File No. 220145 **Committee Item No.** 1
Board Item No.

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee **Date** March 16, 2022
Board of Supervisors Meeting **Date**

Cmte Board

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OTHER **(Use back side if additional space is needed)**

Cmte	Board	
☒	☐	Executed Redacted Energy Storage Service Agreement - 1/24/22
☒	☐	Exhibit L - DRAFT Buyer Liability Pass Through Agreement
☒	☐	Draft Tumbleweed Energy Storage Project Share Agreement
☒	☐	CPUC Decision No. 20-05-003 - 6/24/21
☒	☐	California Community Power Resolution No. 22-01-02
☒	☐	Joint CCA Request for Offers - 10/15/20
☒	☐	SFPUC Resolution No. 21-0023 - 2/9/21
☒	☐	CAL Community Power Agency Joint Powers Agreement - 1/29/21
☒	☐	BOS Ordinance No. 25-21 - 3/12/21
☒	☐	SFPUC Resolution No. 22-0041 - 2/22/22
X	☐	Draft Tumbleweed Operations Agreement

Completed by: Brent Jalipa **Date** March 8, 2022
Completed by: Brent Jalipa **Date**

1 [Agreements - Long Duration Storage - Tumbleweed Energy Storage, LLC - CleanPowerSF -
2 Not to Exceed $65,000,000]

3 **Resolution authorizing the Public Utilities Commission to purchase long duration**
4 **energy storage from Tumbleweed Energy Storage LLC by 1) entering into the Buyer**
5 **Liability Pass Through Agreement; 2) entering into the Tumbleweed Energy Storage**
6 **Project Participation Share Agreement; and 3) entering into the Tumbleweed**
7 **Coordinated Operations Agreement, all of which are agreements between California**
8 **Community Power, CleanPowerSF, and six community choice aggregators to enable the**
9 **City and County of San Francisco to purchase long duration energy storage to serve**
10 **customers of CleanPowerSF with a not to exceed amount of $65,000,000 for a 15-**
11 **year term to commence upon commercial operation of the project, pursuant to**
12 **Charter, Section 9.118.**
13
14 WHEREAS, State law allows cities and counties to develop Community Choice
15 Aggregation (“CCA”) programs through which local governments supply electricity to serve the
16 needs of participating customers within their jurisdictions, while the existing utility continues to
17 provide services such as customer billing, transmission, and distribution; and
18 WHEREAS, The City and County of San Francisco (“City”), through various
19 Ordinances and Resolutions adopted by the Board of Supervisors (“Board”), has implemented
20 a CCA program to provide San Francisco residents and businesses the option to receive
21 cleaner, more sustainable electricity at rates comparable to those of Pacific Gas and Electric
22 Company; and
23 WHEREAS, In May 2016, the Public Utilities Commission (“PUC”) launched its CCA
24 program called CleanPowerSF with initial service to almost 8,000 customer accounts;
25

1 CleanPowerSF completed citywide enrollment in 2020 and now serves over 380,000
2 customer accounts; and
3 WHEREAS, In Ordinance No 25-21, the Board authorized CleanPowerSF to enter into
4 a joint powers agreement with nine other CCAs that provide electricity and related services
5 such as self-generation and energy efficiency programs to customers in Northern California,
6 called California Community Power ("CC Power"); and
7 WHEREAS, In April 2021, CleanPowerSF became a member of CC Power; and
8 WHEREAS, The goal of CC Power is for the participating CCAs to engage in joint
9 efforts for energy-related procurement and projects that will benefit the participating CCAs by
10 leveraging economies of scale to achieve lower costs and more favorable terms and
11 conditions for products and services; and
12 WHEREAS, Long-duration energy storage ("LDS") technology will allow CleanPowerSF
13 to store energy from the grid when it is abundant (e.g., during the middle of the day when solar
14 is available) and discharge it when demand for electricity is high; and
15 WHEREAS, On June 24, 2021, the California Public Utilities Commission ("CPUC")
16 ordered retail sellers of electricity, which includes CleanPowerSF, to procure 11,500
17 megawatts of new resources, including 1,000 megawatts of LDS; CleanPowerSF's share of
18 the CPUC's LDS requirement is 15.5 megawatts; and
19 WHEREAS, CleanPowerSF's failure to comply with CPUC procurement order could
20 result in significant penalties; and
21 WHEREAS, CleanPowerSF, as a member of the CC Power, has participated in a
22 request for offers for LDS resources; and
23 WHEREAS, Following a competitive solicitation, CC Power issued a notice of intent to
24 proceed with its first LDS project, which is known as the Tumbleweed LDS Project; and
25

1 WHEREAS, On January 19, 2022, in Resolution No. 22-01-02, the CC Power Board of
2 Directors approved the Tumbleweed LDS Project and authorized the CC Power General
3 Manager to execute the Tumbleweed LDS Project agreements on behalf of CC Power; and
4 WHEREAS, CleanPowerSF has agreed to purchase a 16 percent share of the
5 Tumbleweed LDS Project; and
6 WHEREAS, CleanPowerSF's share of the Tumbleweed LDS Project will enable
7 CleanPowerSF to meet more than half of its LDS procurement obligation as ordered by the
8 CPUC; and
9 WHEREAS, The Tumbleweed LDS Project requires four separate agreements, and
10 CleanPowerSF is a party to three of those agreements; and
11 WHEREAS, The first of those agreements is the Energy Storage Service Agreement,
12 which is an agreement between CC Power and Tumbleweed Energy Storage, LLC
13 ("Tumbleweed ESSA"); under the Tumbleweed ESSA, CC Power will purchase 69 megawatts
14 of LDS at the Tumbleweed LDS project on behalf of CleanPowerSF and the other participating
15 CCAs; the other participants are Peninsula Clean Energy, Redwood Coast Energy Authority,
16 San José Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean
17 Energy; the Tumbleweed ESSA is on file with the Clerk of the Board in File No. 220145;
18 WHEREAS, The second of those agreements is a Buyer Liability Pass Through
19 Agreement ("BLPTA"), which is an exhibit to the Tumbleweed ESSA; under the BLPTA,
20 CleanPowerSF and the other CCAs that are participating in the Tumbleweed LDS Project must
21 guarantee the prompt payment of their share of CC Power's obligations under the
22 Tumbleweed ESSA should CC Power fail to make any required payments; the BLPTA is on file
23 with the Clerk of the Board in File No. 220145; and
24 WHEREAS, The third of those agreements is the Tumbleweed Energy Storage Project
25 Participation Share Agreement ("Tumbleweed PPSA"); the Tumbleweed PPSA is an

1 agreement between CC Power and the CCAs that are participants in the Tumbleweed LDS
2 Project that defines the rights, duties, and obligations of CC Power and the Project participant;
3 the Tumbleweed PPSA is on file with the Clerk of the Board in File No. 220145; and
4 WHEREAS, The fourth of those agreements is the Tumbleweed Coordinated
5 Operations Agreement ("Tumbleweed Operations Agreement"); the Tumbleweed Operations
6 Agreement is also an agreement between CC Power and the CCAs that are participants in the
7 Tumbleweed LDS Project; the Tumbleweed Operations Agreement details how CC Power and
8 the CCAs will work together to operate the Project including hiring a scheduling coordinator
9 and making decisions on charging and discharging the Project; the Tumbleweed Operations
10 Agreement will be finalized and executed by CC Power and the project participants at a later
11 date, prior to the start of Tumbleweed LDS Project operations; the current draft of the
12 Tumbleweed Operations Agreement is on file with the Clerk of the Board in File No. 220145;
13 and
14 WHEREAS, Under the Tumbleweed ESSA, CleanPowerSF and the other participating
15 CCAs have 90 days from the date the CC Power General Manager executed the Tumbleweed
16 LDS Project agreements (January 24, 2022); and
17 WHEREAS, In PUC Resolution No. 22-0041 dated February 22, 2022, the PUC
18 Commission approved the BLPTA, the Tumbleweed PPSA, and Tumbleweed Operations
19 Agreement, and authorized the General Manager of the PUC to execute those agreements on
20 behalf of the PUC; Resolution No. 22-0041 is on file with the Clerk of the Board in File
21 No. 220145; and
22 WHEREAS, As required by the Board in Ordinance No. 25-21, the Tumbleweed ESSA
23 provides that Tumbleweed Energy Storage, LLC must comply with California prevailing wage
24 and local permitting requirements and prohibits the use of forced labor in its supply chain; in
25 addition, Tumbleweed Energy Storage, LLC has committed to using a project labor agreement,

1 community workforce agreement, work site agreement, collective bargaining agreement, or
2 other similar agreement, providing for terms and conditions of employment with applicable
3 labor organizations; and
4 WHEREAS, Under the Tumbleweed PPSA, each of the participating CCAs and CC
5 Power will agree to indemnify and hold harmless the other parties to the Tumbleweed PPSA
6 for any injuries or damages caused to the parties or others resulting from a breach of
7 agreement or any negligent acts, errors, omissions or willful misconduct incident to the
8 performance of the agreement; and
9 WHEREAS, On February 22, 2022, the Risk Manager authorized CleanPowerSF to
10 indemnify and hold harmless the other parties to the Tumbleweed PPSA as required by the
11 Tumbleweed PPSA; and
12 WHEREAS, The Tumbleweed ESSA, the BLPTA, Tumbleweed PPSA, and
13 Tumbleweed Operations Agreement each has a term of 15 years; and
14 WHEREAS, Under the Tumbleweed ESSA and Tumbleweed PPSA the costs to
15 CleanPowerSF to purchase LDS storage from Tumbleweed Energy Storage, LLC over the 15-
16 year term of the project will not exceed $65 million, which costs will be paid solely from the
17 revenues of CleanPowerSF; and
18 WHEREAS, Section 9.118 of the Charter requires approval by the Board for contracts
19 in excess of ten years or requiring expenditures above $10,000,000; now, therefore, be it
20 RESOLVED, That the Board of Supervisors approves the BLPTA, Tumbleweed PPSA,
21 and Tumbleweed Operations Agreement to allow CleanPowerSF to purchase long duration
22 storage from Tumbleweed Energy Storage, LLC for a term of 15 years to commence upon
23 commercial operation of the project, with a not to exceed amount of $65,000,000, and authorizes
24 the General Manager of the PUC to execute those agreements on behalf of the PUC in
25

substantially the same form as the agreements on file with the Clerk of the Board of Supervisors in File No. 220145; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the General Manager of the PUC to enter into any amendments or modifications to the Tumbleweed Operations Agreement, prior to the final execution by all parties, that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City, do not otherwise materially increase the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of the agreement, and are in compliance with all applicable laws; and, be it

FURTHER RESOLVED, That within 30 days of the agreements being fully executed by the parties the Public Utilities Commission shall provide them to the Clerk of the Board for inclusion in the official file.

Item 1 File 22-0145	Department: San Francisco Public Utilities Commission (SFPUC)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution authorizes the San Francisco Public Utilities Commission (SFPUC) to purchase long duration energy storage from Tumbleweed Energy Storage LLC (Tumbleweed) through California Community Power (CC Power). This authorization covers three agreements between CC Power, CleanPowerSF, and participating community choice aggregators, including the (1) Buyer Liability Pass Through Agreement, (2) Energy Storage Project Participation Share Agreement, and (3) Coordinated Operations Agreement. The three agreements are for a not-to-exceed amount of $65 million over 15 years.

Key Points

- CleanPowerSF joined CC Power in April 2021. CC Power selected Tumbleweed to provide long duration energy storage to participating members following a Request for Offers and to comply with a California Public Utilities Commission (CPUC) order to procure such energy storage capacity by June 2026. Long duration energy storage is a storage system that can discharge its stored electricity at its rated capacity to support system reliability.
- The CPUC requirement for long duration energy storage for the participating CC Power members is 95.6 megawatts (MW) of which the Tumbleweed Project meets approximately 69 MW. CC Power will need to enter into additional long duration energy storage agreements to support participating members compliance with CPUC requirements.
- The Energy Storage Service Agreement is between CC Power and Tumbleweed for long duration energy storage for 15 years from the date of completion of the project in approximately June 2026 to approximately May 2041. The Project Participation Share Agreement is between CC Power and participating members and is for the term of the Energy Storage Service Agreement; this agreement authorizes CC Power to purchase storage capacity and electricity from Tumbleweed on behalf of the participating members. The Buyer Liability Pass-Through Agreement is between Tumbleweed as the energy seller, CC Power as the energy buyer, and CleanPowerSF as the participant; and defines CleanPowerSF's obligation to make its share of the monthly payment owed to Tumbleweed.

Fiscal Impact

- According to SFPUC staff, CleanPowerSF payments for the Tumbleweed long duration energy storage project will begin prior to project completion in approximately June 2026. CleanPowerSF will make quarterly payments to CC Power, who is responsible for payments to Tumbleweed on behalf of its participating members. CleanPowerSF's approximate share of the annual payments are $4.3 million and total payments over 15 years are not to exceed $65 million. CleanPowerSF's payments to CC Power for long duration energy storage have been accounted for in CleanPowerSF's 10-year financial plan and will be incorporated into CleanPowerSF's rates in future years.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract 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

CleanPowerSF, operated by the San Francisco Public Utilities Commission Power Enterprise, provides electricity generated from renewable sources to approximately 380,000 San Francisco customers. CleanPowerSF began serving customers in 2016 following enactment of California Public Utilities Code Section 331.1(c) and 366.2 in 2002 authorizing local governments to create community choice aggregators to provide electricity to participating customers using the existing investor-owned utility's billing, transmission, and distribution infrastructure. The Board of Supervisors approved a series of legislation between 2004 and 2015 supporting implementation of CleanPowerSF as the City's community choice aggregator.[1]

In February 2021, the Board of Supervisors authorized CleanPowerSF to join a nine-member Joint Powers Agreement (JPA) with other community choice aggregators in Northern California (Ordinance 25-21).[2] The JPA, called California Community Power or "CC Power," was formed in April 2021.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution authorizes the San Francisco Public Utilities Commission (SFPUC) to purchase long duration energy storage from Tumbleweed Energy Storage LLC (Tumbleweed) as a member of CC Power. This authorization covers three agreements between CC Power, CleanPowerSF, and six other members of CC Power, including the (1) Buyer Liability Pass Through Agreement, (2) Tumbleweed Energy Storage Project Participation Share Agreement, and (3) Tumbleweed Coordinated Operations Agreement. The three agreements are for a not-to-exceed amount of $65 million over 15 years.

The agreements allow CC Power to secure long duration energy storage from Tumbleweed for the participating community choice aggregators. Construction of the Tumbleweed project is

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[1] 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.

[2] According to the Budget and Legislative Analyst's report to the January 27, 2021 Budget and Finance Committee, the JPA was to be made up of Clean Power SF; Central Coast Community Power (serving parts of Monterey, San Benito, Santa Cruz, San Luis Obispo and Santa Barbara counties); East Bay Community Energy Authority (Alameda County); Marin Clean Energy Authority (serving Contra Costa, Marin, Napa and Solano counties as well as towns and cities within those counties); San Jose Clean Energy (City of San Jose); Redwood Coast Energy Authority (Humboldt County); Peninsula Clean Energy (San Mateo County and incorporated cities); Silicon Valley Clean Energy Authority (parts of Santa Clara County); and Sonoma Clean Power Authority (Sonoma and Mendocino Counties).

scheduled to be completed and operational in approximately June 2026 and the 15-year capacity and electricity delivery period begins in approximately June 2026 and extends through approximately May 2041.

Long Duration Energy Storage

In June 2021, the California Public Utilities Commission (CPUC) issued a new rule to increase electricity system reliability by requiring electricity retailers to procure an additional 11,500 megawatts of electricity generated from renewable sources; the additional electricity is to become available between 2023 and 2026. Of the 11,500 megawatts, 1,000 megawatts are long duration energy storage to be procured by 2026. Long duration energy storage is a storage system that can provide a number of hours of stored electricity. According to a 2021 report by the National Renewable Energy Laboratory, funded by the U.S. Department of Energy, long duration energy storage is intended to provide resource adequacy (ability to meet peak electricity demand at all times by end-use customers) and to reduce use of carbon emitting fuels. According to the report, "energy storage duration is typically expressed in terms of the number of hours a storage device can provide continuous output at its rated capacity"; the number of hours of output capacity is not standard but is often considered to be 10 hours.[3] The California Public Utilities Commission rule requires at least eight hours of output capacity.

Long Duration Energy Storage Request for Offers

In October 2020, eight community choice aggregators issued a Request for Offers (RFO) for the sale of long duration energy storage capacity and energy. The eight community choice aggregators included CleanPowerSF, Central Coast Community Energy, Marin Clean Energy, Peninsula Clean Energy, Redwood Coast Energy Authority, San Jose Clean Energy, Silicon Valley Clean Energy, and Sonoma Clean Power. The RFO stated that the selected project(s) must (1) provide eight hours of discharge duration (or "continuous output" defined in the National Renewable Energy Laboratory report); (2) meet CPUC and CAISO (California Independent System Operator)[4] requirements for participation in the Resource Adequacy program; (3) interconnect with the transmission or distribution system and be able to participate in CAISO electricity markets; and (4) if not interconnected to the transmission or distribution system, be able to provide Resource Adequacy as a dynamic transfer. The RFO required that the project be in operation by June 2026 and have a minimum delivery term of 10 years. The minimum project capacity was 50 megawatts.

Project Selection

CC Power assumed the management of the long duration energy storage RFO. Projects responding to the RFO were scored based on the projects' economic value, development status,

[3] *Storage Futures Study: The Challenge of Defining Long-Duration Energy Storage,* National Renewable Energy Laboratory, Paul Denholm, Wesley Cole, A. Will Frazier, Kara Podkaminer, and Nate Blair; 2021.

[4] CAISO is responsible for statewide management of the flow of electricity on high-voltage power lines, operation of the wholesale energy market, and oversight of electricity infrastructure planning.

project viability, ability to meet state regulatory requirements, technology viability, project team experience, compliance with workforce.

An ad hoc project oversight committee consisting of representatives of each of the eight participants in the RFO was formed to review and recommend project offers to the CC Power Board of Directors. Of the 51 projects that submitted offers, 15 were selected for a second round of evaluation. The project oversight committee then selected and entered into negotiations with a short list of project developers. In October 2021, the CC Power Board of Directors issued notice of its intent to consider a contract with the Tumbleweed Long Duration Energy Storage (LDS) Project, and on January 19, 2022 the Board approved the three project agreements – Energy Storage Service Agreement, Project Participation Share Agreement, and Buyer's Liability Pass Through Agreement.

Long Duration Energy Storage Project Agreements

Participation in the project is voluntary for CC Power members; participating members include CleanPowerSF, Peninsula Clean Energy, Redwood Coast Energy Authority, San Jose Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy (covering the cities of Davis and Woodland and unincorporated areas of Yolo County). The Tumbleweed LDS Project capacity of 69 megawatts covers approximately 72 percent of CPUC capacity requirement of 96.5 megawatts, as shown in Exhibit 1 below.[5]

Exhibit 1: CPUC Long Duration Energy Storage Requirements and Tumbleweed Capacity

	CPUC Requirement (MW)	Tumbleweed Capacity (MW)	Percent of Requirement
Clean Power SF	15.5	11.1	71%
Peninsula Clean Energy	19.0	13.6	72%
Redwood Coast Energy Authority	3.5	2.5	71%
San Jose Clean Energy	21.5	15.4	71%
Silicon Valley Clean Energy	20.5	14.7	72%
Sonoma Clean Power	12.5	8.9	72%
Valley Clean Energy	4.0	2.8	72%
Total	**96.5**	**69.0**	**72%**

[5] While Tumbleweed LDS Project total capacity meets 72 percent of CPUC requirements, CC Power staff estimated that actual storage capacity requirements may be higher than CPUC requirements because variations in generation of electricity compared to when an electricity shortfall may occur impact the reliability of the electricity grid (an increase in electricity demand may occur at time when renewable electricity is not at peak generation). The Effective Load Carrying Capability (ELCC) is an estimate of electricity grid reliability that considers this variation and is calculated as a percentage of an electricity plant's capability. For example, a solar plant with 100-megawatt capability may only generate at 70 megawatt or 70 percent capability. According to the CC Power staff presentation, the CPUC requirement of 96.5 megawatts of storage capacity is only 78 percent of ELCC requirements, estimated by CC Power staff to be 123.4 megawatts, and therefore the Tumbleweed LDS Project of 69 megawatts is only 55 percent of the actual storage capacity requirements of 123.4 megawatts when adjusted for ELCC.

Source: CC Power Board of Directors January 19, 2022 Meeting Presentation

The Tumbleweed LDS Project, located in Kern County, consists of lithium-ion battery storage and 8 hours of discharge capacity. Project development is expected to be completed and operational by June 2026, which complies with CPUC requirements. The project connects to the electricity grid at the Whirlwind Substation and the California Independent System Operator managed grid.

Energy Storage Service Agreement

The Energy Storage Service Agreement is between CC Power and Tumbleweed Energy Storage, LLC (“Tumbleweed”), and is for 15 years from the date of completion and commercial operation of the Project in approximately June 2026. The agreement:

- provides for guaranteed 69 megawatts installed capacity at eight hours of continuous discharge and dedicated interconnection capacity of 69 megawatts;
- is for a fixed price per kilowatt per month and no escalation over the agreement term;
- gives CC Power exclusive rights to purchase Tumbleweed LDS Project capacity and to resell the purchased capacity; and
- sets performance standards, progress reporting requirements, and requirements for project completion and electricity availability.

CC Power, as the buyer, makes a monthly payment to Tumbleweed based on a formula defined in Exhibit C of the agreement.

Project Participation Share Agreement

The Project Participation Share Agreement is between CC Power and the seven participating members shown in Exhibit 1 above and is for the term of the Energy Storage Service Agreement. This agreement authorizes CC Power to purchase storage capacity and electricity from Tumbleweed on behalf of the participating members. Under the Project Participation Share Agreement, each participating member is entitled to the following share of project capacity:

Exhibit 2: Entitlement Share of Total Project Capacity

	Entitlement Share	Capacity Share (MW)
Clean Power SF	16.1%	11.08
Peninsula Clean Energy	19.7%	13.59
Redwood Coast Energy Authority	3.6%	2.50
San Jose Clean Energy	22.3%	15.37
Silicon Valley Clean Energy	21.3%	14.66
Sonoma Clean Power	13.0%	8.94
Valley Clean Energy	4.2%	2.86
Total	**100.0%**	**69.00**

Source: Project Participation Share Agreement

Under the Project Participation Share Agreement, CC Power prepares the annual budget for the Tumbleweed Project, maintains financial records, and provides annual financial reports. CC Power is also responsible for scheduling of energy on the electricity grid, and resale of electricity on behalf of a participating member. The CC Power Board of Directors has oversight of the Energy Storage Service Agreement with Tumbleweed, and has authority to review, modify, and approve, as appropriate, all amendments, modifications, and supplements to the Energy Storage Service Agreement. The Project Participation Share Agreement provides for a project committee, made up of representatives from the participating members, to coordinate information and make recommendations to the CC Power Board of Directors on the Energy Storage Service Agreement.

The Project Participation Share Agreement defines the terms by which each participating member makes their monthly share of payments to the project. The agreement specifically states that San Francisco payment obligations are limited to CleanPowerSF and are not obligations of SFPUC or the City. Payments require that the Controller certifies the availability of funds and are limited to those payments agreed upon in the project scope.

Participating members can be required to make a "step-up" payment that fully covers monthly payments in the event of a default by another participating member. The step-up payment is capped at 25 percent of the participating member's share; CleanPowerSF step-up payment obligation, therefore, would not exceed 125 percent of CleanPowerSF's total share of the Tumbleweed Project monthly payment.

Coordinated Operations Agreement

The Project Participation Share Agreement provides for a Coordinated Operations Agreement between CC Power and the seven participating members for operating the Project. The Coordinated Operations Agreement sets the terms by which CC Power will (i) provide for delivery of Project electricity to each participant, including allocating any revenues, credits, or other account requirements associated with the electricity; and (ii) coordinate scheduling of electricity on the power grid. The CC Power Board of Directors is to establish an Operations Committee for oversight of Project operations.

Buyer Liability Pass-Through Agreement

The Buyer Liability Pass-Through Agreement is between Tumbleweed as the energy seller, CC Power as the energy buyer, and CleanPowerSF as the participant. Each participant in the Tumbleweed Project is required to enter into a Buyer Liability Pass-Through Agreement. The agreement defines CleanPowerSF's obligation to make its share of the monthly payment to Tumbleweed and incorporates the City's standard Administrative Code contracting requirements.

FISCAL IMPACT

According to SFPUC staff, CleanPowerSF payments for the Tumbleweed long duration energy storage project will begin prior to project completion and operation in approximately June 2026. CleanPowerSF will make quarterly payments to CC Power, who is responsible to payments to

Tumbleweed on behalf of the community choice aggregators. Annual payments are approximately $4.3 million and total payments over 15 years are not to exceed $65 million.

CleanPowerSF's 10-year financial plan for FY 2022-23 through FY 2031-32 projects an annual fund balance ranging from 37 percent of operating expenses in FY 2022-23 to 38 percent of operating expenses in FY 2031-32, which is compliant with SFPUC's minimum fund balance requirement of 25 percent. Historically, CleanPowerSF's rates have been pegged to Pacific Gas and Electric (PG&E) rates. SFPUC is conducting a CleanPowerSF rate study that will set CleanPowerSF rates based on operating and capital requirements rather than PG&E rates. The new rates will be implemented on July 1, 2022. CleanPowerSF's payments to CC Power for long duration energy storage will be incorporated into CleanPowerSF's rates in future years.

RECOMMENDATION

Approve the proposed resolution.

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

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

Buyer: California Community Power, a California joint powers authority

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

Milestones:

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

Delivery Term: 15 Contract Years

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

Dedicated Interconnection Capacity: 69 MW

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1-15	83.3%

Contract Price:

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

Product:

☒ Discharging Energy

☒ Installed Capacity and Effective Capacity

☒ Ancillary Services

☒ Capacity Attributes

Scheduling Coordinator:

Prior to Commercial Operation Date: Seller

From Commercial Operation Date through the Delivery Term: Buyer

Security Amount:

Development Security: $[redacted]/kW of Guaranteed Capacity

Performance Security: $[redacted]/kW of Guaranteed Capacity

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ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement ("**Agreement**") is entered into as of 01/24/2022 (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1
DEFINITIONS

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

"**AC**" means alternating current.

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transferee", "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Buyer the public entities designated as members or participants under the Joint Powers Agreement creating Buyer shall not constitute or otherwise be deemed an "Affiliate" for purposes of this Agreement.

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

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

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

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

"**Automatic Generation Control**" or "**AGC**" has the meaning set forth in the CAISO Tariff.

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

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

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

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

"**Bankrupt**" or "**Bankruptcy**" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

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

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

"**Buyer**" has the meaning set forth on the Cover Sheet.

"**Buyer Default**" means an Event of Default of Buyer.

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

"**Buyer's Indemnified Parties**" has the meaning set forth in Section 16.1(a).

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

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

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

"**CAISO Certification**" means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services that the Facility can provide, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

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

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

"**CAISO Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, as the same may be amended or modified from time-to-time and approved by FERC.

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the ability of the Facility to charge, discharge and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

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

"**Capacity Test**" or "**CT**" means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity or Efficiency Rate or, subject to the qualifications set forth in Exhibit O, any other test conducted pursuant to Exhibit O.

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

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

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

"**Charging Energy**" means the Energy delivered to the Facility pursuant to a Charging Notice as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses. All Charging Energy not consumed in Electrical Losses or used for Station Use shall be used solely to charge the Facility.

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

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

"**Commercial Operation**" means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice of the same to Buyer; *provided*, Commercial Operation shall occur no sooner than the Expected Commercial Operation Date.

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

"**Commercial Operation Date**" or "**COD**" means the later of (a) the Expected Commercial Operation Date or (b) the date on which Commercial Operation is achieved.

"**Commercial Operation Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

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

"**Compliant Project Participant**" means a Project Participant that is not a Defaulted Project Participant.

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

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

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

"**Contract Price**" has the meaning set forth on the Cover Sheet.

"**Contract Term**" has the meaning set forth in Section 2.1(a).

"**Contract Year**" means a period of twelve (12) consecutive months (plus, in the case of the first Contract Year only, if the Commercial Operation Date does not occur on the first day of a calendar month, the period from the Commercial Operation Date through the end of the calendar month in which the Commercial Operation Date occurs). The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date or, if the Commercial Operation Date does not occur on the first day of a calendar month, the anniversary of the first day of the first full calendar month following the Commercial Operation Date.

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

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

"**CPM Soft Offer Cap**" has he meaning set forth in the CAISO Tariff.

"**CPUC**" means the California Public Utilities Commission, or any successor entity performing similar functions.

"**Credit Rating**" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

"**Cure Plan**" has the meaning set forth in Section 11.1(b)(iii).

"**Curtailment Order**" means any of the following:

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

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

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

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

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

"**Daily Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

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

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

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

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

"**Defaulted Liability Share**" means the Liability Share of a Defaulted Project Participant.

"**Defaulted Project Participant**" means a Project Participant that has incurred but not cured a Project Participant Payment Default, including any Project Participant whose rights under the Project Participation Share Agreement have been suspended or terminated.

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

"**Delivery Point**" means the Facility Pnode on the CAISO grid.

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

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

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

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

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to the Facility, directing the Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh. Any instruction to discharge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.

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

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

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

"**Effective Capacity**" means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point) as determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

"**Effective Date**" has the meaning set forth on the Preamble.

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

"**Efficiency Rate**" means the tested rate calculated pursuant to Sections II.I(2) and III(A) of Exhibit O by dividing Discharging Energy by Charging Energy and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate test has been conducted in such calendar month and different tested Efficiency Rates apply during such calendar month.

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

"**Electrical Losses**" means all transmission or transformation losses (a) between the Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy.

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

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

"**Energy Management System**" or "**EMS**" means the Facility's energy management system.

"**Environmental Attributes**" shall mean any and all attributes under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future to the Facility and its displacement of conventional energy generation. "Environmental Attributes" do not include (i) Tax Credits or other tax benefits or attributes, including any cash payments in lieu thereof, (ii) any governmental grants, subsidies or other incentive payments related to the construction, ownership or operation of the Facility, or (iii) any Emission Reduction Credits or Marketable Emission Trading Credits.

"**Environmental Cost**" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate the Facility, and the costs associated with the disposal and clean-up of hazardous substances introduced to the Site, and the

decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

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

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

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

"**Facility**" means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

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

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

"**Federal Investment Tax Credit Legislation**" means validly enacted federal legislation that either (a) applies the ITC in its current form to the Facility, or (b) extends federal Tax Credits associated with capital investment in the construction of energy storage facilities or equipment used to store energy for which Seller, as the owner of the Facility, is eligible.

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

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

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

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

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

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

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

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

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

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

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

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

"**Guaranteed Capacity**" means the maximum dependable operating capability of the Facility to discharge electric energy, as measured in MW AC at the Delivery Point for eight (8) hours of continuous discharge, as set forth on the Cover Sheet.

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

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

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

"**Guaranteed Flexible Capacity**" means, at any point in time, the maximum quantity of Flexible Capacity (in MWs) for which a storage facility having a storage capacity of 69 MW with eight (8) hours of continuous discharging at the maximum rate of discharge, having achieved PCDS sufficient to fully deliver the Facility's Guaranteed Capacity, and performing with

operational characteristics equal to those required by the Guaranteed Availability, Guaranteed Efficiency Rate, and the Operating Restrictions may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

"**Guaranteed Net Qualifying Capacity**" means, at any point in time, the maximum quantity of Net Qualifying Capacity (in MWs) for which a storage facility having a storage capacity of 69 MW with eight (8) hours of continuous discharging at the maximum rate of discharge, having achieved PCDS sufficient to fully deliver the Facility's Guaranteed Capacity, and performing with operational characteristics equal to those required by the Guaranteed Availability, Guaranteed Efficiency Rate, and the Operating Restrictions may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

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

"**Imbalance Energy**" means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy or Discharging Energy, as applicable, deviates from the amount of Scheduled Energy.

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

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

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

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

"**Installed Capacity**" means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW AC at the Facility Meter Point by the Facility Meter and adjusted for Electrical

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

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

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller or a Seller Affiliate pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

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

"**ITC**" means the investment tax credit established pursuant to Section 48 or other applicable provisions of the United States Internal Revenue Code of 1986.

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

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated January 29, 2021, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

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

"**Lender**" means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of

the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's or (b) being reasonably acceptable to Buyer, in a form substantially similar to the letter of credit set forth in Exhibit K.

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

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

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

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

"**Losses**" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes. Seller's lost revenue under this Agreement resulting from a Buyer Default shall not be considered to be consequential, incidental, punitive, exemplary or indirect or business interruption damages for purposes of determining Losses under this Agreement.

"**Marketable Emission Trading Credits**" means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

"**Master File**" has the meaning set forth in the CAISO Tariff.

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

"**Maximum Charging Capacity**" means the highest level at which the Facility may be charged, expressed in MW and as set forth in Exhibit Q.

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

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

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

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

"**Moody's**" means Moody's Investors Service, Inc., or its successor.

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

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

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

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

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

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

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

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

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

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

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

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

"**Partial Capacity Deliverability Status**" or "**PCDS**" has the meaning set forth in the CAISO Tariff.

"**Party**" has the meaning set forth in the Preamble.

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

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

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

"**Permitted Transferee**" means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

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

(b) At least two (2) years of experience in the ownership and operations of energy generation or storage facilities similar to the Facility or has retained a third-party with such experience to operate the Facility.

"**Person**" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

"**Planned Outage**" means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.12(a).

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

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

"**PNode**" has the meaning set forth in the CAISO Tariff.

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

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

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

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

"**Product**" has the meaning set forth on the Cover Sheet.

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

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

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

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

"**Project Participation Share Agreement**" means that certain Tumbleweed Energy Storage Project Participation Share Agreement executed by and among Buyer and all of the Project Participants relating to their allocation among themselves of Buyer's responsibilities and liabilities under this Agreement, and any successor agreement.

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

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

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

"**Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

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

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

"**RA Guarantee Date**" means the Commercial Operation Date, which is the date by which the Facility is expected to have achieved Partial Capacity Deliverability Status sufficient to fully deliver the Facility's Guaranteed Capacity.

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

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

(a) the Facility has not achieved PCDS sufficient to fully deliver the Facility's Guaranteed Capacity; or

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

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

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

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

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

"**Remedial Action Plan**" has the meaning in Section 2.4.

"**Replacement RA**" means Resource Adequacy Benefits, if any, (a) equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA

Deficiency Amount is due to Buyer, unless Buyer consents to accept Replacement RA from another facility, and (b) located within the CAISO Balancing Authority Area.

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

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's Resource Adequacy Requirements, as those obligations are set forth in any ruling issue by the CPUC, including the Resource Adequacy Rulings, or the CAISO Tariff, and shall include Flexible Capacity, and any local, zonal or otherwise locational attributes associated with the Facility.

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

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

"**Resource Adequacy Resource**" shall have the meaning used in Resource Adequacy Rulings.

"**Resource Adequacy Rulings**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by the CPUC or the CAISO, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

"**Revised Liability Share**" means the sum of a Project Participant's Initial Liability Share plus its Pro Rata portion of all Defaulted Liability Shares, not to exceed one hundred twenty-five percent (125%) of such Participant's Initial Liability Share.

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

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

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

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

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

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

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

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Seller's Indemnified Parties**" has the meaning set forth in Section 16.1(b).

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

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount shall not include consequential, incidental, punitive, exemplary or indirect or business interruption damages for purposes of this Agreement, except to the extent that Seller's lost revenue under this Agreement resulting from a Buyer Default may be included in the determination of Losses.

"**Settlement Interval**" has the meaning set forth in the CAISO Tariff.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff.

"**Shared Facilities**" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Discharging Energy to the Delivery Point, including the Interconnection Facilities and the Interconnection Agreement itself, if applicable, that are used in common with third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

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

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

described in Exhibit A shall be subject to Buyer's approval of such updates in its sole discretion. "Site" does not include any land rights or interests in the real property constituting the Site that relate to or are used by other projects constructed or owned by Seller or its Affiliates.

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

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

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

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

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

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

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

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

"**System Emergency**" means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

"**Tax**" or "**Taxes**" means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and

use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

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

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

"**Termination Payment**" has the meaning set forth in Section 11.3(b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein, including Section 2.1(b) ("**Contract Term**"); *provided*,

Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Notwithstanding anything to the contrary in this Agreement, if Project Participant Approval of this Agreement is not obtained within ninety (90) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(c), and Buyer shall promptly return to Seller any Development Security then held by Buyer, if any, less any amounts drawn in accordance with this Agreement.

(c) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

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

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity and Efficiency Rate on the Commercial Operation Date;

(b) Seller has executed an Interconnection Agreement with the Transmission Provider, which shall be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(c) Seller has provided Buyer with a copy of written notice from CAISO that the Facility has achieved Partial Capacity Deliverability Status sufficient to fully deliver the Facility's Guaranteed Capacity, if applicable;

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

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

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

(g) Seller has Site Control;

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

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

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

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

2.4 **Remedial Action Plan**. If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone; *provided*, in the event Seller misses any Milestone and Seller provides Notice to Buyer that it is not likely to be able to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date as may be extended pursuant to Exhibit B, Buyer shall have the right to terminate this Agreement and retain the Development Security as liquidated damages and as its exclusive remedy, and neither Party shall have any further liability under this Agreement arising after the date of

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

2.5 **Pre-Commercial Operation Actions**. The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller's delivery of an Availability Notice for the Commercial Operation Date, and delivery of a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date. In addition, Seller shall have the right to operate the Facility [redacted] prior to the Commercial Operation Date, so long as such operation does not interfere with Seller's ability to perform its obligations under this Agreement from and after the Commercial Operation Date.

ARTICLE 3
PURCHASE AND SALE

3.1 **Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith. Seller has all rights to the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith [redacted] and after the Delivery Term. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or the CAISO pursuant to this Agreement.

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

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

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

(b) Throughout the Delivery Term, Seller shall maintain Partial Capacity Deliverability Status sufficient to fully deliver the Facility's Guaranteed Capacity for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

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

3.4 **Ancillary Services; Environmental Attributes**.

(a) Ancillary Services. Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing during the Delivery Term consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Contract Term so as to be able to provide such Ancillary Services in accordance with the specifications set forth in the Facility's initial CAISO Certification associated with the Installed Capacity. Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein and without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any costs Seller incurs in connection with conducting such additional CAISO Certification.

(b) Environmental Attributes. Buyer shall have the exclusive rights during the Delivery Term to any Environmental Attributes existing on the Effective Date or that may come into existence during the Contract Term. Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Environmental Attributes. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Environmental Attributes. Seller shall have no obligation to bear any costs, losses or liability, or alter the Facility, unless the Parties in their discretion have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

3.5 **Resource Adequacy Failure**.

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

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

(i) The greater of:

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

(B) the difference, expressed in kW, of the then applicable Guaranteed Effective Capacity of the Facility, minus the then applicable Effective Flexible Capacity of the Facility that may be included in Supply Plans by Buyer, which shall be deemed to be zero (0) MW if the Effective Flexible Capacity has not been published by or otherwise established with the CAISO by the Notification Deadline for such RA Shortfall Month, plus any Effective Flexible Capacity that was provided as Replacement RA that was able to be included in Supply Plans in the Showing Month by Buyer;

(ii)

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

3.6 **Buyer's Re-Sale of Product**. Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

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

commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Discharging Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. Commencing as of the Commercial Operation Date, the Charging Energy and Discharging Energy will be scheduled to the CAISO by Buyer in accordance with Exhibit D.

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

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

4.3 **Performance Guarantees**.

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

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

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

4.4 **Facility Testing**.

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

(i) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests.

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

(b) Additional Testing. Seller shall conduct such additional testing as necessary to ensure the Facility is functioning properly and the Facility is able to respond to Dispatch Notices pursuant to Section 4.6(b).

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

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

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

4.5 **Testing Costs and Revenues**.

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

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

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

4.6 **Facility Operations**.

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

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

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

(d) Seller shall maintain accurate records with respect to all Capacity Tests.

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

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

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

remedy, the time period corresponding to such Settlement Interval or Settlement Period shall be deemed unavailable for purposes of calculating the Monthly Capacity Availability.

4.9 **Energy Management**.

(a) Charging Generally. Upon receipt of a valid Charging Notice, Seller shall take all action necessary to deliver the Charging Energy to the Facility from the Delivery Point. Seller shall maintain, repair or replace equipment in Seller's possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all costs and charges of delivering the Charging Energy to the Delivery Point, including all CAISO costs and charges associated with Charging Energy.

(b) Charging Notices. Buyer shall have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Charging Notices to be issued, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this Agreement shall be effective unless and until Buyer's SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice. Buyer shall be responsible for issuing all Charging Notices necessary or required in connection with the Must Offer Obligations.

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

(d) Discharging Notices. Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Discharging Notices to be issued. Each Discharging Notice issued in accordance with this Agreement shall be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice. Buyer shall be responsible for issuing all Discharging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligation.

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

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

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Facility other than as permitted hereunder, or as is expressly addressed in this Section 4.9, it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom, and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11.

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.9 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch or Seller negligently or intentionally fails to accurately communicate to Buyer the Facility's availability, Seller shall be responsible for all CAISO charges and penalties resulting from such deviations (in addition to any Buyer remedy related to overcharging of the Facility as set forth in Section 4.9(c)).

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

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

(j) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use(including paying the cost of any Energy used to serve Station Use during periods in which the Storage Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice), (ii) Energy supplied from Charging Energy or Discharging Energy during periods in which the Storage Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice shall not be considered Station Use, (iii) Station Use may be supplied over the same circuit as Charging Energy and Discharging Energy, and (iv) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties or charges for Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use (other than that supplied from Charging Energy or Discharging Energy as provided in clause (ii) or over the same circuit as Charging Energy and Discharging Energy as

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

4.10 **Capacity Availability Notice**.

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

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

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

4.11 **[Reserved]**.

4.12 **Outages**

(a) **Planned Outages**.

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller's schedule of proposed Planned Outages ("**Outage Schedule**") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer's requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to reduce deliveries of applicable Products during any period of such Planned Outages.

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

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

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

(c) **Planned Outage Timing**. To the extent commercially reasonable, Seller shall schedule maintenance outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.

(d) **Notice of Unplanned Outages** Seller shall notify Buyer by telephoning Buyer's Scheduling Coordinator no later than thirty (30) minutes following the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within thirty (30) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.

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

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

ARTICLE 5
TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Buyer's income, revenue, receipts or employees). Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and

after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees) or on Charging Energy prior to its delivery to Seller. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

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

5.3 **Environmental Costs**. Seller shall be solely responsible for:

(a) All Environmental Costs;

(b) All taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Delivery Term, but expressly excluding any taxes, charges or fees related to Greenhouse Gases imposed on Charging Energy or Discharging Energy;

(c) Seller's obligations listed under "Compliance Obligation" in the GHG Regulations, and

(d) All other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with the California Global Warming Solutions Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder, including the GHG Regulations, or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by a Governmental Authority) with respect to the Facility and/or Seller.

ARTICLE 6
MAINTENANCE AND REPAIR OF THE FACILITY

6.1 **Maintenance of the Facility**.

(a) Seller shall construct, operate, and maintain the Facility so that Buyer may dispatch the Facility within the operating parameters of the Operating Restrictions. Nothing herein shall limit Seller's right replace or augment existing batteries and other equipment to maintain the capacity of the Facility.

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

(c) Seller shall promptly make all necessary repairs to the Facility, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Performance Guarantees).

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

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

ARTICLE 7
METERING

7.1 **Metering**. Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter, which shall be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. Seller shall separately meter all Station Use except to the extent drawn from Charging Energy or Discharging Energy. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Each meter shall be kept under seal, such seals to be broken only when the Facility Meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the

CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface - Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility.

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

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall reflect (a) records of metered data, including, to the extent the available, (i) CAISO metering and transaction data reflecting the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy and the amount of Discharging Energy, in each case as read by the Facility Meter, and the amount of Replacement RA delivered to Buyer (if any) and (ii) Seller's records of metered data, including data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Beginning on the Commercial Operation Date, Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices; *provided*, however, that the Parties acknowledge and agree that CAISO metering and transaction data showing the amount of Product delivered by the Facility for any Settlement Period during the prior month may not be available or be final at the time each monthly invoice is delivered pursuant to this Section 8.1 and that the monthly invoice will be based on such data as are available at the time. When CAISO metering and transaction data showing the amount of Product delivered by the Facility for any Settlement Period during the applicable month, including the amount of Charging Energy and the amount of Discharging Energy, in each case as read by the Facility Meter, and the amount of Replacement RA delivered to Buyer (if any) becomes available, Seller will true up such invoices to reflect any differences between Seller's records and the data received from CAISO, and an appropriate credit or charge will be added to the next monthly invoice.

8.2 **Payment**. Buyer shall make payment to Seller of Monthly Capacity Payments for Product (and any other amounts due) by wire transfer or ACH payment to the bank account

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

8.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds $10,000.

8.4 **Payment Adjustments; Billing Errors**. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a Facility Meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the

extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after receipt of Project Participant Approval. Seller shall maintain the Development Security in full force and effect. Within five (5) Business Days following any draw by Buyer on the Development Security, Seller shall replenish the amount drawn such that the Development Security is restored to the applicable amount. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for

in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

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

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

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

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

8.10 **Buyer Credit Arrangements**.

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

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

Participants executed by Buyer and the applicable Compliant Project Participants that reflect each Compliant Project Participant's Revised Liability Share following such Step Up Event, and, (B) Exhibit V will be amended to reflect the Compliant Project Participants' Revised Liability Shares following such Step Up Event. Seller shall countersign each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Compliant Project Participant within ten (10) Business Days after Buyer's delivery of such Buyer Liability Pass Through Agreements to Seller; *provided* that no delay in countersigning or failure to countersign any such Buyer Liability Pass Through Agreement shall affect Buyer's or the Project Participant's rights or obligations thereunder. Following the occurrence of a Step-Up Event, Seller and Buyer will amend Exhibit V to set forth the Revised Liability Shares of the remaining Project Participants.

ARTICLE 9
NOTICES

9.1 **Addresses for the Delivery of Notices**. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic (excluding impacts of the disease designated COVID-19 or the related virus designated SARS-CoV-2 impacts actually known by the Party claiming the Force Majeure Event as of the Effective Date); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order, except to the extent such Curtailment Order is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) events otherwise constituting a Force Majeure Event that prevents Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under this Agreement; or (ix) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement

in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs**. Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder except as provided above, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Section 4 of Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) after all applicable extensions of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

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

10.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or substantially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any further liability to the other Party, save and except for those obligations specified in Section 2.1(c), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An "**Event of Default**" shall mean,

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.5, (B) failures related to the Monthly Capacity Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P, and (C) failure to maintain the Guaranteed Efficiency Rate, the exclusive remedies for which are set forth in Exhibit C), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

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

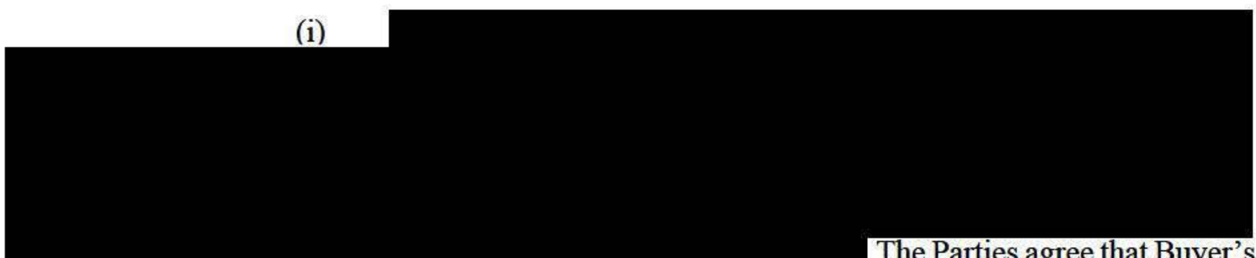
(d) to suspend performance; and

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

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

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

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

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

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

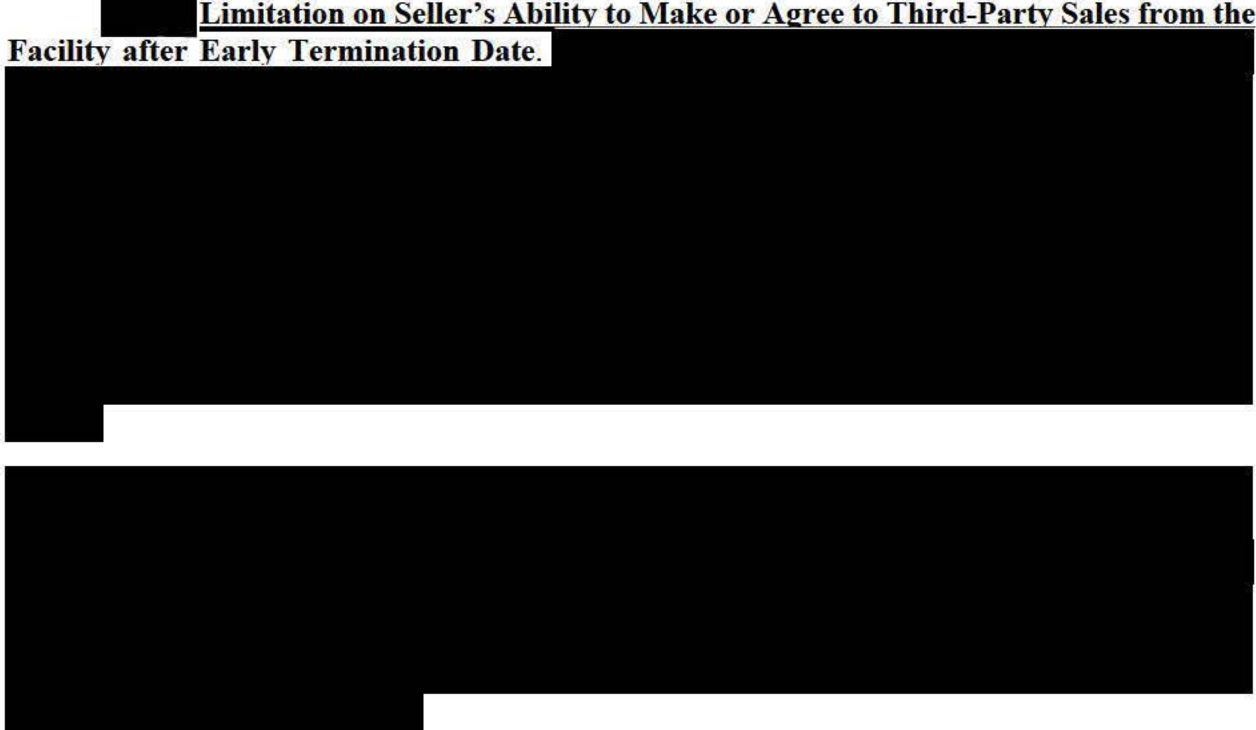
(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a

Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment or Damage Payment**. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

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



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

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

11.9 **Pass Through of Buyer Liability**. Notwithstanding any other provision of this Agreement, if Buyer fails to make when due any payment required pursuant to this Agreement, and such failure is not remedied within ten (10) Business Days after Notice thereof, Seller may, without waiving any of its rights with respect to Buyer except as expressly provided herein, pursue remedies under any or all of the Buyer Liability Pass Through Agreements as provided therein. Seller hereby waives the right to recover directly from Buyer any Damage Payment or Termination Payment owed by Buyer that is not paid by Buyer pursuant to Sections 11.3 and 11.4, but the foregoing waiver does not apply to any other right or remedy of Seller under this Agreement, including the right to recover accrued Monthly Capacity Payments, other amounts payable or reimbursable under this Agreement or any other amounts incurred or accrued prior to termination of this Agreement, and the right to terminate the ESSA as the result of an Event of Default by Buyer.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages**. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH

OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.5, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; COVENANTS

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

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

business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

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

(e) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

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

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

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly

authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

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

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

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

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

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

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

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

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

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

orientation, gender identity, transgender status, domestic partner status, marital status, physical or mental disability, or AIDS/HIV status.

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

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

(d) Permits. Seller shall obtain and maintain any and all permits and approvals necessary for the construction and operation of the Facility, including without limitation, environmental clearance under CEQA or other environmental law, as applicable, from the local jurisdiction where the Facility is or will be constructed.

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

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below in this Article 14, neither Party may assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer's consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall pay the

other Party's reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment**. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility without the consent of Buyer. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"), which shall be substantially in the form of Exhibit T. Seller shall pay Buyer's reasonable expenses, including attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing of the Facility. Buyer shall have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify this Agreement.

14.3 **Permitted Assignment**.

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

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3(a) shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

(b) Buyer may, without the prior written consent of Seller, transfer or assign this Agreement to any member of Buyer that (A) has a Credit Rating of at least BBB- from S&P and Baa3 from Moody's, and (B) is a load serving entity; *provided*, Buyer shall give Seller Notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests that provides that such Person will assume all of Buyer's obligations and liabilities under this Agreement upon such transfer or assignment. Notwithstanding the foregoing, any assignment by Buyer, its successors or assigns under this Section 14.3(b) shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

14.4 **Portfolio Financing**. Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio

Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

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

ARTICLE 15
DISPUTE RESOLUTION

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

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

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

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnification**.

(a) Seller agrees to indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "**Buyer's Indemnified Parties**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Seller's breach

of this Agreement (including inaccuracy of any Seller representation of warranty made hereunder), (ii) a violation of applicable Laws by Seller or its Affiliates, including but not limited to violations of any laws in constructing or operating the Facility, or (iii) negligent or willful misconduct by Seller or its Affiliates, directors, officers, employees, or agents.

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

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

(d) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting solely from its own negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

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

ARTICLE 17
INSURANCE

17.1 **Insurance**.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars ($1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars ($2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall name Buyer as an additional insured and contain standard cross-liability and severability of interest provisions.

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

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

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

(e) Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Insurance in the amount of Two Million Dollars ($2,000,000) per occurrence and in the aggregate, including Seller (and Lender, if any) as additional named insureds.

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

(g) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods.

(h) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.

(i) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars ($1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(i).

(j) Evidence of Insurance. Within ten (10) days after execution of the Agreement, and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage with insurers with ratings comparable to A-VII or higher, and that are authorized to do business in the State of California, in form evidencing all coverages set forth above. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality**. The Party receiving Confidential Information

(the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's members, employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

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

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

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

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

18.5 **Press Releases**. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19
MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits**. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

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

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

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

19.5 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally

acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

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

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

19.10 **No Recourse to Members of Buyer**. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Except as set forth in Section 11.9 and any Buyer Liability Pass Through Agreements issued by one or more Project Participants pursuant to Section 8.10, Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract**. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the

other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Change in Electric Market Design**. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

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

[Signatures on following page]

DocuSign Envelope ID: 477A8599-6163-4D70-B5B1-D2DA321B9FA8

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

TUMBLEWEED ENERGY STORAGE, LLC		CALIFORNIA COMMUNITY POWER, a California joint powers authority	
By:	DocuSigned by: Mark Strength	By:	DocuSigned by: Tim Haines
Name:	Mark Strength	Name:	Tim Haines
Title:	Senior Vice President	Title:	Interim General Manager

Signature Page

EXHIBIT A

FACILITY DESCRIPTION

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

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

City: [REDACTED] near Rosamond, CA

County: Kern

Zip Code: 93560

Latitude and Longitude: [REDACTED]

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

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

Facility Meter: See Exhibit R

Facility Metering Points: See Exhibit R

P-node: [REDACTED]

Transmission Provider: Southern California Edison (SCE)

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

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

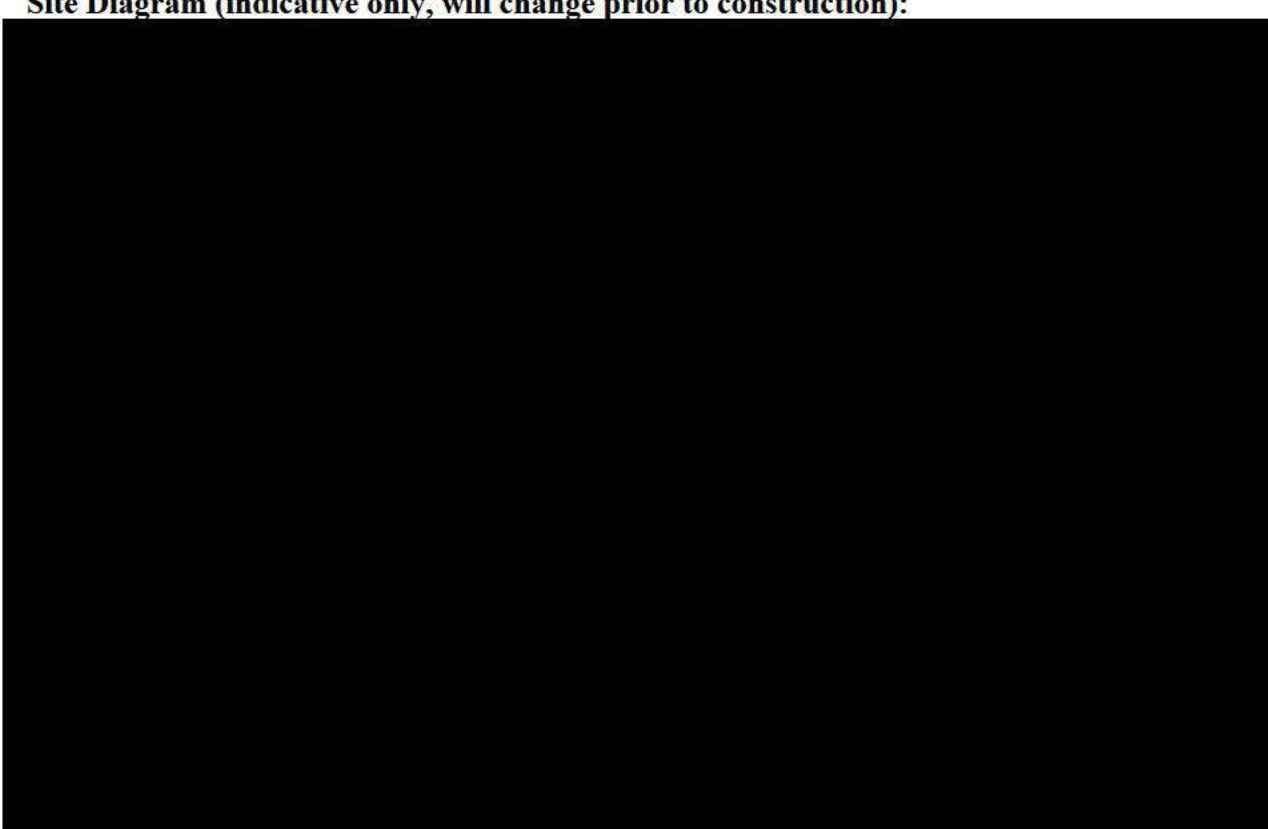


EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

   a. "**Construction Start**" will occur upon Seller's acquisition of the conditional use permit and other applicable discretionary permits for the construction of the Facility, and once Seller has engaged one or more contractors, and ordered all long lead time equipment as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin, and has executed one or more engineering, procurement, and construction contract and issued a notice to proceed under the applicable contract that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations) at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "**Construction Start Date**." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date for all purposes hereunder, including Section 11.1(b)(ii), by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current (including any previous extensions) Guaranteed Construction Start Date, Seller may provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b). If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller's payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.

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

   a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date.

   b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Commercial Operation Date for all purposes hereunder, including

Section 11.1(b)(ii), by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current (including any previous extensions) Guaranteed Commercial Operation Date, Seller may provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).

3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, both be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:

    a. Seller has not acquired the Material Permits by the Guaranteed Construction Start Date despite the exercise of diligent and commercially reasonable efforts by Seller; or

    b. a Force Majeure Event occurs; or

    c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date despite the exercise of diligent and commercially reasonable efforts by Seller; or

    d. Buyer has not made all necessary arrangements to receive the Discharging Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

    Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and

any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred eighty (180) days. Upon request from Buyer, Seller shall provide documentation reasonably demonstrating that the delays described in subsections (a) and (c) above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity**. If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [redacted] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Daily Delay Damages, Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer's Right to Draw on Development Security**. If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT C

COMPENSATION

(a) Monthly Compensation. Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Contract Price x Effective Capacity x Availability Adjustment x Efficiency Rate Adjustment. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If the Effective Capacity and/or Efficiency Rate are adjusted pursuant to a Capacity Test effective as of a day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Capacity and/or Efficiency Rate are applicable.

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

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

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

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

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

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

(c) CAISO Costs and Revenues. Beginning on the Commercial Operation Date, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including Charging Energy, penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including Discharging Energy, credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Delivery Point; *provided*, *however*, Seller shall assume all liability and reimburse Buyer for any and all costs or charges (i) incurred by Buyer because of Seller's default, breach or other failure to perform as required by this Agreement, (ii) incurred by Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility), or (iii) to the

extent arising as a result of Seller's failure to comply with a timely Curtailment Order if such failure results in incremental costs to Buyer. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

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

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

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

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

(h) NERC Reliability Standards. Beginning on the Commercial Operation Date, Buyer

(as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

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

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

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

EXHIBIT G

FORM OF DAILY AVAILABILITY NOTICE

Trading Day: ________________________

Station: _______________________ Issued By: _________________________________

Unit: _________________________ Issued At: _________________________________

Unit 100% Available No Restrictions: ______________________

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

Comments: ____
____
____
____
____
____

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

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

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

1. The Facility is fully operational, interconnected, and synchronized with the Transmission System in accordance with the Interconnection Agreement.

2. The Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority.

3. The commissioning of the equipment has been completed in accordance with the applicable material requirements of the manufacturers' specifications.

4. The Facility's Installed Capacity is no less than ninety-five percent (95%) of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.

5. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on___[DATE]____.

6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _______[DATE]_____.

7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _______[DATE]_____.

8. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**
this ________ day of _____________, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**
By:_________________________________
Its:_________________________________
Date:__________________________

EXHIBIT I

FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

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

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

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**
this ________ day of _____________, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**
By:_________________________________
Its:_________________________________
Date:__________________________

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [SELLER ENTITY] ("**Seller**") to California Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated __________ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

(2) the Construction Start Date occurred on _____________ (the "**Construction Start Date**"); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: ____ (such description shall amend the description of the Site in Exhibit A of the Agreement.)

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

[SELLER ENTITY]

By:_________________________________
Its:_________________________________

Date:_______________________________

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US$[XXXXXXXX]

Beneficiary:

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

Ladies and Gentlemen:

By the order of __________ ("Applicant"), we, [insert bank name and address] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the "Letter of Credit") in favor of California Community Power, a California joint powers authority ("Beneficiary"), [Address], for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100) (the "Available Amount"), pursuant to that certain Energy Storage [Service] Agreement dated as of ______ and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the "Expiration Date").

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

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

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

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

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

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided*, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least ninety (90) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

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

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

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

[Bank Name]

____
[Insert officer name]
[Insert officer title]

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of California Community Power, [ADDRESS], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of __________ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Energy Storage Service Agreement dated as of ___________, 20__ (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

____

Name and Title of Authorized Representative

Date__________________________

EXHIBIT L

FORM OF BUYER LIABILITY PASS THROUGH AGREMENT

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

RECITALS

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

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

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

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

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

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

AGREEMENT

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

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

2. **Seller Waiver**. In consideration of the foregoing, Seller unconditionally waives:

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

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

4. **Step-Up Events.** Within thirty (30) days after the occurrence of a Step-Up Event, Project Participant and CC Power will tender to Seller a duly executed and binding replacement Buyer Liability Pass Through Agreement in the same form as this Agreement, but for a Liability Share equal to the Project Participant's Revised Liability Share. Upon receipt of such executed replacement Buyer Liability Pass Through Agreement, Seller will cancel this Buyer Liability Pass Through Agreement, effective upon the effectiveness of the replacement Buyer Liability Pass Through Agreement. For the avoidance of doubt, the cancellation of an existing Buyer Liability Pass Through Agreement shall not be effective unless and until the replacement Buyer Liability Pass Through Agreement has become effective and binding. Following delivery of such replacement Buyer Liability Pass Through Agreement and cancellation of this Buyer Liability Pass Through Agreement, Exhibit V to the ESSA will be deemed amended to reflect the Project Participant's Revised Liability Share; *provided* that the Project Participant's Revised Liability Share shall not exceed one hundred twenty-five percent (125%) of the Project Participant's Initial Liability Share.

5. **Scope and Duration of BLPTA**. The obligations under this BLPTA are

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

a) The extension of time for the payment of any Guaranteed Amount; or

b) Any amendment, modification or other alteration of the ESSA; or

c) Any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount; or

d) Any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting CC Power, including but not limited to any rejection or other discharge of CC Power's obligations under the ESSA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding; or

e) Any reorganization of CC Power or Project Participant, or any merger or consolidation of CC Power or Project Participant into or with any other Person; or

f) The receipt, release, modification or waiver of, or failure to pursue or seek relief under or with respect to, any other BLPTA, guaranty, collateral, pledge or security device whatsoever; or

g) CC Power's inability to pay any Guaranteed Amount or perform its obligations under the ESSA; or

h) Any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction; *provided* that Project Participant reserves the right to assert for itself any defenses, setoffs or counterclaims that CC Power is or may be entitled to assert against Seller, including with respect to disputes regarding the calculation of a Guaranteed Amount.

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

7. Project Participant Representations and Warranties. Project Participant hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene Project Participant's organizational documents, any applicable Law or any contractual provisions binding on or affecting Project Participant, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Project Participant, threatened, against or affecting Project Participant or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Project Participant to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any member of the Project Participant), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Project Participant.

8. Seller Representations and Warranties. Seller hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene Seller's organizational documents, any applicable Law or any contractual provisions binding on or affecting Seller, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Seller, threatened, against or affecting Seller or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Seller to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of,

filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Seller), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Seller.

9. **California Community Power Representations and Warranties**. California Community Power hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene California Community Power's organizational documents, any applicable Law or any contractual provisions binding on or affecting California Community Power, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the California Community Power, threatened, against or affecting California Community Power or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of California Community Power to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any member of California Community Power), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by California Community Power.

10. **Notices**. Notices under this BLPTA shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first-class mail, return receipt requested. Any Party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Seller, to it at:

[____]
Attn: [____]
Fax: [____]

If delivered to Project Participant, to it at:

[____]
Attn: [____]
Fax: [____]

If delivered to CC Power, to it at:

[____]
Attn: [____]
Fax: [____]

11. **Governing Law and Forum Selection**. This BLPTA shall be governed by, and

interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this BLPTA shall be brought in the federal courts of the United States or the courts of the State of California sitting in the county of ________.

12. **Miscellaneous**. This BLPTA shall be binding upon the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and their successors and permitted assigns. No provision of this BLPTA may be amended or waived except by a written instrument executed by Seller, CC Power, and Project Participant. No provision of this BLPTA confers, nor is any provision intended to confer, upon any third party (other than the Parties' successors and permitted assigns) any benefit or right enforceable at the option of that third party. This BLPTA embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this BLPTA is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the Parties hereto, and (ii) such determination shall not affect any other provision of this BLPTA and all other provisions shall remain in full force and effect. This BLPTA may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This BLPTA may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

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

14. **No Recourse to Members of Project Participant**. Project Participant is organized

as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its joint powers agreement and is a public entity separate from its constituent members. Project Participant shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA. Seller and CC Power shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Project Participant's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

15. No Recourse to Members of CC Power. CC Power is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Except as expressly set forth in the ESSA and this BLPTA, CC Power shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA, and as such, Seller and Project Participant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CC Power's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

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

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

b) Controller Certification. CleanPowerSF's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of CleanPowerSF are not authorized to request, and CleanPowerSF is not required to reimburse Seller for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of CleanPowerSF are not authorized to offer or promise, nor is CleanPowerSF required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

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

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

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

f) Non-discrimination in Contracts. Seller shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

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

h) Submitting False Claims. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (1) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (3) conspires to defraud the City by getting a false claim allowed or paid by the City; (4) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (5) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

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

j) Consideration of Criminal History in Hiring and Employment Decisions.

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

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

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

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

n) Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as

expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, Seller shall not provide any items to the City in performance of this BLPTA which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of Seller to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

o) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 16(d) through 16(n) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 16(d) through 16(n) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

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

a) Designated Fund. The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; *provided*, *however*, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("**Designated Fund**") for payment of its obligations under this BLPTA. Subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the SJCE's obligations, SJCE agrees to establish rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this BLPTA.

b) Limited Obligations. SJCE's payment obligations under this BLPTA are special limited obligations of the SJCE payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

c) Nondiscrimination/Non-Preference. In performing its obligations under this BLPTA, Seller shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Seller to file, and cause any Seller's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall

be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

d) Conflict of Interest. Seller represents that it is familiar with the local and state conflict of interest laws and agrees to comply with those laws in performing this BLPTA. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this BLPTA. Seller has the obligation of determining if the manner in which it performs any part of this BLPTA results in a conflict of interest or an appearance of a conflict of interest and shall immediately notify SJCE in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller's violation of this subsection (ii) is a material breach.

e) Environmentally Preferable Procurement Policy. Seller shall perform its obligations under this BLPTA in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 13.1(g) be a material breach of this BLPTA or otherwise give rise to an Event of Default or entitle SJCE to terminate this BLPTA.

f) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Seller's violation of this subsection (iv) is a material breach.

g) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

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

IN WITNESS WHEREOF, the Parties have caused this BLPTA to be duly executed and delivered by their duly authorized representatives on the date first above written.

[**PROJECT PARTICIPANT**]:

By:______________________________

Printed Name:__________________
Title:____________________________

CALIFORNIA COMMUNITY POWER, a California joint powers authority:

By:______________________________

Printed Name:__________________
Title:____________________________

[**SELLER**]:

By:______________________________

Printed Name:__________________
Title:____________________________

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [SELLER ENTITY] ("**Seller**") to [______], a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated __________ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.5 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information[1]

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

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

[SELLER ENTITY]

By:_________________________________

Its:_________________________________

Date:_______________________________

EXHIBIT N

NOTICES

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

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

EXHIBIT O

CAPACITY AND EFFICIENCY RATE TESTS

Capacity Test Notice and Frequency

A. Commercial Operation Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Commercial Operation Capacity Test(s).

B. Subsequent Capacity Tests. Following the Commercial Operation Date, at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. In addition to the annual capacity test, if Buyer has reason to believe that the Effective Capacity or the Efficiency Rate is materially less than shown by the most recent test results, Buyer shall have the right to require a Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller. Seller shall have the right to run a retest of any Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

B. Conditions Prior to Testing.

(1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data

with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

(2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data.

(3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the Guaranteed Capacity; provided, for all purposes of this Agreement, the amount of Installed Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and all SOC measurements associated with a Capacity Test shall be based on the Installed Capacity without taking into account any capacity that exceeds the Guaranteed Capacity.

A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

(1) Electrical output at maximum discharging level (MW) for eight (8) continuous hours; and

(2) Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed ten (10) hours of total charging time.

B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:

(1) Time;

(2) The amount of Discharging Energy to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);

(3) Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter); and

(4) Storage Level (MWh).

C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg) near the horizontal centerline of the Facility; and

(3) Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

(1) That the CT successfully started;

(2) The maximum sustained discharging level for eight (8) consecutive hours pursuant to A(1) above;

(3) The maximum sustained charging level for ten (10) consecutive hours (or such lesser time as is required to reach 100% SOC) pursuant to A(2) above;

(4) Amount of time between the Facility's electrical output going from 0 to the maximum sustained discharging level registered during the CT (for purposes of calculating the ramp rate);

(5) Amount of time between the Facility's electrical input going from 0 to the maximum sustained charging level registered during the CT(for purposes of calculating the ramp rate);

(6) Amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC;

(7) Amount of Discharging Energy, registered at the Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

(1) General. At all times during a CT, the Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Facility.

(2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller

may postpone or reschedule all or part of such CT in accordance with Part II.F below.

(3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

(1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;

(2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and

(3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor. If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then current design of the Facility ("**Supplementary Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Capacity and Efficiency Rate. The Effective Capacity and Efficiency Rate shall be updated as follows:

(1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first eight (8) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) eight (8) hours) shall be divided by eight (8) hours to determine the Effective Capacity, which shall be expressed in MW AC, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.

(2) The total amount of Discharging Energy (as reported under Section II.D(7) above) divided by the total amount of Charging Energy (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Capacity and Efficiency Rate Test**

- Procedure:

(1) System Starting State: The Facility will be in the on-line state at 0% SOC.

(2) Record the initial value of the SOC.

(3) Command a real power charge that results in an AC power of Facility's maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) ten (10) hours have elapsed since the Facility commenced charging.

(4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) ten (10) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.

(5) Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC.

(6) Following an agreed-upon rest period (not to exceed 5 minutes), command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for eight (8) consecutive hours, or (b) the Facility has reached 0% SOC.

(7) Record and store the SOC after eight (8) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation Capacity Test) for eight (8) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for the purposes of calculating the Battery Discharging Factor.

(8) Record and store the Discharging Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity.

(9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC.

(10) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Part III.A.6 until the Facility has reached a 0% SOC pursuant to either Part III.A.7 or Part III.A.9, as applicable.

- Test Results:

(1) The resulting Effective Capacity measurement is the sum of the total Discharging Energy at the Facility Meter divided by eight (8) hours.

(2) The total amount of Discharging Energy (as reported under Section III.A(10) above) divided by the total amount of Charging Energy (as reported under Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

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

B. **AGC Discharge Test**

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's maximum discharging level within 1 second.

- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.

- Procedure:

  (1) Record the Facility active power level at the Facility Meter.

  (2) Command the Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.

  (3) Record and store the Facility active power response (in seconds).

- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. **AGC Charge Test**

- Purpose: This test will demonstrate the AGC charge capability to achieve the facility's full charging level within 1 second.

- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.

- Procedure:

  (1) Record the Facility active power level at the Facility Meter.

  (2) Command the Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.

  (3) Record and store the Facility active power response (in seconds).

- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. **Reactive Power Production Test**

- Purpose: This test will demonstrate the reactive power production capability of the Facility.

- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.

- Procedure:

  (1) Record the Facility reactive power level at the Facility Meter.

  (2) Command the Facility to follow 35 MW for ten (10) minutes.

(3) Record and store the Facility reactive power response.

- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. **Reactive Power Consumption Test**

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.

- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.

- Procedure:

(1) Record the Facility reactive power level at the Facility Meter.

(2) Command the Facility to follow 35 MW for ten (10) minutes.

(3) Record and store the Facility reactive power response.

- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

EXHIBIT P

FACILITY AVAILABILITY CALCULATION

Monthly Capacity Availability Calculation. Seller shall calculate the "**Monthly Capacity Availability**" for a given month of the Delivery Term using the formula set forth below:

$$\text{Monthly Capacity Availability (\%)} = \frac{[AVAILHRS_m + EXCUSEDHRS_m]}{[MONTHRS_m]}$$

Where:

m = relevant month "m" in which Monthly Capacity Availability is calculated;

$MONTHRS_m$ is the total number of hours for the month;

$AVAILHRS_m$ is the total number of hours, or partial hours, in the month during which the Facility was available to charge and discharge Energy between the Facility and the Delivery Point and to provide Ancillary Services at the Delivery Point. If the Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the Effective Capacity, the $AVAILHRS_m$ for such time period shall be calculated by multiplying such $AVAILHRS_m$ by a percentage determined by dividing (a) by (b); where (a) is the lower of (i) such capacity amount reported as available by Seller's real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.10(b)), and (b) is the Effective Capacity.

$EXCUSEDHRS_m$ is the total number of hours, or partial hours, in the month that are not included as $AVAILHRS_m$ due to Approved Maintenance Hours, Buyer Dispatched Tests, Operating Restrictions in Exhibit Q, Buyer breach or default, or any circumstances at the high-voltage side of the Delivery Point or beyond that point that may limit Seller's delivery of Product (each, an "**Excused Event**"). If an Excused Event results in less than the full amount of the Effective Capacity for the Facility being unavailable during any applicable hour, or partial hour, the $EXCUSEDHRS_m$ for such time period shall be calculated by multiplying such $EXCUSEDHRS_m$ by a percentage determined by dividing (a) by (b); where (a) is the lower of such Effective Capacity amount that is not reported as available by (i) Seller's real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.10(b)), and (b) is the Effective Capacity. For avoidance of doubt, the total of $AVAILHRS_m$ plus $EXCUSEDHRS_m$ for any hour, or partial hour, shall never exceed 1.

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include facility scheduling, operating restrictions and Communications Protocols.

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

EXHIBIT R

METERING DIAGRAM

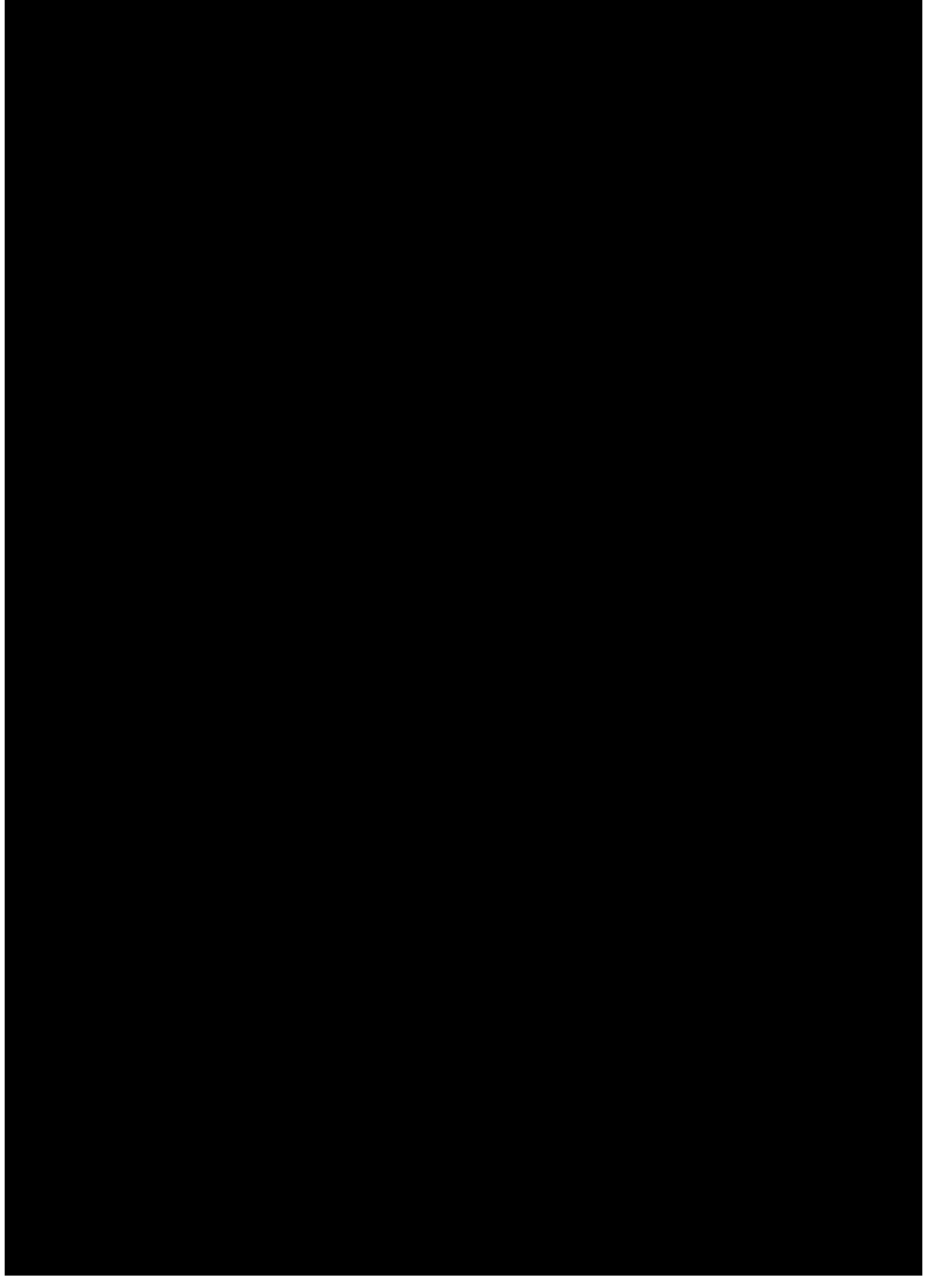


EXHIBIT S

[INTENTIONALLY OMITTED]

EXHIBIT T

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

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

RECITALS

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

A. Project Company and CCP have entered into that certain Energy Storage Service Agreement, dated as of *[Date] [List all amendments as contemplated by Section 3.4]* ("ESSA"), pursuant to which Project Company will develop, construct, commission, test and operate the Storage Units (the "Project") and sell the Product to CCP, and CCP will purchase the Product from Project Company;

B. As collateral for Project Company's obligations under the ESSA, Project Company has agreed to provide to CCP certain collateral, which may include Performance Security and Development Security and other collateral described in the ESSA (collectively, the "ESSA Collateral");

C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto and the Collateral Agent (the "Financing Agreement"), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;

D. As collateral security for Project Company's obligations under the Financing Agreement and related agreements (collectively, the "Financing Documents"), Project Company has, among other things, assigned all of its right, title and interest in, to and under the ESSA and Project's Company's owners have pledged their ownership interest in Project Company (collectively, the "Assigned Interest") to the Collateral Agent pursuant to the Financing Documents; and

E. It is a requirement under the Financing Agreement and the ESSA that CCP and the other Parties hereto shall have executed and delivered this Consent.

AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

CCP hereby acknowledges:

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

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

1.2 Project Company's Acknowledgement.

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

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the ESSA, or upon the occurrence or non-occurrence of any event or condition under the ESSA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CCP to terminate or suspend its performance under the ESSA (a "ESSA Default"), CCP will not terminate or suspend its performance under the ESSA until it first gives written notice of such ESSA Default to Collateral Agent and affords Collateral Agent the right to cure such ESSA Default within the applicable cure period under the ESSA, which cure period shall run concurrently with that afforded Project Company under the ESSA. In addition, if Collateral Agent gives CCP written notice prior to the expiration of the applicable cure period under the ESSA of Collateral Agent's intention to cure such ESSA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such ESSA Default) and is diligently proceeding to cure such ESSA Default, notwithstanding the applicable cure period under the ESSA, Collateral Agent shall have a period of ninety (90) days (or, if such ESSA Default is for failure by the Project Company to pay an amount to CCP which is due and payable under the ESSA other than to provide ESSA Collateral, thirty (30) days, or, if such ESSA Default is for failure by Project Company to provide ESSA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such ESSA Default from CCP to cure such ESSA Default; *provided*, (a) if possession of the

Project is necessary to cure any such non-monetary ESSA Default and Collateral Agent has commenced foreclosure proceedings within ninety (90) days after notice of the ESSA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed two hundred seventy (270) days after the notice of the ESSA Default, to complete such proceedings and cure such ESSA Default, and (b) if Collateral Agent is prohibited from curing any such ESSA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a ESSA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CCP with reports concerning the status of efforts to cure a ESSA Default upon CCP's reasonable request.

1.4 Substitute Owner.

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

1.5 Replacement Agreements.

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

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

1.6 Transfer.

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

1.7 Assumption of Obligations.

(a) Transferee.

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

(b) Substitute Owner.

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

(c) No Liability.

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

obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; *provided*, such limited recourse shall not limit CCP's right to seek equitable or injunctive relief against Collateral Agent, or CCP's rights with respect to any offset rights expressly allowed under the ESSA, a Replacement ESSA or the ESSA Collateral.

1.8 Delivery of Notices.

CCP shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CCP to Project Company pursuant to the ESSA relating to (a) a ESSA Default by Project Company under the ESSA, (b) any claim regarding Force Majeure by CCP under the ESSA, (c) any notice of dispute under the ESSA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CCP's obligation to give Collateral Agent a notice of ESSA Default under Section 1.3. Collateral Agent shall deliver to CCP, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

1.9 Confirmations.

CCP will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the ESSA (including the performance of same by Project Company); *provided*, such confirmation may be limited to matters of which CCP is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CCP under the ESSA as between CCP and Project Company.

1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CCP receives a Financing Document Default Notice, CCP shall deal exclusively with Project Company in connection with the performance of CCP's obligations under the ESSA. From and after such time as CCP receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement ESSA is entered into or the ESSA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, CCP shall, until Collateral Agent confirms to CCP in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CCP's obligations under the ESSA, and CCP may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

1.11 No Amendments.

To the extent permitted by Laws, CCP agrees that it will not, without the Project Company obtaining prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the ESSA (b) terminate or suspend its performance under the ESSA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the ESSA by Project Company.

SECTION 2. PAYMENTS UNDER THE ESSA

2.1 Payments.

Unless and until CCP receives written notice to the contrary from Collateral Agent, CCP will make all payments to be made by it to Project Company under or by reason of the ESSA directly to Project Company. CCP, Project Company, and Collateral Agent acknowledge that CCP will be deemed to be in compliance with the payment terms of the ESSA to the extent that CCP makes payments in accordance with Collateral Agent's instructions.

2.2 No Offset, Etc.

All payments required to be made by CCP under the ESSA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the ESSA.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF CCP

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

3.1 Organization.

CCP is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. CCP has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the ESSA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

3.2 Authorization.

The execution, delivery and performance by CCP of this Consent and the ESSA have been duly authorized by all necessary corporate or other action on the part of CCP and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CCP which, if not obtained, will prevent CCP from performing its obligations hereunder or under the ESSA except approvals or consents which have previously been obtained and which are in full force and effect.

3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the ESSA is in full force and effect, have been duly executed and delivered on behalf of CCP by the appropriate officers of CCP, and constitute the legal, valid and binding obligation of CCP, enforceable against CCP in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither CCP nor, to CCP's actual knowledge, Project Company, is in default of any of its obligations under the ESSA; (b) CCP and, to CCP's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the ESSA; (c) to CCP's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CCP or Project Company to terminate or suspend its obligations under the ESSA; and (d) the ESSA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

3.5 No Previous Assignments.

CCP has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the ESSA, except as previously disclosed in writing and consented to by CCP.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

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

4.1 Organization.

Project Company is a *[Legal Status of Seller]* duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the ESSA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the ESSA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement

of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, CCP, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, CCP, has complied with all conditions precedent to the effectiveness of its obligations under the ESSA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CCP or Project Company to terminate or suspend its obligations under the ESSA; and (d) the ESSA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the ESSA.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

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

5.1 Authorization.

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

5.2 Execution and Delivery; Binding Agreement.

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

SECTION 6. MISCELLANEOUS

6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the ESSA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized

courier service, and shall be directed (a) if to CCP or Project Company, in accordance with *[Notice Section of the ESSA]* of the ESSA, (b) if to Collateral Agent, to *[Collateral Agent Name]*, *[Collateral Agent Address]*, Attn: *[Collateral Agent Contact Information]*, Telephone: *[___]*, Fax: *[___]*, and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the ESSA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by CCP, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party's obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until CCP has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the ESSA or any Replacement ESSA, its obligations under such ESSA or Replacement ESSA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

CCP hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

[NAME OF PROJECT COMPANY], *[Legal Status of Project Company]*.		CALIFORNIA COMMUNITY POWER, a California joint powers authority.
By: ______________________________ *[Name]* *[Title]* Date: ________________________		**By:** ______________________________ *[Name]* *[Title]* Date: ________________________
[NAME OF COLLATERAL AGENT], *[Legal Status of Collateral Agent]*. By: ____________________________ *[Name]* *[Title]* Date: ________________________		

SCHEDULE A

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

EXHIBIT U

MATERIAL PERMITS

No.	*Permits*
1	[redacted]
2	[redacted]

EXHIBIT V

PROJECT PARTICIPANTS AND LIABILITY SHARES

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

EXHIBIT L

FORM OF BUYER LIABILITY PASS THROUGH AGREMENT

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

RECITALS

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

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

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

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

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

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

AGREEMENT

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

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

2. **Seller Waiver**. In consideration of the foregoing, Seller unconditionally waives:

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

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

4. **Step-Up Events.** Within thirty (30) days after the occurrence of a Step-Up Event, Project Participant and CC Power will tender to Seller a duly executed and binding replacement Buyer Liability Pass Through Agreement in the same form as this Agreement, but for a Liability Share equal to the Project Participant's Revised Liability Share. Upon receipt of such executed replacement Buyer Liability Pass Through Agreement, Seller will cancel this Buyer Liability Pass Through Agreement, effective upon the effectiveness of the replacement Buyer Liability Pass Through Agreement. For the avoidance of doubt, the cancellation of an existing Buyer Liability Pass Through Agreement shall not be effective unless and until the replacement Buyer Liability Pass Through Agreement has become effective and binding. Following delivery of such replacement Buyer Liability Pass Through Agreement and cancellation of this Buyer Liability Pass Through Agreement, Exhibit V to the ESSA will be deemed amended to reflect the Project Participant's Revised Liability Share; *provided* that the Project Participant's Revised Liability Share shall not exceed one hundred twenty-five percent (125%) of the Project Participant's Initial Liability Share.

5. **Scope and Duration of BLPTA**. The obligations under this BLPTA are

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

a) The extension of time for the payment of any Guaranteed Amount; or

b) Any amendment, modification or other alteration of the ESSA; or

c) Any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount; or

d) Any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting CC Power, including but not limited to any rejection or other discharge of CC Power's obligations under the ESSA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding; or

e) Any reorganization of CC Power or Project Participant, or any merger or consolidation of CC Power or Project Participant into or with any other Person; or

f) The receipt, release, modification or waiver of, or failure to pursue or seek relief under or with respect to, any other BLPTA, guaranty, collateral, pledge or security device whatsoever; or

g) CC Power's inability to pay any Guaranteed Amount or perform its obligations under the ESSA; or

h) Any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction; *provided* that Project Participant reserves the right to assert for itself any defenses, setoffs or counterclaims that CC Power is or may be entitled to assert against Seller, including with respect to disputes regarding the calculation of a Guaranteed Amount.

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

7. **Project Participant Representations and Warranties**. Project Participant hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene Project Participant's organizational documents, any applicable Law or any contractual provisions binding on or affecting Project Participant, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Project Participant, threatened, against or affecting Project Participant or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Project Participant to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any member of the Project Participant), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Project Participant.

8. **Seller Representations and Warranties**. Seller hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene Seller's organizational documents, any applicable Law or any contractual provisions binding on or affecting Seller, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Seller, threatened, against or affecting Seller or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Seller to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of,

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filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Seller), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Seller.

9. **California Community Power Representations and Warranties**. California Community Power hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene California Community Power's organizational documents, any applicable Law or any contractual provisions binding on or affecting California Community Power, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the California Community Power, threatened, against or affecting California Community Power or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of California Community Power to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any member of California Community Power), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by California Community Power.

10. **Notices**. Notices under this BLPTA shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first-class mail, return receipt requested. Any Party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Seller, to it at:

[____]
Attn: [____]
Fax: [____]

If delivered to Project Participant, to it at:

[____]
Attn: [____]
Fax: [____]

If delivered to CC Power, to it at:

[____]
Attn: [____]
Fax: [____]

11. **Governing Law and Forum Selection**. This BLPTA shall be governed by, and

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interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this BLPTA shall be brought in the federal courts of the United States or the courts of the State of California sitting in the county of ________.

12. **Miscellaneous**. This BLPTA shall be binding upon the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and their successors and permitted assigns. No provision of this BLPTA may be amended or waived except by a written instrument executed by Seller, CC Power, and Project Participant. No provision of this BLPTA confers, nor is any provision intended to confer, upon any third party (other than the Parties' successors and permitted assigns) any benefit or right enforceable at the option of that third party. This BLPTA embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this BLPTA is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the Parties hereto, and (ii) such determination shall not affect any other provision of this BLPTA and all other provisions shall remain in full force and effect. This BLPTA may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This BLPTA may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

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

14. **No Recourse to Members of Project Participant**. Project Participant is organized

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as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its joint powers agreement and is a public entity separate from its constituent members. Project Participant shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA. Seller and CC Power shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Project Participant's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

15. **<u>No Recourse to Members of CC Power</u>**. CC Power is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Except as expressly set forth in the ESSA and this BLPTA, CC Power shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA, and as such, Seller and Project Participant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CC Power's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

16. **<u>CleanPowerSF as Project Participant</u>**. Paragraph 14 shall not apply if CleanPowerSF is the Project Participant, but the following shall apply:

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

b) <u>Controller Certification</u>. CleanPowerSF's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of CleanPowerSF are not authorized to request, and CleanPowerSF is not required to reimburse Seller for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of CleanPowerSF are not authorized to offer or promise, nor is CleanPowerSF required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

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

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

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

f) Non-discrimination in Contracts. Seller shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

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

h) Submitting False Claims. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (1) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (3) conspires to defraud the City by getting a false claim allowed or paid by the City; (4) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (5) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

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

j) Consideration of Criminal History in Hiring and Employment Decisions.

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

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

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

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

n) Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as

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expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, Seller shall not provide any items to the City in performance of this BLPTA which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of Seller to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

o) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 16(d) through 16(n) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 16(d) through 16(n) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

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

a) Designated Fund. The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; *provided*, *however*, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("**Designated Fund**") for payment of its obligations under this BLPTA. Subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the SJCE's obligations, SJCE agrees to establish rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this BLPTA.

b) Limited Obligations. SJCE's payment obligations under this BLPTA are special limited obligations of the SJCE payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

c) Nondiscrimination/Non-Preference. In performing its obligations under this BLPTA, Seller shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Seller to file, and cause any Seller's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall

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be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

d) Conflict of Interest. Seller represents that it is familiar with the local and state conflict of interest laws and agrees to comply with those laws in performing this BLPTA. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this BLPTA. Seller has the obligation of determining if the manner in which it performs any part of this BLPTA results in a conflict of interest or an appearance of a conflict of interest and shall immediately notify SJCE in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller's violation of this subsection (ii) is a material breach.

e) Environmentally Preferable Procurement Policy. Seller shall perform its obligations under this BLPTA in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 13.1(g) be a material breach of this BLPTA or otherwise give rise to an Event of Default or entitle SJCE to terminate this BLPTA.

f) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Seller's violation of this subsection (iv) is a material breach.

g) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

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

IN WITNESS WHEREOF, the Parties have caused this BLPTA to be duly executed and delivered by their duly authorized representatives on the date first above written.

Approval Draft

[**PROJECT PARTICIPANT**]:

By:______________________________

Printed Name:__________________
Title:____________________________

CALIFORNIA COMMUNITY POWER, a California joint powers authority:

By:______________________________

Printed Name:__________________
Title:____________________________

[**SELLER**]:

By:______________________________

Printed Name:__________________
Title:____________________________

Approval Draft

TUMBLEWEED ENERGY STORAGE
PROJECT PARTICIPATION SHARE AGREEMENT

among

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

and

PENINSULA CLEAN ENERGY

and

REDWOOD COAST ENERGY AUTHORITY

and

CITY OF SAN JOSÉ, ADMINISTRATOR OF SAN JOSÉ CLEAN ENERGY

and

SILICON VALLEY CLEAN ENERGY

and

SONOMA CLEAN POWER

and

VALLEY CLEAN ENERGY

and

CALIFORNIA COMMUNITY POWER

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TUMBLEWEED ENERGY STORAGE
PROJECT PARTICIPATION SHARE AGREEMENT

PREAMBLE

This Project Participation Share Agreement ("**Agreement**") is entered into as of _________ (the "**Effective Date**"), by and among the City and County of San Francisco acting by and through its Public Utilities Commission, CleanPowerSF, Peninsula Clean Energy, a California joint powers authority, Redwood Coast Energy Authority, a California joint powers authority, City of San José, a California municipality, Silicon Valley Clean Energy, a California joint powers authority, Sonoma Clean Power, a California joint powers authority, and Valley Clean Energy, a California joint powers authority (each individually a "**Project Participant**" and collectively referred to as the "**Project Participants**") and California Community Power ("CCP"), a California joint powers authority. CCP and the Project Participants are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS CCP is a Joint Powers Authority, was formed for the purpose of developing, acquiring, constructing, owning, managing, contracting for, engaging in, or financing electric energy generation and storage projects, and for other purposes; and

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

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

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

ARTICLE 1
DEFINITIONS

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

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"**AC**" means alternating current.

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transferee", "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

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

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

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

"**Bankrupt**" or "**Bankruptcy**" means, with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

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

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

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

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

“**CAISO Certification**” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

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

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

“**California Renewables Portfolio Standard**” or “**RPS**” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

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

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

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

“**Capacity Attribute**” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can charge, discharge, and deliver to the Delivery Point at a particular moment and that can be purchased, sold, or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

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

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

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

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

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by CCP's SC or the CAISO to Project Developer, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions.

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

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

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

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

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

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

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

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

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

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

"**Contract Year**" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

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

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

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

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

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

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

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

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

"Defaulting Project Participant" has the meaning set forth in Section 12.1.

"**Delivery Point**" means the Facility Pnode on the CAISO grid.

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

"Designated Fund" has the meaning set forth in Section 10.5.

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

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

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by CCP's SC or the CAISO to the Facility, directing the Facility to discharge Facility Energy at a specific MW rate for a specified period of time or to an amount of MWh.

"**Effective Date**" has the meaning set forth in the Preamble.

"**Electrical Losses**" means all transmission or transformation losses (a) between the Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Facility Energy.

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

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"**Energy**" means electrical energy, measured in kilowatt-hours or Megawatt-hours or multiple units thereof.

"**Energy Management System**" or "**EMS**" means the Facility's energy management system.

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

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

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

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

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

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

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

"**Environmental Attributes**" shall mean any and all attributes under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable now, or in the future to the Facility and its displacement of conventional energy generation.

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

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

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

"**Facility**" means the energy storage facility described on the Cover Sheet of the ESSA and in Exhibit A of the ESSA, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of the ESSA.

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"**Facility Energy**" means the Energy delivered from the Facility to the Delivery Point during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

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

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

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

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

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

"**Force Majeure Event**" has the meaning set forth in Section 10.1 of the ESSA.

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

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

"**Gains**" means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from such Step-Up Allocation for the remaining Contract Term of the ESSA, determined in a commercially reasonable manner. Factors used in determining the economic benefit to such Project Participant may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of such Project Participant, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Environmental Attributes and Capacity Attributes.

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

"**Governmental Authority**" means any federal, state, provincial, local, or municipal government, any political subdivision thereof or any other governmental, congressional, or

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parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, "Governmental Authority" shall not in any event include any Party, except to the extent that the Party is acting solely in its governmental capacity.

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

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

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

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

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

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

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

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

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

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

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated January 29, 2021, as amended from time to time, under which CCP is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

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

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

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

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

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

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

"**Losses**" means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from such Step-Up Allocation for the remaining Contract Term of the ESSA, determined in a commercially reasonable manner. Factors used in determining economic loss to such Project Participant may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Project Participant, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term of the ESSA and must include the value of Environmental Attributes and Capacity Attributes.

"**Marketable Emission Trading Credits**" means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

"**Month**" means a calendar month.

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

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

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

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

"**NERC**" means the North American Electric Reliability Corporation.

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

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

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

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

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

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

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

"**Party**" has the meaning set forth in the Preamble.

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

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

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

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

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

"**Person**" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

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

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

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"**PNode**" has the meaning set forth in the CAISO Tariff.

"**Product**" has the meaning set forth in Section 3.1

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

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

"**Project Committee**" means the committee established in accordance with Section6.1.

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

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

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

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

"**Project Rights and Obligations**" means the Project Participants' Project Rights and obligations under the terms of this Agreement.

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

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

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they may be amended or superseded from time to time, including the criteria, rules, and standards of any successor organizations.

"**Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

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

"**RA Deficiency Amount**" has the meaning set forth in Section 1.1 of the ESSA.

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

"**RA Shortfall Month**" has the meaning set forth in Section 1.1 of the ESSA.

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

"**Receiving Party**" has the meaning set forth in Section 18.2 of the ESSA.

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

"**Remedial Action Plan**" has the meaning set forth in Section 2.4 of the ESSA.

"**Replacement RA**" has the meaning set forth in Section 1.1 of the ESSA.

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

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

"**Resource Adequacy Resource**" has the meaning used in Resource Adequacy Rulings.

"**Resource Adequacy Rulings**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006, 21-06-035 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable

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Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

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

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

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

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

"**Settlement Interval**" has the meaning set forth in the CAISO Tariff.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff.

"**Shared Facilities**" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Facility Energy to the Delivery Point, including the Interconnection Facilities and the Interconnection Agreement itself, if applicable, that are used in common with third parties or by the Project Developer for electric generation or storage facilities owned by Project Developer other than the Facility.

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

"**Site**" has the meaning set forth in Section 1.1 of the ESSA, as further described in Exhibit A of the ESSA.

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

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

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

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

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

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

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

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

"**System Emergency**" means any condition that requires, as determined, and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

"**Tax Credits**" means any state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit, including the ITC, specific to investments in renewable energy facilities and/or energy storage facilities.

"**Terminated Transaction**" has the meaning set forth in Section 11.2(a) the ESSA.

"**Termination Payment**" has the meaning set forth in Section 11.3 of the ESSA.

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

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

"**Unanimous Vote**" has the meaning set forth in Exhibit D.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2
EFFECTIVE DATE AND TERM

2.1. Term.

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

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

ARTICLE 3
AGREEMENT

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

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

ARTICLE 4
ENTITLEMENT SHARE

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

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

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

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

5.1. Obligations of CCP.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Business Auto Insurance. CCP shall maintain at all times during the Term business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of CCP's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name each Project Participant as an additional insured and contain standard cross-liability and severability of interest provisions.

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

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

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

5.2. Role of CCP Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.3. Role of CCP Manager.

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

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

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

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

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

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

ARTICLE 6
PROJECT COMMITTEE

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

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

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

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

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

(a) General Responsibilities of the Project Committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 7
OPERATING COMMITTEE

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

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

ARTICLE 8
OPERATING ACCOUNT

8.1. Calculation of Estimated Monthly Project Cost.

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

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

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

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

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

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

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ARTICLE 9
BILLING

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

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

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

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

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

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

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

9.7. Late Payments.

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

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

ARTICLE 10
UNCONDITIONAL PAYMENT OBLIGATIONS; AUTHORIZATIONS; CONFLICTS; LITIGATION.

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

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

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

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

10.5. San José Clean Energy.

(a) The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City of San José to appropriate funds for purposes of the Agreement; provided, however, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("**Designated Fund**") for payment of its obligations under this Agreement.

(b) Limited Obligations. The City of San José's payment obligations under this Agreement are special limited obligations of San José Clean Energy payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

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

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

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

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

ARTICLE 12
NONPERFORMANCE AND PAYMENT DEFAULT.

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

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

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

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

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

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

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

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

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

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

12.7. Step-Up Invoices.

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

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

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

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

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

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

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

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

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Allocation. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Defaulting Project Participant disputes the Non-Defaulting Project Participant's calculation of the Step-Up Allocation Damage Payment, in whole or in part, the Defaulting Project Participant shall, within five (5) Business Days of receipt of the Non-Defaulting Project Participant's calculation of the Step-Up Allocation Damage Payment, provide to the Non-Defaulting Project Participant a detailed written explanation of the basis for such dispute. Disputes regarding the Step-Up Allocation Damage Payment shall be determined in accordance with Article 16. Each Party agrees and acknowledges that (i) the actual damages that the other Project Participant would incur in connection with a Step-Up Allocation would be difficult or impossible to predict with certainty, (ii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is a reasonable and appropriate approximation of such damages, and (iii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is the exclusive remedy of a Project Participant in connection with a Step-Up Allocation pursuant to the process set forth in Sections 12.8(b) or 12.8(c) against a Defaulting Project Participant but shall not otherwise act to limit any of the Non-Defaulting Project Participant's rights or remedies under this Agreement.

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

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

ARTICLE 13
LIABILITY

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

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

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

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

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

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

ARTICLE 14
NOTICES

14.1. Addresses for the Delivery of Notices. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit A or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

14.2. Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, five (5) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5:00 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 15
ASSIGNMENT

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

ARTICLE 16
GOVERNING LAW AND DISPUTE RESOLUTION

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

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

ARTICLE 17
MISCELLANEOUS

17.1. Entire Agreement; Integration; Exhibits. This Agreement, together with the Exhibits attached hereto constitutes the entire agreement and understanding by and among the Parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting or execution hereof.

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

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

17.4. Severability. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

17.5. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

17.6. Electronic Delivery. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect,

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validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

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

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

17.9. City of San Francisco Standard Provisions.

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

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

(c) Non-discrimination Requirements.

(i) Non-discrimination in Contracts. CCP shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. CCP shall incorporate by reference in all subcontracts the provisions of Sections12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. CCP is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

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

(d) Consideration of Criminal History in Hiring and Employment Decisions. CCP agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to CCP's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law. MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

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

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

17.10. City of San José Standard Provisions.

(a) Nondiscrimination/Non-Preference. The Parties shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender

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identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. The Parties will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Parties from providing a reasonable accommodation to a person with a disability; (ii) the City of San José's Compliance Officer may require the Parties to file, and cause any Party's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

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

(c) Environmentally Preferable Procurement Policy. Parties shall perform its obligations under this Agreement in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 17.10(c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle the City of San José to terminate this Agreement.

(d) Gifts Prohibited. The Parties represent that they are familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. The Parties shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. A Party's violation of this Section 17.10(d) is a material breach.

(e) Disqualification of Former Employees. The Parties represent that they are familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Parties shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

17.11. Further Assurances. Each of the Parties hereto agrees to provide such information, execute, and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions

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of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

<table>
<tr><td>California Community Power

By:
Name: ____________________
Title: ____________________

Approved as to form by Counsel

By:
Name: ____________________
Title: ____________________</td><td>Clean Power San Francisco

By:
Name: ____________________
Title: ____________________

Approved as to form by Counsel

By:
Name: ____________________
Title: ____________________</td></tr>
<tr><td>Peninsula Clean Energy

By:
Name: ____________________
Title: ____________________

Approved as to form by Counsel

By:
Name: ____________________
Title: ____________________</td><td>Redwood Coast Energy Authority

By:
Name: ____________________
Title: ____________________

Approved as to form by Counsel

By:
Name: ____________________
Title: ____________________</td></tr>
</table>

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San José Clean Energy	Silicon Valley Clean Energy
By: Name: ____________________ Title: ____________________ Approved as to form by Counsel By: Name: ____________________ Title: ____________________	By: Name: ____________________ Title: ____________________ Approved as to form by Counsel By: Name: ____________________ Title: ____________________
Sonoma Clean Power	**Valley Clean Energy**
By: Name: ____________________ Title: ____________________ Approved as to form by Counsel By: Name: ____________________ Title: ____________________	By: Name: ____________________ Title: ____________________ Approved as to form by Counsel By: Name: ____________________ Title: ____________________

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EXHIBIT A

NOTICES

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

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

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EXHIBIT B

SCHEDULE OF PROJECT PARTICIPANT ENTITLEMENT SHARES AND STEP-UP ALLOCATION CAPS

*Dated:*________________________

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

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

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EXHIBIT C

PROCEDURE FOR VOLUNTARY REDUCTION OF PROJECT PARTICIPANT'S ENTITLEMENT SHARE

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

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

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

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

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

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

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

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

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

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

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

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EXHIBIT D

PROJECT COMMITTEE OPERATIONS, MEETINGS, AND VOTING

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

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

(c) Calling of Meetings.

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

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

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

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

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

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

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

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

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

Draft January 2022

TUMBLEWEED ENERGY STORAGE
COORDINATED OPERATIONS AGREEMENT

among

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

and

PENINSULA CLEAN ENERGY

and

REDWOOD COAST ENERGY AUTHORITY

and

SAN JOSE CLEAN ENERGY

and

SILICON VALLEY CLEAN ENERGY

and

SONOMA CLEAN POWER

and

VALLEY CLEAN ENERGY

and

CALIFORNIA COMMUNITY POWER

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Draft January 2022

TUMBLEWEED ENERGY STORAGE
COORDINATED OPERATIONS AGREEMENT

PREAMBLE

This Coordinated Operations Agreement ("**Agreement**") is entered into as of _________ (the "**Effective Date**"), between the City and County of San Francisco acting by and through its Public Utilities Commission - CleanPowerSF, Peninsula Clean Energy, a California joint powers authority, Redwood Coast Energy Authority, a California joint powers authority, San Jose Clean Energy, Silicon Valley Clean Energy, a California joint powers authority, Sonoma Clean Power, a California joint powers authority, and Valley Clean Energy, a California joint powers authority (each individually an "**Operation Participant**" and collectively referred to as the "**Operation Participants**") and California Community Power ("**CCP**"), a Joint Powers Authority. CCP and the Operation Participants are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 of this Agreement.

RECITALS

WHEREAS, CCP is a Joint Powers Authority and was formed for the purpose of developing, acquiring, constructing, owning, managing, contracting for, engaging in, or financing electric energy generation and storage projects, and for other purposes.

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

WHEREAS, the Operation Participants and CCP will enter into a Project Participation Share Agreement ("**PPSA**") for the Project, which is incorporated herein by this reference, and which governs the administration of the ESSA and participation in the Project by each of the Project Participants (as defined in the PPSA).

WHEREAS, the Parties desire to enter into this Agreement for purposes of operating the Project in accordance with the ESSA.

WHEREAS, each Operation Participant shall cooperate and work in good faith with the other Operation Participants to achieve the full benefits of joint administration and operation of the Project for their respective customers.

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

ARTICLE 1
DEFINITIONS

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

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

"**Alternate Normal Vote**" has the meaning set forth in clause (e)(iii) of Exhibit E.

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

"**Bankrupt**" or "**Bankruptcy**" means, with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

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

"**CAISO Certification**" means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

"**CAISO Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

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

the rules, protocols, procedures, and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can charge, discharge, and deliver to the Delivery Point at a particular moment and that can be purchased, sold, or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

"**CCP Board**" means the Board of Directors of California Community Power.

"**CEO**" means the Chief Executive Officer for the respective Operation Participant.

"**CEO Meeting**" has the meaning set forth in Section 14.2(b).

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

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by the Scheduling Coordinator or the CAISO to Project Developer, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions.

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

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

"**CPUC**" means the California Public Utilities Commission, or any successor entity performing similar functions.

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

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

"**Delivery Point**" means the Facility Pnode on the CAISO grid.

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

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

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

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by the Scheduling Coordinator or the CAISO to the Facility, directing the Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh.

"**Dispatch Notice**" means any Charging Notice, Discharging Notice and any subsequent updates thereto, given by the CAISO or the Scheduling Coordinator, to the Project Developer, directing the Facility to charge or discharge Energy at a specific MWh rate to a specified Storage Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions.

"**Effective Date**" has the meaning set forth in the Preamble.

"**Electrical Losses**" means all transmission or transformation losses (a) between the Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy.

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

"**Energy Storage Service Agreement**" or "**ESSA**" means the agreement between CCP and Project Developer for the purchase of energy storage products of Tumbleweed Energy Storage, executed on [Date].

"**Entitlement Share**" means the percentage entitlement of each Operation Participant for the Project as set forth in the PPSA, as may be amended pursuant to Section 4.2 therein.

"**Environmental Attributes**" shall mean any and all attributes under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future to the Facility and its displacement of conventional energy generation.

"**Facility**" means the energy storage facility described on the Cover Sheet and in Exhibit A of the ESSA, including mechanical equipment and associated facilities and equipment required to deliver Product, as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of the ESSA.

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

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

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

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

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

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

“**Lead Point Person**” has the meaning set forth in Section 5.4.

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

“**Management Team”** means the group established in accordance with Article 5.

“**Month**” means a calendar month.

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

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

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

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

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

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

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

“**Operation Participant Indemnitees**” has the meaning set forth in Section 9.5.

"**Operation Participants**" means those entities executing this Agreement, as identified in the Preamble, together in each case with each entity's successors or assigns.

"**Party**" has the meaning set forth in the Preamble.

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

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

"**Person**" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

"**PNode**" has the meaning set forth in the CAISO Tariff.

"**Product**" means all of the Discharging Energy, Charging Energy, Capacity Attributes, Ancillary Services, and Environmental Attributes associated with the Facility, or otherwise provided for pursuant to the ESSA.

"**Project**" has the meaning set forth in Exhibit A of the ESSA.

"**Project Committee**" means the committee established in accordance with the PPSA.

"**Project Developer**" means Tumbleweed Energy Storage, LLC, a Delaware limited liability company, or Assignee as permitted under the ESSA.

"**Project Participation Share Agreement**" or "**PPSA**" means the agreement between CCP and the Project Participants (as defined therein) for the administration of the ESSA with Project Developer, executed on [Date].

"**Prudent Operating Practice**" means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States, and (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules, and standards of any successor organizations.

"**Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Released Party**" has the meaning set forth in Section 9.2.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's Resource Adequacy Requirements, as those obligations are set forth in any ruling issued by a Governmental Authority, including the Resource Adequacy Rulings, and shall include Flexible Capacity, and any local, zonal, or otherwise locational attributes associated with the Facility.

"**Resource Adequacy Requirements**" or "**RAR**" means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

"**Resource Adequacy Resource**" has the meaning used in Resource Adequacy Rulings.

"**Resource Adequacy Rulings**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

"**Schedule**" has the meaning set forth in the CAISO Tariff, and "**Scheduled**" and "**Scheduling**" has a corollary meaning.

"**Scheduled Energy**" means the Discharging Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

"**Scheduling Coordinator**" or "**SC**" means an entity engaged by CCP and certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

"**Storage Level**" means, at a particular time, the amount of electric Energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

"**Unanimous Vote**" has the meaning set forth in Exhibit E.

1.2. Rules of Interpretation. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation, or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the terms "include" and "including" mean "include or including (as applicable) without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression "and/or" when used as a conjunction shall connote "any or all of";

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
EFFCTIVE DATE, TERM, AND EARLY TERMINATION

2.1. Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term of the ESSA, subject to any early termination provisions set forth herein or subject to an early termination of the ESSA ("**Term**").

(b) Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. All indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

ARTICLE 3
AGREEMENT

3.1. Transaction. The Operation Participants seek to establish Management Team to facilitate the implementation and administration of the ESSA and the operation of the Project, and to engage and coordinate with the Scheduling Coordinator.

ARTICLE 4
ROLE OF PROJECT COMMITTEE

4.1. Role of Project Committee. The Project Committee shall be established and governed pursuant to the PPSA. The Project Committee shall oversee and advise on the actions taken by the Management Team. To the extent that the Management Team requires decisions to be made promptly, the Management Team shall notify the Chairperson of the Project Committee and request a prompt response.

ARTICLE 5
MANAGEMENT TEAM

5.1. Management Team. The Management Team is authorized to (a) provide coordination among, and information to, the Operation Participants and CCP, (b) direct the daily operation of the Project, (c) make recommendations to the Project Committee regarding the administration and operation of the Project, and (d) undertake the responsibilities set forth in Section 5.5.

5.2. Management Team Membership. The Management Team shall consist of one representative from each Operation Participant. Within thirty (30) days after the Effective Date, each Operation Participant shall provide notice to each other of such Operation Participant's

representative to the Management Team. Alternate Management Team representatives may be appointed by written notice. An alternate representative may attend all meetings of the Management Team but may vote only if the representative for whom they serve as alternate is absent. No Operation Participant's representative shall exercise any greater authority than permitted by the Operation Participant which they represent. The Management Team may add additional non-voting members without seeking approval from the Project Committee.

5.3. Management Team Operations, Meetings, and Voting. Management Team operations, meeting, and voting shall be in accordance with the procedures and requirements as set forth in Exhibit E, as may be amended from time to time.

5.4. Lead Point Person; Responsibilities.

(a) Lead Point Person. The Management Team shall have a Lead Point Person ("**Lead Point Person**") that is designated, voted on, and majority approved by the Project Committee. The Project Committee shall decide how the role of Lead Point Person is shared or rotated amongst the Operation Participants. In the event there is no Lead Point Person designated by the Project Committee, the roles and responsibilities set forth in this Section 5.4 shall be carried out by the resource manager for each of the Operation Participants rotating on a quarterly basis. The Lead Point Person shall be the voting member representing its respective Operation Participant. For the avoidance of doubt, the Lead Point Person is not an additional vote to the Management Team.

(b) Responsibilities of Lead Point Person. The Lead Point Person shall have the following responsibilities:

(i) Facilitate efficient and regular communications with the Scheduling Coordinator;

(ii) Act as a liaison between the Management Team and the Project Committee;

(iii) Provide a weekly report to the Operation Participants and the Project Committee regarding the status of the Project and any actions taken by the Management Team; and

(iv) Calling and presiding over meetings of the Management Team.

(c) Limited Autonomous Authority. The Operation Participants agree to grant the Lead Point Person limited autonomous authority to make certain operational decisions in coordination with the Scheduling Coordinator, so long as (i) it arises from an exceptional event requiring prompt decision making, and (ii) the Lead Point Person notifies the Management Team representatives via text or email promptly upon learning of the event. The Lead Point Person shall provide to all Parties and the Project Committee an email summary of the event, the options discussed with the Scheduling Coordinator, the decision made, and resolution of the event. The Parties agree that the Lead Point Person shall bear no liability for the decision so long as he or she has acted in good faith on behalf of the Parties, and the Parties shall waive any claims against the Lead Point Person.

5.5. Management Team Responsibilities. The Management Team shall have the following duties and responsibilities:

(a) Coordinate, make and review proposals and recommendations to the Project Committee with respect to the operation of the Projects;

(b) Initiate, review and make recommendations to the Project Committee with respect to proposed amendments to the scheduling and dispatch criteria set forth in Exhibit C;

(c) Coordinate communications with Project Developer with respect to the operation of each Project, including requests for operating reports and providing reasonable access to any records (e.g., invoices or settlement data from the CAISO) as may be necessary for Project Developer to prepare the invoices;

(d) To the extent CCP may claim Environmental Attributes for the Project, work with Project Developer to undertake any necessary actions;

(e) Review proposed planned outages schedules for the Project on a quarterly basis and, if applicable, provide requests for changes in accordance with the ESSA;

(f) Review and make recommendations with respect to the annual maintenance schedule for the Project for approval by the Project Committee;

(g) Review and update the Resource Specific Template set forth in Exhibit B;

(h) Coordinate monthly CAISO settlements or other administrative actions under the ESSA;

(i) Prepare (or cause to be prepared) reports relating to operation of the Project, as requested by the Project Committee;

(j) Coordinate on responses (including the provision of data) to regulatory agencies in regulatory compliance filings, as requested by the Project Committee;

(k) With respect to the Scheduling Coordinator, (i) assist the Project Committee with negotiating the form of Scheduling Coordinator Agreement and any amendments thereto; (ii) oversee the engagement of the Scheduling Coordinator and notify the Project Committee if the Scheduling Coordinator is in breach of its agreement or otherwise does not perform; and (iii) coordinate the authorization or designation of the Scheduling Coordinator for the Facility with the CAISO;

(l) Take any other action reasonably necessary pursuant to the ESSA, as directed by the Project Committee, to the extent such action is consistent with the scope of this Agreement;

(m) In the event of an Unplanned Outage, coordinate an inspection of the Facility and all records relating thereto;

(n) Approval of NQC amounts;

(o) With respect to testing of the Facility, (i) coordinate and schedule the presence of a representative of CCP to witness any Capacity Tests, (ii) coordinate the approval of requests by Project Developer to conduct additional testing, (iii) ensure payment to Project Developer of all applicable CAISO revenues received by CCP and associated with the discharge Energy associated with any testing initiated by Project Developer; (iv) coordinate with Project Developer the testing of the Facility Meter on an annual basis; (v) coordinate a request to Project Developer to undertake a Capacity Test with appropriate notice; (vi) coordinate with Project Developer to agree on any deviations to the order of the Test Elements set forth in Exhibit O of the ESSA; (vii) coordinate the acceptance of an incomplete Capacity Test or any requests to complete or repeat any or all of a portion of the Capacity Test; (viii) coordinate the acceptance or rejection of the results of a Capacity Test as set forth in a written report from Project Developer; and (ix) coordinate the review and approval of the Supplementary Capacity Test Protocol provided by Project Developer and any updates thereto;

(p) Coordinate, schedule, and do all other things deemed necessary or appropriate, as permitted under this Agreement and the ESSA, to provide for the delivery of Charging Energy from the grid to the Point of Delivery;

(q) Coordinate with the Scheduling Coordinator to: (i) dispatch the Facilities, including the delivery of Dispatch Notices, in accordance with the Operating Restrictions and Exhibit C, (ii) charge the Facilities, including the delivery of Charging Notices, in accordance with the Operating Restrictions and Exhibit C; (iii) discharge the Facilities, including the delivery of Discharging Notices, in accordance with the ESSA and Exhibit C; (iv) provide updated Dispatch Notices during any Curtailment Period; (v) request additional CAISO Certification for provision of additional Ancillary Services (including reimbursement for any material costs); (vi) resell any part of the Product provided under the ESSA; (vii) submit Schedules to the CAISO in accordance with the ESSA and the applicable CAISO Tariff, protocols and Scheduling practices for the Product on a Day-Ahead, hour-ahead, fifteen-minute market, Real-Time or other market basis that may develop after the Effective Date, as determined by Buyer; (viii) provide Project Developer with access to a web-based system for submission of notices and updates required under the CAISO Tariff; (ix) undertake all settlement functions with the CAISO related to the Facility, including rendering an invoice to Project Developer for any CAISO payments charges or penalties for which Project Developer is responsible under the ESSA and making any adjustments thereto, in accordance with the ESSA; (x) dispute CAISO settlements as required by Project Developer; (xi) cooperate reasonably with Project Developer to the extent necessary to enable Project Developer to comply, and for Project Developer to demonstrate its compliance with, NERC reliability standards; and (x) convey any Capacity Attributes and any applicable Environmental Attributes associated with the Facility to each Operation Participant; and

(r) Exercise general supervision over any subgroup established pursuant to Section 5.9.

5.6. Recommendations to the Project Committee.[1]

(a) Amendments. Review, modify, and approve by a Normal Vote a recommendation to the Project Committee regarding proposed amendments to the scheduling and dispatch criteria set forth in Exhibit C.

(b) [_______]. Review, modify, and approve by a Normal Vote a recommendation to the Project Committee regarding [____].

5.7. Actions Requiring Unanimous Vote.[2]

(a) [________].

5.8. Actions Subject to a Normal Vote.[3]

(a) Make recommendations to the Project Committee or to Project Developer, as appropriate, with respect to the operation of the Project.

(b) Make recommendations to the Project Committee regarding rules, procedures, and protocols for the scheduling, handling, tagging, dispatching, and crediting of the Product, the handling and crediting of Environmental Attributes associated with the Facility and the control and use of the Facility.

(c) Make recommendations to the Project Committee regarding the form or content of any written operational reports, Facility-related data and storage information, technical information, facility reliability data, transmission information, forecasting, scheduling, dispatching, tagging, parking, firming, exchanging, balancing, movement, or other delivery information, and similar information and records, or matters pertaining to the Project.

(d) Make recommendations to the Project Committee regarding practices and procedures for, among other things, the production, scheduling, tagging, transmission, delivery, firming, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale, or disposition of the Product, including the control and use of the Facility, and the supply, scheduling, and use of Charging Energy.

(e) Make recommendations to Project Committee regarding policies or programs formulated by CCP or Project Developer for determining or estimating storage resources or the values, quantities, volumes, or costs of the Product from the Facility.

(f) Make recommendations regarding the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of the Product to the Point of Delivery (directly or through the Facility).

5.9. Subgroups. The Management Team may establish as needed subgroups including, but not limited to, engineering, mechanical, weather, geologic, diurnal, barometric,

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[1] Should anything specifically be called out in making recommendations to the Project Committee?
[2] What should require a Unanimous Vote?
[3] What should require a Normal Vote?

meteorological, operating, and environmental subgroups. The authority, membership, and duties of any subgroups shall be established by the Management Team; provided, however, such authority, membership or duties shall not conflict with the provisions of the ESSA. Each such subgroup shall be initially responsible to the Management Team.

5.10. Change in Representative. Each Operation Participant shall promptly give written notice concurrently to the other Operation Participants and CCP of any changes in the designation of its representative on the Management Team or any subgroup.

5.11. Representative's Expenses. Any expenses incurred by any representative of any Operation Participant or group of Operation Participants serving on the Management Team or any other subgroup in connection with their duties on such subgroup shall be the responsibility of the Operation Participant which they represent and shall not be an expense payable under this Agreement.

5.12. Inaction by Committee. It is recognized by the Operation Participants that if the Management Team is unable or fails to agree with respect to any matter or dispute which it is authorized to determine, resolve, approve, disapprove or otherwise act upon after a reasonable opportunity to do so, or within the time specified herein or in the ESSA, then the Project Committee may take such action as in its discretion as necessary for its timely performance under any requirement pursuant to the ESSA, pending the resolution of any such inability or failure to agree, but nothing herein shall be construed to allow the Project Committee to act in violation of the express terms of the ESSA or this Agreement.

5.13. Delegation. To secure effective cooperation and decision making in a timely manner in connection with various administrative, technical, and other matters which may arise from time to time in connection with the operation of the Project, in appropriate cases, duties and responsibilities of the Management Team may be delegated to any individual in the Management Team upon notice to the Operation Participants. In addition, an Operation Participant may delegate its vote to the Lead Point Person or another Operation Participant prior to any meeting by giving notice to all of the Operation Participants.

5.14. Role of CCP Board. The rights and obligations of the Management Team under this Agreement shall be subject to the ultimate control at all times of the CCP Board.

ARTICLE 6
SCHEDULING COORDINATOR

6.1. Hiring of Scheduling Coordinator. The Operation Participants agree to work together to hire a qualified Scheduling Coordinator and to share the costs of such Scheduling Coordinator as set forth in Section 6.3 below. As necessary, the Operation Participants shall assist the Project Committee in the negotiation of a separate agreement between CCP and the Scheduling Coordinator to engage the services of the Scheduling Coordinator. The engagement of the Scheduling Coordinator shall require approval by the CCP Board. The Operation Participants shall coordinate the authorization or designation of the Scheduling Coordinator for the Facility with the CAISO.

6.2. Scheduling Coordinator Responsibilities. The Scheduling Coordinator shall have the duties and responsibilities set forth in Exhibit E attached hereto, as may be amended from time to time pursuant to this Agreement.

6.3. Cost Sharing. Each Operation Participant shall be responsible for the costs of the Scheduling Coordinator in accordance with its Entitlement Share. Such costs shall be included in the Annual Budget (as defined in the PPSA) and billed and paid pursuant to the PPSA. To the extent that the Operation Participants engage a consultant for purposes of this Agreement, the same requirements set forth in this Section 6.3 shall apply to such engagement.

6.4. Performance of Scheduling Coordinator. The Management Team shall oversee the performance of the Scheduling Coordinator. To the extent that the Management Team believes that the Scheduling Coordinator is in breach of its agreement with CCP or is otherwise not performing under the agreement, then the Management Team shall notify the Project Committee.

ARTICLE 7
AUTHORIZATIONS; CONFLICTS; LITIGATION.

7.1. Authorizations. Each Operation Participant hereby represents and warrants that no order, approval, consent, or authorization of any governmental or public agency, authority, or person, is required on the part of such Operation Participant for the execution and delivery by the Operation Participant, or the performance by the Operation Participant of its obligations under this Agreement except for such as have been obtained.

7.2. Conflicts. Each Operation Participant represents and warrants as of the Effective Date that, to the Operation Participant's knowledge, the execution and delivery of this Agreement by the Operation Participant and the Operation Participant's performance hereunder will not constitute a default under any agreement or instrument to which it is a party, or any order,judgment, decree or ruling of any court that is binding on the Operation Participant, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of the Operation Participant.

7.3. Litigation. Each Operation Participant represents and warrants that, as of the Effective Date, to the Operation Participant's knowledge, except as disclosed, there are no actions, suits or proceedings pending against the Operation Participant (service of process on the Operation Participant having been made) in any court that questions the validity of the authorization, execution or delivery by the Operation Participant of this Agreement, or the enforceability on the Operation Participant of this Agreement.

ARTICLE 8
NONPERFORMANCE.

8.1. Nonperformance by an Operation Participant. If an Operation Participant fails to perform any covenant, agreement, or obligation under this Agreement or shall cause CCP to be in default under the ESSA, the remaining Operation Participants may, in the event the performance of any such obligation remains unsatisfied after thirty (30) days' prior written notice thereof to such Operation Participant and a demand to so perform, undertake the performance of the

obligation without taking into account the Operation Participant's Entitlement Share for purposes of voting, if applicable.

8.2. Termination and Disposal of Operation Participant's Rights. If an Operation Participant has defaulted under the PPSA and its respective Project Rights and Obligations have been terminated and disposed of in accordance with the PPSA, then any rights and obligations of such Operation Participant under this Agreement shall also be terminated.

ARTICLE 9
LIABILITY

9.1. Operation Participants' Obligations Several. The Operation Participants shall be severally responsible and liable for performance under this Agreement.

9.2. No Liability of CCP or Operation Participants, Their Directors, Officers, Etc.; CCP and the Operation Participants' Directors, Officers, Employees Not Individually Liable. The Parties agree that neither CCP, the Operation Participants, nor any of their past, present or future directors, officers, employees, board members, agents, attorneys or advisors (collectively, the "**Released Parties**") shall be liable to any other of the Released Parties for any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of the Operation Participants, CCP, or third persons) suffered by any Released Party as a result of the action or inaction or performance or non-performance by Project Developer under the ESSA. Each Party shall release each of the other Released Parties from any claim or liability that such Party may have cause to assert as a result of any actions or inactions or performance or non-performance by any of the other Released Parties under this Agreement (excluding gross negligence and willful misconduct, which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Notwithstanding the foregoing, no such action or inaction or performance or non-performance by any of the Released Parties shall relieve CCP or any Operation Participant from their respective obligations under this Agreement. The provisions of this Section 9.2 shall not be construed so as to relieve CCP or the Project Developer from any obligation or liability under this Agreement or the ESSA.

9.3. Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 9.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, any Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of any other Party, and each Party shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment, underpayment or other monetary damages owed by the other Party in accordance with the terms of this Agreement.

9.4. No General Liability of CCP. The undertakings under this Agreement by CCP, shall not constitute a debt or indebtedness of CCP within the meaning of any provision or limitation of

the Constitution or statutes of the State of California, and shall not constitute or give rise to a charge against its general credit.

9.5. Indemnification of Operation Participants. CCP undertakes and agrees, to the extent permitted by law, to indemnify and hold harmless each Operation Participant, their directors, board members, officers, employees, agents, attorneys and advisors, past, present or future (collectively, "**Operation Participant Indemnitees**"), from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise , which include, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of the Operation Participants, CCP or third persons, that may be imposed on, incurred by or asserted against the Operation Participants arising by manner of any breach of this Agreement by CCP, or the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of CCP or any of CCP's directors, board members, officers, employees, agents and advisors, past, present or future.

ARTICLE 10
NOTICES

10.1. Addresses for the Delivery of Notices. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit A or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

10.2. Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 11
ASSIGNMENT

11.1. General Prohibition on Assignments. No Party may assign this Agreement, or its rights or obligations under this Agreement, without the prior written consent of all other Parties, in each Party's sole discretion.

ARTICLE 12
GOVERNING LAW AND DISPUTE RESOLUTION

12.1. Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced, and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action, or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought in the federal or state courts located in the State of California in a location to be mutually chosen by all Parties, or in the absence of mutual agreement, the County of San Francisco.

12.2. Dispute Resolution.

(a) In the event of any dispute arising under this Agreement, within ten (10) Business Days following the receipt of a Notice from any Party identifying such dispute, the Parties shall meet, negotiate, and attempt, in good faith, to resolve the dispute by consensus quickly and informally without significant legal costs. Such meeting may be held in person or by video conference and each Party shall have one representative attend the meeting.

(b) If the Parties are unable to resolve a dispute arising hereunder pursuant to Section 12.2(a), the respective CEOs of each Party shall designate a representative to work towards a resolution of the dispute. The Parties shall make best efforts to resolve any dispute within fifteen (15) Business Days of representatives being designated.

(c) If the Parties are unable to resolve a dispute arising hereunder within twenty (20) Business Days following the CEO Meeting, the Parties may submit the dispute to arbitration under the rules of Judicial Arbitration and Mediation Services (JAMS).

12.3. Attorneys' Fees. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 13
MISCELLANEOUS

13.1. Entire Agreement; Integration; Exhibits. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting or execution hereof.

13.2. Amendments. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of all Parties; *provided*, this Agreement may not be amended by electronic mail communications.

13.3. No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

13.4. Severability. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

13.5. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

13.6. Electronic Delivery. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

13.7. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

13.8. Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and that the Parties are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

13.9. Further Assurances. Each of the Parties hereto agrees to provide such information, execute, and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

13.10. Confidentiality. Each Party agrees to maintain the confidentiality of all information exchanged amongst the Parties pursuant to this Agreement that is deemed "Confidential Information" under this Agreement (e.g., pricing, bidding strategies, resource

capabilities, planned outages, etc.), subject to any required disclosures, including under the California Public Records Act. None of the Parties may disclose information deemed Confidential Information under this Agreement without the prior written consent of the other Parties.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

California Community Power	CleanPowerSF
By: Name: __________ Title: __________ Approved as to form by Counsel By: Name: __________ Title: __________	By: Name: __________ Title: __________ Approved as to form by Counsel By: Name: __________ Title: __________
Peninsula Clean Energy	**Redwood Coast Energy Authority**
By: Name: __________ Title: __________ Approved as to form by Counsel By: Name: __________ Title: __________	By: Name: __________ Title: __________ Approved as to form by Counsel By: Name: __________ Title: __________

San José Clean Energy	Silicon Valley Clean Energy
By: Name: ____________________ Title: ____________________ Approved as to form by Counsel By: Name: ____________________ Title: ____________________	By: Name: ____________________ Title: ____________________ Approved as to form by Counsel By: Name: ____________________ Title: ____________________
Sonoma Clean Power By: Name: ____________________ Title: ____________________ Approved as to form by Counsel By: Name: ____________________ Title: ____________________	Valley Clean Energy By: Name: ____________________ Title: ____________________ Approved as to form by Counsel By: Name: ____________________ Title: ____________________

EXHIBIT A

NOTICES

Party	*All Notices*	*Invoices*
California Community Power	**California Community Power** Tim Haines ____________________ ____________________ timhaines@powergridsymmetry.com	
CleanPower SF	**CleaPowerSF** Barbara Hale, Assistant General Manager, Power San Francisco Public Utilities Commission 525 Golden Gate Ave, 13th Floor San Francisco, CA 94102 bhale@sfwater.org	
Peninsula Clean Energy	**Peninsula Clean Energy** Jan Pepper, CEO Peninsula Clean Energy 2075 Woodside Road Redwood City, California 94061 jpepper@peninsulacleanenergy.com	
Redwood Coast Energy Authority	**Redwood Coast Energy Authority** Matthew Marshall, CEO Redwood Coast Energy Authority 633 3rd Street Eureka, CA 95501 mmarshall@redwoodenergy.org	
San José Clean Energy	**San José Clean Energy** Lori Mitchell, Director cc: Luisa Elkins, Senior Deputy City Attorney San José Clean Energy 200 E. Santa Clara Street, 14th Floor San José, CA 95113 Lori.Mitchell@sanjoseca.gov Luisa.Elkins@sanjoseca.gov	

Party	*All Notices*	*Invoices*
Silicon Valley Clean Energy	**Silicon Valley Clean Energy** Girish Balachandran, CEO Silicon Valley Clean Energy Authority 333 W. El Camino Real, Suite 330 Sunnyvale, CA 94087 girish@svcleanenergy.org	
Sonoma Clean Power	**Sonoma Clean Power** Geof Syphers, CEO Sonoma Clean Power 50 Santa Rosa Avenue, 5th Floor Santa Rosa, CA 95404 gsyphers@sonomacleanpower.org	
Valley Clean Energy	**Valley Clean Energy** Gordon Samuel Assistant General Manager & Director of Power Resources 604 2nd Street Davis, CA 95616 gordon.samuel@valleycleanenergy.org	

EXHIBIT B

RESOURCE SPECIFIC TEMPLATE

EXHIBIT C

SCHEDULING AND DISPATCH OPERATIONS AND ECONOMIC CRITERIA

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES[4]

Schedule and dispatch of the Product in accordance with applicable Laws, Prudent Operating Practices, Exhibit C, and Operating Restrictions.

Submit Schedules to the CAISO in accordance with the ESSA and the applicable CAISO Tariff, protocols and Scheduling practices for the Product on a day-ahead, hour-ahead, fifteen-minute market, Real-Time or other market basis that may develop after the Effective Date.

Coordinate with the Management Team in accordance with Section 5.4(q).

Communications and reporting from the Scheduling Coordinator to the Operation Participants.

Submit Supply Plan indicating allocation of Capacity Attributes to Operation Participants.

To extent applicable, coordinate the transfer of WREGIS Certificates from Project Developer to CCP and from CCP to the Operation Participants.

[4] Exhibit D require more input.

EXHIBIT E

PROJECT COMMITTEE OPERATIONS, MEETING, AND VOTING

(a) Lead Point Person of Management Team. The Lead Point Person of the Management Team shall be designated pursuant to Section 5.4(a). The Lead Point Person shall be responsible for calling and presiding over meetings of the Management Team and making limited autonomous decisions in coordination with the Scheduling Coordinator.

(b) Meetings. Unless otherwise directed by the Project Committee, the Management Team shall meet weekly to review operations of the Project. Conducting of Management Team meetings and actions taken by the Management Team may be taken by vote given in an assembled meeting, by telephone, by video conferencing, or by any combination thereof. At least one representative from each Operation Participant and the Lead Point Person shall be present at each meeting. To the extent an Operation Participant is unable to attend a meeting, such Operation Participant shall delegate his or her vote in accordance with Section 5.13.

(c) Voting. Voting by the Management Team shall be as set forth in this Exhibit E. The Operation Committee shall have the ability to amend the voting procedures subsequent to the Effective Date by a unanimous affirmative vote by all Operation Participants. The Scheduling Coordinator shall be a non-voting member of the Management Team, and if mutually agreed by the Operation Participants, a consultant may be a non-voting member of the Management Team.

(d) Unanimous Vote. Certain actions, as designated in Section 5.7, require a unanimous affirmative vote by all Operation Participants. No such vote may be taken unless a representative from every Operation Participant is present at the meeting of the Management Team or Operation Participant has delegated their vote in writing to another member.

(e) Normal Vote. All actions not designated as requiring unanimous vote, shall proceed pursuant to the "Normal Vote" process set forth in this clause (e).

(i) Quorum. No Normal Vote of the Management Team shall be taken unless a representative is present or vote is delegated for at least fifty percent (50%) of the total number of Operation Participants, without regard to each Operation Participant's Entitlement Share.

(ii) Initial Normal Vote. Unless a representative requests an Alternate Normal Vote, pursuant to clause (e)(iii), all actions requiring a Normal Vote, as specified in Section 5.6 or 5.8, shall require an affirmative vote of at least fifty-one percent (51%) of the total number of Operation Participants, without regard to each Operation Participant's Entitlement Share.

(iii) Alternate Normal Vote. Any representative may request that any Normal Vote be taken on an Entitlement Share basis (referred to as an "**Alternate Normal Vote**"). If a representative requests an Alternate Normal Vote, then the following vote requirements shall apply:

(A) If any individual Operation Participant has an Entitlement Share exceeding fifty percent (50%), then all actions for which an Alternate Normal Vote is taken, shall require that the Operation Participant with an Entitlement Share exceeding fifty percent (50%) plus any other Operation Participant vote in the affirmative.

(B) If no individual Operation Participant has an Entitlement Share exceeding fifty percent (50%), then all actions for which an Alternate Normal Vote is taken, shall require an affirmative vote of Operation Participants having Entitlement Shares aggregating at least fifty-one percent (51%) of the total Entitlement Shares.

Decision **PROPOSED DECISION OF ALJ FITCH** **(Mailed 5/21/2021)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes.	Rulemaking 20-05-003

DECISION REQUIRING PROCUREMENT TO ADDRESS MID-TERM RELIABILITY (2023-2026)

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DECISION REQUIRING PROCUREMENT TO ADDRESS MID-TERM RELIABILITY (2023-2026)

Summary

This decision addresses the mid-term reliability needs of the electricity system within the California Independent System Operator's (CAISO's) operating system by requiring at least 11,500 megawatts (MW) of additional net qualifying capacity (NQC) to be procured by all of the load-serving entities (LSEs) subject to the Commission's integrated resource planning (IRP) authority. The capacity requirements are adopted annually, beginning with 2,000 MW by 2023, an additional 6,000 MW by 2024, an additional 1,500 MW by 2025, and an additional 2,000 MW by 2026.

This procurement order is designed to achieve our ambitious greenhouse gas (GHG) emissions reduction targets for 2030 and to keep us on a clear path to meeting our ultimate goal of 100 percent zero-carbon electricity resources by 2045. In particular, the resources required in 2023-2025 are designed for purposes of replacing the capacity retiring from the Diablo Canyon Power Plant (Diablo Canyon), as well as several thermal power plants complying with the once-through-cooling (OTC) regulations of the State Water Resources Control Board (Water Board). We are specifically ordering that the resources from Diablo Canyon be replaced with at least 2, 500 MW of zero-emitting generation, generation paired with storage, or demand response resources. We also expect that all of the resources procured pursuant to this order will be zero-emitting, unless they otherwise qualify under the renewables portfolio standard eligibility requirements.

The 2026 resources are required to be long-lead-time (LLT) resources, with half coming from long-duration storage and the other half from zero-emitting

resources or those that otherwise qualify as eligible under the renewables portfolio standard (RPS) program and have at least an 80 percent capacity factor.

Contracted imported power may be used to count toward the capacity requirements in this order if the imports otherwise meet the requirements for firm imports in the resource adequacy program, are available during the duration of the time period for this order (2023-2026), and are contracted with new resources or represent capacity expansions to existing resources that have commercial online dates after the date of this decision.

Incremental capacity from fossil-fueled resources will not be eligible to qualify under this order, but the Commission, in cooperation with the California Energy Commission (CEC), will conduct additional quantitative and qualitative analysis in the next few months to help inform preferred system portfolio (PSP) decision, expected no later than the end of this year, where we may consider additional capacity procurement requirements. We also expect to complete the aggregation and analysis of the individual LSE IRPs as part of the PSP decision by the end of this year.

The total capacity procurement requirements in this decision are allocated to all LSEs in proportion to their overall load on the electric system, as adjusted by their peak load contribution, and all LSEs will be required to procure their proportional share.

LSEs will be required to submit procurement information twice yearly, consistent with Decision (D.) 20-12-044 requirements, to show progress toward the capacity procurement requirements in this decision. Backstop procurement to be conducted by the IOUs may be ordered by the Commission once yearly, with the costs allocated to the deficient LSEs and/or their customers. In addition, deficient LSEs will be subject to penalties for failing to deliver the

capacity required in 2023-2025 at the level of the net cost of new entry (CONE). Penalties will not be assessed on any LSE failing to procure the LLT resources required in 2026; LSEs showing a good faith effort to procure these resources may be granted an extension until 2028 before facing potential penalties, due to the challenging nature of procuring these important LLT resources.

For the IOUs that must submit their contracts to the Commission for advance approval, Tier 3 advice letters must be submitted for all procurement, except for contracts with pumped storage resources and when proposing utility ownership of the resources, circumstances which will require full applications.

This proceeding remains open.

1. Background

On February 22, 2021, an Administrative Law Judge (ALJ) ruling (ALJ ruling) was issued seeking comments from parties on Commission staff analysis of mid-term (2024-2026) electric system reliability and proposed procurement requirements recommended based on the analysis. The ruling included a series of questions to which parties responded in comments and reply comments.

The following 46 parties timely filed comments on or before March 26, 2021, in response to the ALJ ruling: American Clean Power - California (ACP-CA); Advanced Energy Economy (AEE); Alliance for Retail Energy Markets (AReM); Bioenergy Association of California (BAC); California Biomass Energy Alliance (CBEA); California Community Choice Association (CalCCA); California Energy Storage Alliance (CESA); California Environmental Justice Alliance (CEJA) and Sierra Club, jointly; California Independent System Operator (CAISO); California Wind Energy Association (CalWEA); Calpine Corporation (Calpine); Center for Energy Efficiency and Renewable Technologies

(CEERT); City and County of San Francisco (CCSF); Diamond Generation Corporation (Diamond); Eagle Crest Energy (Eagle Crest); Electrochaea Corporation (Electrochaea); Environmental Defense Fund (EDF); EDF Renewables, Inc. (EDFR); Fervo Energy Company (Fervo); Form Energy, Inc. (Form Energy); Geothermal Rising (GRC); Golden State Clean Energy, LLC (Golden State); Green Power Institute (GPI); GridLiance West LLC (GridLiance); Hydrostor, Inc. (Hydrostor); Independent Energy Producers Association (IEP); L. Jan Reid (Reid); Long Duration Energy Storage Association of California (LDESAC); Middle River Power, LLC (Middle River); Natural Resources Defense Council (NRDC); Ormat Technologies, Inc. (Ormat); Pacific Gas and Electric Company (PG&E); Protect Our Communities Foundation (PCF); Public Advocates Office of the California Public Utilities Commission (Cal Advocates); Powerex Corporation (Powerex); San Diego Gas & Electric Company (SDG&E); Shell Energy North America (Shell); Silicon Valley Clean Energy Authority (SVCE) and Central Coast Community Energy (3CE), jointly; Small Business Utility Advocates (SBUA); Southern California Edison Company (SCE); Southwestern Power Group II, LLC (SWPG) and Pattern Energy (Pattern), jointly; The Utility Reform Network (TURN); Union of Concerned Scientists (UCS); Vote Solar, the Large-Scale Solar Association (LSA), and the Solar Energy Industries Association (SEIA), jointly; Watson Cogeneration (Watson); and the Joint Environmental Parties, consisting of NRDC, UCS, CEJA, Defenders of Wildlife (DOW), EDF, Friends of the Earth (FOE), GPI, and Sierra Club, jointly.

The following 38 parties timely filed reply comments on or before April 9, 2021, in response to the ALJ ruling: ACP-CA; AEE; AReM; Brookfield Renewable Trading and Marketing, LP (Brookfield); CalWEA; CAISO; Cal Advocates; CalCCA; Calpine; CBEA; CCSF; CEERT; CEJA and Sierra Club,

jointly; CESA; Diamond; EDF; Form; Green Hydrogen Coalition (GHC); GridLiance; GPI; GR; Hydrostor; IEP; LDESAC; LS Power Development, LLC (LS Power); Middle River; Ormat; PCF; PG&E; PCF; Reid; SBUA; SCE; SDG&E; SEIA, LSA, and Vote Solar, jointly; SWPG and Pattern, jointly; TURN; Vistra Corp. (Vistra); and the Joint Environmental Parties.

We also received over 225 written comments from the public since issuing the February 22, 2021 ALJ ruling, and numerous speakers have address this matter at public meetings more recently. The commenters overwhelmingly urged the Commission to require investment in clean, non-fossil-fueled resources, especially in anticipation of the retirement of the Diablo Canyon Power Plant.

2. Planning Standards

The February 22, 2021 ALJ ruling included an adjustment to the planning reserve margin (PRM) that is used to analyze integrated resource planning (IRP) scenarios. To account for the types of conditions that led to unplanned rotating outages in August 2020, as well as the high demands experienced in September and October 2020, a PRM of 20.7 percent was used as the basic assumption for the analysis leading to the recommended level of procurement. This included a revision to the operating reserve component of the PRM from 4.5 percent to 6 percent, as well as an additional 2,000 megawatts (MW) of generic capacity that was added in the last IRP cycle to cover perceived calibration differences between the two major models being used for IRP (RESOLVE and SERVM), but may have also included changing reliability conditions on the electric system.

Parties were asked to comment on the 20.7 percent PRM assumption, as well as whether a loss of load expectation (LOLE) metric would be preferable. The ALJ ruling also sought input on the appropriate weather variants of the

demand forecast to be used. Currently, the IRP process uses the "1-in-2" weather variant of the demand forecast, which means that the expectation is that the forecast will be exceeded once every two years, on average. Parties were asked to weigh in on whether a 1-in-5 or 1-in-10 weather variant assumption would be more appropriate, and why.

2.1. Comments of Parties

Roughly half of the parties commenting on the planning assumptions made for the analysis in the February 22, 2021 ALJ ruling agreed, to a larger or lesser degree, that the 20.7 percent PRM assumption was appropriate for now. These parties included AEE, CAISO, Calpine, CESA, Golden State, Hydrostor, IEP, LDESAC, Middle River, NRDC, Ormat, SBUA, SEIA/LSA/Vote Solar, Shell, and Watson. Most of these parties also would have preferred a more complete or more robust analysis if there was or is time. Some also noted that the PRM may need to be even higher, given the composition of resources on the grid today, as well as due to the reliability challenges experienced in 2020.

Cal Advocates argued that the 1.5 percent additional operating reserves is appropriate, as well as approximately 1.1 Gigawatt (GW) additional capacity, which amounts to 2.4 percent. Together, these amounts would equal around 18.7 percent and could be rounded up to 19 percent as an assumption, rather than 20.7 percent.

GPI would prefer a modified demand level be used for modeling, but if using a PRM, GPI suggested that it be at most 1.25 times the 15 percent level, which would amount to 18.75 percent. GPI reasoned that this would serve as a middle ground between the existing 15 percent assumption and the higher 20.7 percent level.

CCSF and TURN argued that the PRM assumption for this round of analysis should be set at 17.5 percent, with CCSF arguing that this is the PRM level used in the extreme weather Rulemaking (R.) 20-11-003, while TURN pointed to the root cause analysis report from the events of August 2020. Both argued that the 17 percent level would be an interim assumption until a more complete study is conducted to set the long-term assumption.

AReM and Reid argued that a 15 percent PRM should be maintained for now, with a more complete analysis later. PCF argued that instead of revising operating reserves up to 6 percent, they should be moved down to 3 percent, with import limits increased by the 2,000 MW adder amount, since this would still be fewer imports during the peak demand period than assumed in earlier analyses.

The 20.7 percent assumption was actively opposed by several parties, including CEERT, CEJA/Sierra Club, EDF, SCE, and SDG&E. PG&E and CalCCA also opposed the 20.7 percent PRM assumption, but generally supported procurement requirements in the range of 7 GW (CalCCA) or 7.5 GW (PG&E), with additional analysis for setting the PRM in the future. PG&E was also concerned about transmission constraints and wanted more zonal analysis of procurement locations.

Almost all parties opposed using the 20.7 percent PRM assumption for long-term planning going forward without additional analysis.

Parties were quite divided on the subject of the appropriate weather variant of the demand forecast to use (1-in-2, vs. 1-in-5 or 1-in-10). A good number of parties supported maintaining a 1-in-2 forecast, including Cal Advocates, CEJA/Sierra Club, Gridliance, IEP, PCF, PG&E, SCE, SDG&E, and SBUA. Some parties argued that the 1-in-2 should remain, under the

assumption that the PRM assumption is already being increased to 20.7 percent. Many of these parties supported using the 1-in-2 forecast for purposes of this order, but exploring other options for later planning, after considering further the effects of climate change.

Cal Advocates also suggested consideration of incorporating a 1-in-5 weather variant in developing the inputs and assumptions for the next cycle of the IRP process. CEJA/Sierra Club pointed out that the difference between a 1-in-2 weather variant and a 1-in-5 is related to air conditioning load, and as such, advocated that programs should be developed that directly target that impact.

Middle River argued that the weather variant used should either be higher than 1-in-2, with an average allowance for load forecast error in the PRM, or be 1in-2 with a high allowance in the PRM, but not both, since together these assumptions create a compound effect.

CEERT and Reid advocated that a 1-in-10 weather variant be used. CESA referred to recent California and Texas outages and suggested that even 1-in-10 may not be enough. Form advocated for 1-in-10 at a minimum, and preferably 1-in-20. ACP-CA suggested consideration of 1-in-35, while not advocating that this level be adopted now. GPI argued that the assumptions underlying the forecasts need to be recalibrated in light of expected weather pattern changes due to climate change.

CalCCA argued that using higher percentiles of the load distribution, different rainfall profiles for hydroelectric generation, or a 1-in-5 weather variant may well be warranted as part of an overall PRM analysis, and an LOLE analysis should be the ultimate guide. Hydrostor, referring to the amount of capacity that will need to be built to electrify the transportation sector and buildings, and

NRDC, referring to the demand forecast and its accounting for climate change, also generally advocated for further study of these weather and demand forecasting issues.

Finally, CAISO pointed out that the CEC currently only produces hourly forecasts based on the 1-in-2 weather variant, and use of higher forecasts would have to be based off of those same hourly forecasts. Thus, further analysis would likely be needed to develop true 1-in-5 or 1-in-10 (or higher) weather variants. Overall, the CAISO basically argued that increasing the PRM or changing the demand forecast weather variant are interim measures that will uncover the minimum level of need, but should not replace more comprehensive reliability analysis for the long-term requirements. Many other parties, including CalCCA, CCSF, CEERT, CEJA/Sierra Club, GPI, Golden State, NRDC, PG&E, SCE, SEIA/LSE/Vote Solar, SWPG, UCS, and SBUA all stated this same basic conclusion in various and slightly different ways.

When addressing the assumptions that the Commission should use for the long-term in IRP, AReM insisted that both the PRM and LOLE assumptions are out of scope for the IRP proceeding, preferring to address these questions only in the resource adequacy context. The majority of parties argued that the PRM assumptions should be regularly updated, based on studies to determine how much of a PRM is required to maintain a 0.1 LOLE standard. These parties included CalCCA, CEJA/Sierra Club, NRDC, PG&E, SCE, SDG&E, TURN, UCS, CAISO, Shell, CCSF, and Watson. Calpine, SDG&E, Shell, CCSF, and Watson commented that the 0.1 LOLE standard should be maintained, while CalCCA, SCE, and CAISO argued that this standard should be revisited.

Several parties preferred that the IRP analysis use different metrics than just LOLE, including expected unserved energy (EUE), or loss of load hours

(LOLH), instead of or at least in addition to an LOLE-based metric. Form and Reid made comments along these lines, and Form proposed a "net energy" planning standard to address reliability issues. Middle River commented that the IRP analysis should address local area reliability requirements that are no less stringent than in the resource adequacy program. SBUA commented that the Commission needs to relook at and potentially redefine both the resource adequacy and IRP reliability methods to address the current, more modern power system.

Many parties also commented about the continuing need for coordination between IRP and resource adequacy planning and compliance, including ACP-CA, PG&E, SVCE, CESA, and SEIA/LSA/Vote Solar. Cal Advocates specifically advocated that the PRM assumptions for IRP should be higher than the compliance standard in resource adequacy.

2.2. Discussion

For the long-term assumptions to be used for IRP planning purposes, we agree with the majority of parties who commented that more analysis is likely needed before revisiting our standards. The composition of the electric grid is changing dramatically, at the same time that the state is facing more extreme weather events driven, at least in part, by climate change. Therefore, we will refrain, in this order, from setting new standards for PRM, LOLE, or weather variants of the demand forecast, and instead will continue additional analysis and stakeholder engagement before making major changes. With respect to matters related to the demand forecast and the impacts of climate change, we will work closely with the CEC to determine if there are additional changes or analyses that they should make in the demand forecast that underpins a lot of

other analysis by this Commission, the CEC, and the CAISO in driving reliability and environmental decisions affecting the electricity sector.

Should the Commission decide to continue to use an LOLE metric of 0.1, we agree that the PRM should be set at a level that accomplishes this reliability level, and the analysis should be regularly updated. Commission staff is currently conducting such an analysis, and additional analysis and discussion of these issues will be forthcoming in this proceeding. In the meantime, we will not make revisions to the long-term assumptions in this decision.

However, we do need to make a determination about the assumptions to use to support this interim procurement requirement for the medium term (2024-2026). For this purpose, we find that the 20.7 percent PRM assumption is a reasonable proxy for the potential changes that may be needed to the PRM, the load forecast, and LOLE standards. Though certainly not every party agreed with this PRM assumption, even on an interim basis, most parties did not object to the resulting magnitude of the capacity procurement. The 20.7 percent PRM level is higher than the assumption used in the extreme weather proceeding addressing 2021 reliability, which was 17.5 percent. However, in the context of this order, with the longer timeframe, it is reasonable to account for both some contingency, as well as both the reliability and environmental goals that drive the need for greater investment in development of new and improvement of existing resources.

3. Need Determination

To conduct the analysis of potential procurement needed during the mid-term (2024-2026) timeframe for purposes of the February 22, 2021 ruling, Commission staff began with the planning standards described above, which are the 1-in-2 managed peak forecast, plus the PRM.

The 2019-2020 IRP baseline generator list was updated to align with the CAISO Master File. Staff also accounted for additions to the IRP baseline using the contracted resources included in the individual IRP filings of all of the load-serving entities (LSEs) included in their filings from September 1, 2020 intended to meet the 46 million metric ton (MMT) greenhouse gas (GHG) target required by D.20-03-028. Resources in development that were identified in the individual IRP filings were added to the baseline if they had signed contracts that were approved by the Commission and/or the LSE's highest decision-making authority, as applicable, as of June 30, 2020. Also included were resources sufficient to meet 100 percent of the 3,300 MW of net qualifying capacity (NQC) needed to satisfy the requirements of Decision (D.) 19-11-016.

Each resource type had its NQC based on expected contribution to reliability. For wind and solar resources, Commission staff applied effective load carrying capability (ELCC) assumptions developed stochastically by year. For other resource types, staff applied the September NQC according to the Commission's 2021 NQC list, where available, and otherwise used technology-specific NQC multipliers consistent with the 2019-2020 IRP Inputs and Assumptions.[1] Once-through cooling (OTC) plant closures, and other planned retirements, were also taken into consideration.

Once all of these NQC values were calculated, they were added up and compared against the reliability need in each year through 2026.

Commission staff also analyzed a low-need and a high-need scenario, to bound the amount of effective capacity likely to be needed in the medium term. For the low-need scenario, staff removed the PRM adjustments, leaving it at

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[1] Available at: https://www.cpuc.ca.gov/General.aspx?id=6442459770

15 percent instead of 20.7 percent, and also removed project viability discounts on the resource additions to the IRP baseline. For the high-need scenario, approximately 815 MW of additional thermal plant retirements by 2026 were assumed. This was based on an estimate of the portion of the thermal generation fleet that will reach 40 years of operating life by 2026, which is an indication of the risk of plants being retired beyond those already announced. Also, for the high-need scenario, unspecified imports were reduced from 5 GW to 4 GW. Finally, the PRM was effectively increased further to reflect an assumed effect of a one-degree Celsius temperature increase due to climate impacts over the next decade, with the impacts of the changed assumption applied beginning in 2024.

Table 1 below shows the key metrics and NQC need outputs for each scenario.

Table 1. Assumptions and Outputs of Need Scenarios Analyzed (NQC MW unless otherwise specified)

Item	Mid Need	Low Need	High Need
Assumptions (by 2026)			
PRM	20.7%	14.9%	22.5%
Operating Reserves (subset of PRM)	6%	4.5%	6%
Unspecified imports	5,000	5,000	4,000
OTC unit retirements	3,733	3,733	3,733
Diablo Canyon retirement	2,280	2,280	2,280
Additional thermal retirements	479	479	1,294
Outputs			
2024 NQC shortfall	4,146	1,520	6,571
2025 NQC shortfall (cumulative)	7,097	4,424	9,892
2026 NQC shortfall (cumulative)	7,410	4,715	10,432

The ALJ ruling recommended that procurement be required to address the mid-need scenario, which showed the need for 7,410 MW of NQC additions by 2026. This amount, when added to the 3,300 MW of NQC required by D.19-11-016, closely approximates the 18,000 MW of new nameplate capacity by 2026 included in the Reference System Portfolio (RSP) adopted in D.20-03-028.

3.1. Comments of Parties

Parties to the proceeding were quite divided about the reasonableness of the mid-need scenario. Parties generally supporting the recommendation in their comments on the ALJ ruling included Calpine, GridLiance, IEP, SWPG/Pattern, Watson, SBUA, SDG&E, PG&E, and CalCCA. SDG&E argued that this level of procurement is in line with the IRP load case used in the IRP RESOLVE modeling. These parties generally commented that this level of procurement appeared to represent a balanced analysis.

Parties preferring that the Commission order procurement based on the high-need scenario included ACP-CA, CEERT, EDF, CESA, Golden State, Hydrostor, LDESAC, SEIA/LSA/Vote Solar, Cal Advocates, and CAISO. ACP-CA argued that the high-need scenario is more reasonable given the number of uncertainties inherent in the analysis, including projected online dates for baseline resources, development uncertainty, weather events, interconnection issues, and the likelihood that the Commission will reduce the greenhouse gas (GHG) target. SEIA/LSA/Vote Solar, CEERT, CESA, and Golden State pointed out the requirements of Senate Bill (SB) 100 (DeLeon, 2018) requiring electric sector near-zero-carbon emissions by 2045, as well as the likelihood of load growth associated with electrification. EDF, CESA, CEERT, and Hydrostor argued that the high-need scenario is the least-regrets option, and CESA pointed

out that this level of procurement is consistent with the CAISO's independent stochastic analysis.

CESA argued that the GHG target should be set at 38 MMT for the electric sector by 2030, and therefore the high-need scenario is more relevant. LDESAC and SEIA/LSA/Vote Solar argued that we should account for the additional units likely to retire during this period, beyond those already announced, and that increasing capacity constraints in the West in general will constrain imports further. SEIA/LSA/Vote Solar also argued that there is little risk in requiring additional procurement over the next four or five years, because tax credits are still available that will make the investments lower cost for ratepayers. Finally, in between opening and reply comments, Cal Advocates changed their position to advocate for the high-need scenario (from the mid-need) after reading the CAISO analysis and after accounting for additional coal retirements in the West.

Several parties, by contrast, argued that the low-need scenario is more appropriate and least regrets. AReM objected to the use of the 20.7 percent PRM for the mid-term analysis and argued that it does not equate to a 0.1 LOLE. Therefore, AReM reasoned that the mid-need scenario would lead to over-procurement and higher costs than necessary for all consumers. Reid pointed out that the California economy is in poor condition, and therefore cost should be a paramount consideration. TURN suggested that a lower PRM of 17.5 percent be used, similar to the assumption used in emergency procurement for 2021, which would result in procurement requirements similar to the low-need scenario. PCF argued that the import assumptions and the high PRM assumption will lead to excess procurement and cost.

CEJA and Sierra Club argued that at least 20,000 MW of procurement should be required by 2026, with 14,000 MW coming from solar and wind

resources, with no gas capacity counting towards any of the requirements. CEJA and Sierra Club agreed with various other parties that the procurement requirement should be based on a lower GHG target, and also argued that the Commission cannot rely on the RPS requirements to meet the higher GHG requirements.

GPI did not support the high-need scenario, and Middle River stated that they could not comment on the appropriateness of the procurement amount because the analysis that led to the recommendation was not rigorous enough.

SCE argued that the Commission must take action now as a "no regrets" first step and require procurement of at least 5,400 MW to address the OTC and Diablo Canyon retirements, while resolving any additional procurement in a later decision.

CAISO conducted its own analysis and presented a summary of that analysis in its comments, calling for at least 10,000 MW of effective capacity by 2026. The CAISO also noted that it had reevaluated the Commission staff analysis and considered the need for additional capacity because the peak demand is shifting later in the day. CAISO, AReM, and SCE commented that the Commission staff analysis was more focused on gross peaks than net peaks, which currently are the most critical reliability periods.

Several parties also pointed out errors in the staff analysis that led to all of the need cases. First, AReM and CalCCA pointed out that there was 410 MW of small hydroelectric capacity that was inadvertently left out of the analysis. Hydrostor also pointed out an error in a ruling reference to the Navajo coal plant, noting that the plant retired in 2019 (this was reflected correctly in the associated spreadsheets). Finally, Cal Advocates noted that the updated CEC load forecast adopted as part of the Integrated Energy Policy Report (IEPR) in

2021[2] should be used, instead of the 2020 forecast, which would result in increased resource needs of at least 1,100 MW by 2026.

Finally, GPI and Watson raised the issue of ensuring that existing preferred resources that may be coming off contract in the mid-term are re-contracted, by increasing the amount of resources that are required to be procured in the medium term. This position was opposed, in reply comments, by CalCCA, on the basis that there is a significant probability that preferred resources with imminent retirement dates will be voluntarily recontracted by LSEs to meet other objectives, including the RPS and resource adequacy requirements.

3.2. Discussion

First, we agree with CalCCA and others that an error in the accounting for small hydroelectric resources should be corrected. This, combined with correction of erroneous counting of a specified import as thermal instead of solar,[3] results in a net reduction in the ultimate need under any scenario by approximately 327 MW.

Second, we disagree with the comments of the CAISO and others that our analysis does not account for the net peak periods. The model used for the analysis underpinning this decision uses the managed peak from the CEC's demand forecast as the basis for determining resource adequacy need, but in doing so accounts for the annual ELCC of renewables both in front of and behind the meter. This is done via the use of the ELCC surface model, derived from

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[2] Available at: https://www.energy.ca.gov/data-reports/reports/integrated-energy-policy-report/2020-integrated-energy-policy-report-update

[3] This error was caught by Commission staff and described in a workshop held on March 10, 2021 describing the analysis.

probabilistic analysis, that expresses the total ELCC of a portfolio of wind and solar resources as a function of the penetrations of each of those two resources on the grid. Using this, the model accounts for the impacts of renewables in shifting the gross peak to the managed peak, as well as the impact in shifting the managed peak to the net peak. The model captures the total ELCC and provides an estimate of the marginal ELCCs, thereby capturing the net peak challenges via an upstream probabilistic analysis rather than an hourly deterministic view.

Despite our confidence in the appropriateness of the Commission staff analysis taking into account the net peak impacts, we agree with those parties who argue that we should choose the high-need scenario as the basis for this procurement order. There are several reasons for this. In general terms, we have, for many years, tended to choose mid-level requirements in all procurement-related orders. It is likely partly due to a natural tendency to assume that the middle scenario is likely "just right," and represents the least-regrets choice. However, as the rotating outages required in August 2020 have demonstrated, we are not in a business-as-usual situation on the electric grid in California. The electricity market is changing rapidly in many respects, including the large number of new LSEs, the recent major shifts in the resource mix, a great deal of weather- and climate-change-driven uncertainty, as well as the increasing acceleration of electrification of building and transportation end uses.

In addition, our staff are currently aggregating the individual IRPs submitted to us in September 2020 by all LSEs, and we strongly anticipate the adoption of those plans that achieve the 38 MMT GHG limit by 2030, assuming that the aggregated portfolio of all LSEs achieves the necessary reliability levels. If that is the case, as pointed out by many parties, procurement of larger amounts

of resources will be necessary compared to the current 46 MMT target, between now and 2030.

All of these factors, coupled with the increasing urgency of our climate goals, leads us to choose to adopt the high-need scenario here rather than the mid-need scenario. An additional benefit is that this comports with the CAISO's analysis of the need, even though the CAISO arrived at a similar conclusion using slightly different assumptions and analytical tools. But the similarity in results gives us confidence that this is in the ballpark of the level of requirements that will be prudent from a reliability perspective.

Under the high-need scenario, with the corrections made for small hydro projects and the adjustments to account for higher demand in the CEC's IEPR forecast adopted in February 2021, the procurement need identified is as follows:

- 2024: 7,361 MW;
- 2025: 10,816 MW; and
- 2026: 11,597 MW.

Finally, in response to the comments of GPI and Watson, with the concern about the need to re-contract existing preferred resources, we clarify that that is not the purpose of this order (or D.19-11-016). Our primary purpose here is to require the LSEs to develop new clean energy resources to address growing resource adequacy needs for new generating, non-generating, and hybrid resources. The risk of retirement of preferred resources is also important, but it is not something the Commission is acting on here, given the roles of the resource adequacy program and the RPS program requirements, and the LSEs' ongoing requirements to satisfy those obligations. The need for additional Commission action is something the LSEs are required to address in their individual IRPs and also something we can consider when we analyze the preferred system portfolio later this year; we will also consider requiring

additional procurement associated with meeting GHG, reliability, RPS, or other goals as part of the PSP.

4. Timing of Procurement

The February 22, 2021 ALJ ruling reasoned that because the current reliability electricity situation has been tight, there is risk in requiring procurement only for the exact amount of capacity identified as needed in any given year. Thus, the ALJ ruling proposed to accelerate procurement requirements by one year for 40 percent of the capacity identified as needed in each year. The ALJ ruling also rounded up the procurement requirements to round numbers to simplify the implementation.

The ruling also suggested that June 1 be the required online date in each year except 2023. The resulting capacity requirements are given in Table 2 below. This capacity is proposed to be in addition to the 3,300 MW NQC required in D.19-11-016.

The ruling also asked whether any contingency procurement should be ordered, to mitigate risk of contract delay or failure.

Table 2. Need Determination by June 1 of Each Online Year (MW NQC)

Need Determination and Required NQC	**2023 (Aug 1)**	**2024**	**2025**	**2026**	**Total**
System Resource Adequacy Need (cumulative)	-	4,146	7,097	7,410	7,410
System Resource Adequacy Need (annual additions)	-	4,146	2,951	313	7,410
Accelerated capacity requirement (approx. 40% by prior year)	1,658	3,668	1,896	188	7,410
Accelerated capacity requirement, conversion to round numbers *(recommendation)*	1,800	3,700	2,000	-	7,500

4.1. Comments of Parties

In comments in response to the February 22, 2021 ALJ ruling, parties were vocal about the issue of accelerating procurement, expressing concerns about increased costs and potentially less diverse resource selection, if procurement requirements are accelerated. CEERT, Diamond, GridLiance, IEP, PG&E, and SWPG/Pattern all generally supported the approach proposed in the ALJ ruling. AReM, Cal Advocates, CCSF, CESA, GPI, Hydrostor, Reid, PCF, SCE, Shell, SBUA, and TURN all generally opposed the accelerated approach. Several parties involved in resource development said that this timeframe is unreasonable and could result in more parties choosing existing thermal contracts or defaulting to solar and storage, to the detriment of resource diversity. PCF pointed out that battery costs are decreasing, making early procurement more expensive.

In replies, AReM, CCSF, Hydrostor, and SCE all reiterated their opposition to accelerated procurement. CAISO reiterated its support, in response to earlier questions, of early procurement to address OTC retirements. IEP suggested accelerating 20 percent of the annual procurement amounts instead of 40 percent, to produce some contingency without causing too much acceleration that could increase costs. SBUA recommended that the 40 percent acceleration be flexible.

Several parties also commented on the ALJ ruling proposal to round up the annual requirements as an additional contingency. AEE supported this approach, while Reid opposed.

With respect to contingency procurement, most commenting parties opposed (AReM, Cal Advocates, Calpine, CCSF, GPI, Reid, Middle River, PCF, PG&E, SCE, and SDG&E), though TURN suggested that contingency

procurement could potentially meet future obligations. SBUA recommended that the 40 percent acceleration be flexible.

4.2. Discussion

We are generally in favor of requiring enough procurement ahead of the exact time when it is needed, because of the reliability risks, as well as potential costs, associated with "just in time" procurement. It is generally preferable to bring resources onto the system a little ahead of when they are needed rather than have an emergency situation in real time. Given that many LSEs are already procuring to meet the requirements of D.19-11-016, the additional procurement required by this order represents an increase that is somewhat large but still should be manageable within their operations.

Due to our selection of the high-need scenario, as discussed in Section 3, this provides a natural contingency for demand being higher than expected. Thus, we are slightly less concerned with the exact annual procurement amounts than we might have been if we were requiring only the mid-need scenario amounts. However, a countervailing consideration is the retirement of Diablo Canyon that will represent two large amounts of capacity retiring in short order in 2024 and 2025. Thus, we want to be sure to require enough new capacity to ensure reliability of the system during this period.

Another consideration is with respect to the desirability of requiring the procurement of some long lead-time (LLT) resources such as geothermal or long-duration storage. This is discussed in more detail in Section 5. However, for purposes of assigning the annual amounts of procurement required, we want to be sure to leave room for those resources being procured in a feasible timeframe, which most parties seem to agree is 2026 at the earliest.

Finally, we agree with parties that these measures offer sufficient hedging, and additional contingency procurement beyond this amount is not required.

We have also adjusted the annual requirements in 2023 and 2024 in response to comments on the proposed decision from several parties, including SCE, IEP, and CCSF/PCE, that suggested that a reliability need was not shown in 2023 and therefore the 40% acceleration may increase costs and decrease procurement feasibility. As noted above, several parties had also made this argument in their earlier comments in response to the ALJ ruling. We have therefore adjusted the assumptions to closer to 25% acceleration one-year ahead. This has the effect of requiring a great deal of capacity to come online in 2024, but we are confident that knowing this now will help LSEs and developers ramp up to deliver the needed resources. In addition, we note, as did some parties in their comments on the proposed decision, that the capacity requirements do not completely reach the total high-need level shown in 2025, though they are well above the capacity requirements identified in the mid-need scenario recommended in the ALJ ruling (7,097 MW). We are confident this is enough to order here, and will continue to reevaluate the capacity needs in 2025 and beyond with additional analysis this year, leading to the decision adopting a PSP by the end of the year.

Taking all of these factors into consideration, Table 3 below summarizes our determination of the annual procurement amounts that will be required from all LSEs as a result of this order.

Table 3. Adopted Aggregated Procurement Requirement by June 1 of Each Online Year (MW NQC)

Need Determination and Required NQC	**2023 (Aug 1)**	**2024**	**2025**	**2026**	**Total**
System Resource Adequacy Need (cumulative)	-	7,361	10,816	11,597	11,597
System Resource Adequacy Need (annual additions)	-	7,361	3,455	781	11,597
Accelerated capacity requirement (approx. 25% by prior year)	1,840	6,385	2,786	586	11,597
Accelerated capacity requirement, conversion to round numbers and similar annual requirements *(adopted amounts)*	2,000	6,000	1,500	2,000	11,500
Cumulative capacity requirement (adopted)	2,000	8,000	9,500	11,500	11,500

5. Eligible Resources

The February 22, 2021 ALJ ruling proposed, due to the significant amount of capacity needed in the 2024-2026 timeframe associated with the retirement of Diablo Canyon and OTC plants, which are firm capacity resources, that at least some of the replacement capacity be similarly firm in nature. Longstanding concerns about resource diversity also led to this suggestion, along with the declining ELCC values of solar, solar plus storage, or standalone battery storage.

In addition, the RSP adopted in D.20-03-028 identified the need for some resources that have long development lead times (chiefly long-duration storage). Thus, the ruling proposed that at least 1,000 MW of geothermal resources and 1,000 MW of long-duration storage (defined as providing 8 hours of storage or more) be required to be part of the procurement requirement by no later than 2025. LSEs would be encouraged, but not required, to undertake joint procurement for their share of both the geothermal and long-duration storage

requirements, under terms mutually agreed upon and not imposed by the Commission. If the LSEs did not show significant progress toward this procurement by the August 1, 2023 milestone reporting date, the ruling proposed that the Commission consider requiring large investor-owned utilities (IOUs) to procure these resources using the cost allocation mechanism (CAM) or forthcoming modified version of CAM.

Ultimately, the ruling proposed the procurement summarized in Table 4 below.

Table 4. Total Recommended Mid-Term Procurement Requirements (in NQC MW)

Type of Resource	2023	2024	2025	Total
Geothermal resources	-	-	1,000	1,000
Long-duration storage resources	-	-	1,000	1,000
Any type of resource	1,800	3,700	-	5,500
Total	1,800	3,700	2,000	7,500

In addition, the ALJ ruling proposed certain limitations on allowing natural gas-fired generation to qualify to provide the capacity in Table 4 above. The proposal was that fossil-fuel development at new sites be prohibited from qualifying to satisfy the requirements of this order, but that redevelopment or repowering at existing electric generation sites could be eligible, with some restrictions. The restrictions listed to elicit parties' comments included:

- Prohibiting modifications to existing fossil-fueled plants within disadvantaged communities unless they can demonstrate net reductions in greenhouse gases and criteria pollutant emissions.
- Requiring contracts to include dispatch constraints, such as limited generating hours, for fossil-fueled plants within disadvantaged communities.

- Allowing repowered or augmented fossil-fuel contracts to count if they are in effect only for a period of ten years or less.
- Requiring efficiency improvements or reductions in the rate of GHG emissions for any fossil-fueled plant repowering.
- For IOUs, allowing fossil-fueled capacity to count, but penalizing its valuation in the least-cost best-fit evaluation in some way.
- Also for IOUs, requiring any contract with fossil-fueled resources to be submitted to the Commission for approval via an application instead of an advice letter.
- Requiring fossil-fueled capacity used to count toward the procurement required to burn a percentage of green hydrogen (hydrogen produced with zero-emitting resources) or biomethane.

The ruling also mentioned, but did not propose, another alternative, which is to request further extensions of OTC compliance deadlines for existing natural gas plants.

Finally, the ruling did not specify if or how imports could count toward the potential capacity procurement requirements, but asked parties to comment on whether firm imports should be allowed to count, particularly if committed to California via pseudo-ties or dynamic scheduling. Parties were invited to suggest any other limitations on or requirements for imports to count towards the capacity requirements.

5.1. Comments of Parties

5.1.1. Long-lead-time resources

The majority of parties responding to the ALJ ruling suggestion for resource-specific procurement requirements for geothermal and long-duration storage resources were opposed to the proposed requirements for 1,000 MW of

each by 2025. Opposition came from ACP-CA, AEE, AReM, BAC, Cal Advocates, CBEA, CCSF, SCE, PG&E, Diamond, Golden State, IEP, Middle River, SEIA/LSA/Vote Solar, PCF, Shell, SVCE, and CalCCA.

Parties supporting the proposal for resource-specific requirements included Calpine, CESA, Form, GridLiance, Geothermal Rising, LDESAC, Ormat, and TURN. SBUA supported action to ensure that at least some of the procured capacity should be firm in nature, as well as implement prior policy, and recommended focusing on identifying the attributes needed instead of specific technologies.

Reasons for opposing the proposal included the idea that an order addressing *mid*-term reliability should not require *long*-term LLT resources. Parties also argued that there could be a risk of under-procurement due to the smaller pool of potential projects, as well as a risk of higher costs to ratepayers due to the smaller number of projects. SCE estimated a cost increase of 16 percent, before accounting for market power concerns.

SDG&E argued that geothermal resources cannot provide local or flexible resource adequacy value, which represents a lost opportunity for meeting multiple needs simultaneously with one resource, which will then mean that procurement is more expensive.

PCF argued that any carve-out for a particular type of resource violates Public Utilities Code Section[4] 454.51(a) which requires that the Commission specify resources for the IRP portfolio in a cost-effective manner. PCF also argues that it violates CCA rights to self-select resources as detailed in § 454.51(d).

[4] All further references to code are to the Public Utilities Code, unless otherwise indicated.

PG&E argued that specific technology mandates belong in focused proceedings, citing the example of the bioenergy requirements in the RPS.

NRDC, with comments somewhat in favor of technology specification, argued that without it, the Commission risks not meeting the statutory requirements related to the retirement of Diablo Canyon.

Ormat was concerned that the Commission does not discourage the nearly 600 MW of geothermal collectively that was included in the LSEs' individual IRPs between now and 2030.

Other parties made specific suggestions for how to modify the proposed requirements, particularly around specifying the attributes of the types of resources needed without necessarily specifying particular technologies.

BAC recommended including all baseload resources. AReM suggested that the Commission define a resource performance profile (generation shape or resource flexibility) and then define the GHG emissions profile; any resource meeting those characteristics would then qualify.

PG&E agreed that the focus should be on operating characteristics. For example: contributing to needs during the net system peak, contributing to needs across all hours of the day, dispatchability, having certain ramping rates, or some combination of all of these.

Form suggested that the specifications should be for firm zero-carbon resources that are physically capable of and contractually guaranteed to deliver at least a 95 percent availability factor over a ten-year period, including during continuous 100-hour low-renewable-energy weather events and grid contingencies reflected in the 1-in-10-year standards.

CalWEA argued that the resources should be specified based on system integration needs, which requires flexible / dispatchable resources, not baseload.

CalWEA also suggested aligning with the ongoing work in the resource adequacy proceeding (R.19-11-009) Track 3B. This comment relates to concern about battery storage experiencing too much wear and tear from regular cycling.

In general, the majority of parties argued in favor of the Commission defining criteria rather than resources. Many parties, including developers of these specific types of resources, expressed concern with the timetable being too fast for reasonable projects to compete. Calpine, CCSF, Ormat, SEIA/LSA,Vote Solar, and SWPG mentioned transmission and/or interconnection challenges. CalWEA was concerned about the potential for market power, while GPI was concerned generally with higher costs.

Some stakeholders recommended a market test of some type and/or the ability of LSEs to seek a waiver of the requirement if they are unable to find reasonable projects. Others, including EDF, felt that off-ramps or other mechanisms designed to mitigate risk could create other risks, such as creating additional market uncertainty.

Parties representing developers of long-duration storage, in particular, recommended relaxing the 2025 online date to ensure that some technology types of long-duration storage are able to compete.

SVCE also raised a concern about sending the wrong regulatory signal to LSEs that have already procured these types of resources, with the consequence of requiring them to procure even more of these types of resources that are already inherently difficult or costly to develop.

The reference in the ALJ ruling to joint procurement of LLT resources also caused some confusion among parties. Parties generally seemed to assume the reference was to some form of multi-party power purchase agreement with a resource, rather than having one LSE procure a resource and then sell portions to

other LSEs. Parties had mixed interpretations, with some interpreting the proposal as mandatory while other saw it as an option if it helped to meet the LLT requirement. The following parties seemed to generally support the concept of voluntary joint procurement: Cal Advocates, Calpine, CCSF, CAISO, CEERT, CESA, GPI, CalCCA, and PG&E. AReM pointed out that antitrust laws do not allow ESPs to procure jointly. PG&E agreed and suggested allowing joint procurement but not mandating it. SCE would prefer that the IOUs procure the LLT resources, though they would prefer that the Commission not require these separate from the overall capacity requirements.

The CAISO supported the LSEs being given the option for joint or separate procurement of these LLT resources, but directing the IOUs to conduct backstop procurement if individual LSEs fail to procure by 2023, and suggested firm imports as a backstop option.

PG&E and SDG&E commented that the backstop timeline needs to be revised because there is not enough time for the IOUs to backstop LLT resources between 2023 and 2025. SCE would prefer that the IOUs front-stop the LLT resources, considering the time required to procure. CCSF agreed that 2 years is not realistic. CESA would prefer an earlier backstop trigger.

5.1.2. Fossil-fueled resources

Parties had mixed responses on fossil generation, many supporting a prohibition on new fossil-fueled procurement, some supporting restrictions, and others opposing any restrictions beyond limiting procurement to existing sites.

Parties arguing for prohibiting any incremental fossil-fueled generation to count toward the capacity requirements in this order included AEE, CEERT, CEJA/Sierra Club, CESA, EDF, GPI, Hydrostor, Joint Environmental Parties, NRDC, PCF, SEIA/LSA/Vote Solar, TURN, SWPG/Pattern, and UCS. PCF

argued that the Commission is legally obligated to support the cleanest, most reliable, and most affordable resources, and that studies have shown that solar and storage are cleaner and more reliable than new gas generation.

GridLiance, Golden State, PG&E, SDG&E, and SBUA supported allowing some incremental fossil-fueled generation, with additional restrictions.

AReM, Calpine, Diamond, IEP, Middle River, Shell, and Watson wanted fewer or no restrictions. Most reiterated their views that existing and incremental fossil-fueled generation should be eligible at all existing sites, though not at new sites.

BAC and Electrochaea supported requiring renewable natural gas as a fuel. Cal Advocates argued that any requirements for green hydrogen are premature, while GHC supports green hydrogen requirements.

Finally, very few parties commented on the idea of any additional OTC extensions as an option. Cal Advocates opposed any extensions to OTC compliance deadlines beyond those already granted.

5.1.3. Diablo Canyon replacement

The Joint Environmental Parties, who originally entered a settlement with PG&E for the retirement of Diablo Canyon and the plan to replace its power, have continued to argue that the Commission has not done enough to ensure that the retirement of Diablo will not result in an increase in GHG emissions. The Joint Environmental Parties requested that the Commission order specific procurement of resources to replace the Diablo Canyon zero-emissions resource to ensure continued GHG-free delivery of energy beginning in 2024 and 2025.

5.1.4. Imports

The most common comment by parties on the topic of whether firm imports should be allowed to count toward the capacity requirements in this

order was that the rules should simply follow the resource counting rules of the resource adequacy program. Parties generally supporting this approach included SWPG, SDG&E, Middle River, Ormat, CESA, CalCCA, AReM, and Golden State.

Cal Advocates and SCE advocated for slightly stricter rules than in the resource adequacy program, allowing the inclusion only of firm imports with pseudo-tie or dynamic scheduling arrangements. SCE noted that the resource adequacy program is considering changing the import counting rules to be stricter as well.

Some parties, including Brookfield, while generally agreeing that the resource adequacy rules should be used, also argued against restricting import eligibility to dynamically-scheduled or pseudo-tied facilities because it would artificially restrict the availability of imports. TURN, Powerex, Geothermal Rising, and CEJA/Sierra Club argued that firm imports should be required, but there should not be additional requirements for pseudo-ties or dynamic scheduling, also to avoid unnecessarily restricting imports.

ACP-CA argued that firm imports should be allowed from specified resources, while noting that discounting imports because of transmission risks is unfair, because in-state resources also have transmission risks that are not typically accounted for.

EDF, Shell, and CEERT advocated that firm imports with specified resources and firm transmission into the CAISO should be eligible, with EDF suggesting additional requirements for carbon-free certification. CEERT advocated for a requirement for both a specified generation source and firm transmission rights.

PG&E advocated for a maximum percentage of an LSE's allocation that could come from imports. AReM explicitly opposed this concept in reply comments. PCF advocated for requiring pseudo-ties and also using the "bid cap" proposal from resource adequacy to limit the amount of imports, similar to PG&E's proposal, to limit the percentage of imports that can bid under must-offer scenarios. PCF also recommended that the Commission only credit imports at 55 percent of their contracted capacity.

Calpine suggested using the same import eligibility requirements as D.19-11-016 (which required pseudo-ties or dynamic scheduling), and also recommended allowing imports procured for D.19-11-016 compliance purposes to have their contracts extended to be counted for the requirements of this order. CalCCA agreed with the idea of contract extensions for imports under contract previously to count toward the new requirements.

BAC argued that no imports should be allowed to count towards the requirements, because they do not provide as many benefits to California as in-state development. LDESAC argued that imports could be allowed only if they come from new capacity from specified resources.

Finally, CAISO proposed that non-dynamically-scheduled resource-specific imports could be allowed to count, in additional to pseudo-tied and dynamically-scheduled resources, if they meet the following specific requirements: 1) they can show firm transmission to the CAISO border; 2) they are available for a minimum of 16 hours per day, seven days per week; and 3) they provide attestation and source specification sufficient to show underlying resources dedicated to serving CAISO load.

5.2. Discussion

5.2.1. Long-lead-time resources

We understand the points of parties who ask that we specify attributes of resources rather than specific resources that need to be delivered to meet mid-term reliability needs. At the same time, our experience is often that we need to seek specific resources in order to spur their development. In past experience, specific orders have been needed from the Commission in the areas of solar, biomass, and storage, to name a few. While we generally prefer to be technology-neutral, there are instances where too much of a least-cost option leads to its own set of challenges. We are facing this situation now due to the confluence of several factors: an abundance of solar energy, the impending loss of a large chunk of nuclear capacity, and the retirement of a number of OTC thermal plants. This means a reduction in the system's ability to supply firm and/or dispatchable energy when the grid needs it most.

Therefore, this order still specifies a requirement for a minimum of 2,000 MW of LLT resources in 2026, one year later than originally proposed, to allow additional development time, as suggested by a number of parties.

The requirement will be in two categories: a minimum of 1,000 MW of long-duration storage, and a minimum of 1,000 MW of firm resources with zero on-site emissions or, if the resources have emissions, they must otherwise qualify under the RPS eligibility requirements, as further described below.

First, we note, as several parties did in comments, that long-duration storage is already a resource-neutral designation that may be met by a number of different technologies. We have specified that long-duration storage must be able to discharge at maximum capacity over at least an eight-hour period from a single resource, though we also note that 12 hours or even multi-day storage

options may be even more favorable, given the grid needs. LSEs should bear these considerations in mind when evaluating proposals to deliver long-duration storage, and strive to increase the diversity of resources on the grid with this category, if possible.

For the other 1,000 MW of specific resources, we have more precisely specified the description of the attributes we are seeking in this second category. To qualify in this category, resources must be able to deliver firm power (with a capacity factor of at least 80 percent). This means that the resource must not be subject to use limitations or be weather dependent. The resource must be a generating resource, not storage, able to generate when needed, for as long as needed. In addition, the resource may not have any on-site emissions, except if the resource otherwise qualifies under the RPS program eligibility requirements. These overall requirements represent the characteristics of the major nuclear and OTC plants that we are seeking to replace in the medium term.

Both the long-duration storage category of 1,000 MW and the clean firm category of 1,000 MW will be required for compliance in 2026 and not earlier in the procurement period of this order, to acknowledge the comments of many parties that noted the need for longer lead times for these resources. We also acknowledge the challenge associated with development of these types of resources in this timeframe, even with a one-year delay from the original proposal. We are aware that the commercial interest shown thus far in diverse and LLT resources that can be online by 2026 may be limited.

As described further in Section 10 below, we will grant LSEs an opportunity for an extension of the compliance date for these LLT resources to 2028, if they show documented evidence of good faith efforts to procure the resources and that they can still be online by 2028. In addition, we reserve the

right to impose cost allocation for these resources on all LSEs if they are not procured by some, consistent with state law, since we find that they are needed for system reliability.

In response to the comments from Form, we clarify that over-procurement of each of the LLT resource procurement categories by an LSE may be used to count toward their total procurement obligations.

In response to the comments of SVCE about LSEs that may have developed these types of resources early and now would be asked to do more, we will allow any long-duration storage or zero-emissions renewable resource that was developed for compliance with D.19-11-016 to count early for the 2026 requirements for 2,000 MW of these types of resources, so long as the LSE can show that other resources were also developed to meet the total capacity requirements of D.19-11-016 and/or this order, such that all obligations are met. For example, if an LSE had a 2 MW obligation to procure firm zero-emitting resources in 2026, but already acquired that amount of geothermal by 2023, then the LSE could procure an additional 2 MW of solar in 2023 and count the geothermal procurement toward its 2026 obligation.

With respect to the option included in the ALJ ruling to encourage joint procurement by multiple LSEs, we clarify that we will adopt this as an option but not a requirement, acknowledging that some LSEs (chiefly ESPs) may be unable to undertake such joint procurement. Other LSEs simply may not want to undertake joint procurement. However, other purchase and/or sale configurations are possible between LSEs to meet these obligations.

As suggested in the ALJ ruling, we will use one of the compliance filing milestones as a triggering check-in point to determine if backstop procurement of these LLT resources will be required. Since the compliance date for LLT

resources to be online will be June 1, 2026, we will use the February 1, 2023 compliance filing date as the time to check the status of LLT resource procurement. Each LSE should be able to show the presence of contracts and other milestone requirements (including site control, interconnection agreement, and notice to proceed) to meet its 2026 LLT obligations by February 1, 2023, or show that an extension to 2028, if granted, will allow the resources to come online.

If neither of these circumstances is present, the Commission will consider at that time instituting a backstop requirement for IOUs to procure the resources and have the costs allocated to the deficient LSEs via the modified CAM mechanism that is still to be finalized for procurement associated with D.19-11-016 and this order. We understand that this will likely mean a delay in the resources being able to be online, but we find this preferable to the proposal of SCE to have the IOUs simply procure all of the LLT resources from the beginning (as "front-stop"). Procurement of diverse resources is an important skill and obligation for all LSEs if we are to achieve the state's long-term reliability and environmental goals.

5.2.2. Fossil-fueled resources

With respect to the question of whether fossil-fueled resources should be allowed to count toward the capacity requirements in this order, this is the most difficult choice we must make in this decision. We understand and sympathize with the views of the many environmental parties that ask us to prohibit the ability of new fossil-fueled generation to be used for compliance with the capacity requirements in this decision. We take very seriously the zero-emission goals for the electric sector by 2045 and for the state in general. We are also very concerned about the continuation of or potential increase in air pollutant

emissions in local communities that bear more than their fair share of environmental burden to keep the electricity grid operating.

At the same time, we face the responsibility to ensure that the delivery of electricity remains reliable in the face of massive changes in the resource mix over the next few decades. We emphasize that the volume of renewable energy in the mix in California already exceeds the percentages on any other grid anywhere in the world that is of similar scale. We are also simultaneously seeing a huge proliferation of battery storage resources, also at a scale not seen anywhere else.

We are confident that we can reach our long-term environmental goals while keeping an acceptable level of reliability of electricity service. However, we have less certainty about the shorter-term operational realities during the transition period and maintaining the reliability of the system in the interim. The middle of this decade represents an inflection point and a transition we need to make it through successfully in order to realize our goals.

The potential for a destabilized electric grid and unreliable service if we fail to plan appropriately for the transition is a very serious threat to our ability to realize our long-term goals. Already with the rotating outages in August 2020, the Commission was blamed for focusing too heavily on our environmental goals to the detriment of reliability. Although this explanation is inaccurate, as demonstrated by the lengthy interagency root cause analysis that explains the multivariate reasons for the outages in August 2020 (and documents the steps the energy agencies are taking to address the problems that occurred), the challenge remains that outages and reliability problems can seriously erode public confidence in our environmental goals for the electric sector. To ensure that we remain on track without reliability problems, we need to retain some

insurance that we will be able to keep the lights on if we encounter operational difficulties during our ongoing transition to zero-emissions resources.

As we have already experienced with emergency procurement for Summer 2021 in R.20-11-003, we have limited options when we must conduct procurement for potential reliability challenges less than a year away. To avoid such circumstances in 2023-2026, we need to plan now to ensure resources are online as insurance in the event of tight supplies and/or higher-than-anticipated demand. As recent experience has shown, when we must procure within a one-year timeframe, the fastest resource to deploy is likely demand response, which may, in an emergency situation, sometimes come with some of the least favorable environmental options of all: backup generators, which are often diesel-fueled. These have far worse local environmental impacts than any new utility-scale natural gas turbine would have, but are sometimes among the only alternatives available to maintain reliability in a very short timeframe.

We also note that much of the recent longer-term procurement in the past few years has been for battery storage capacity. While that represents significant deployment progress for this relatively new resource, it is important to point out that batteries do not themselves produce energy. There must be capacity and energy available from generation resources to charge the batteries, even if they can be optimally discharged at the time the grid needs their resources the most. We also note that battery storage operations are still evolving and likely still require additional experience and possibly policy guidelines to ensure they are optimized for grid use during the most extreme weather and grid events. This progress is evolving and moving in the right direction, but it is still very new, and on an unprecedent scale, as already mentioned above.

As we have also already noted, many of the resources retiring in the 2023-2026 timeframe are either firm or dispatchable resources, which are not easily replaced by as-available variable renewables in terms of their capacity factors and values, as well as their impact on grid operations. We recognize that renewables paired with storage are part of the solution, but also involve increasing reliance on battery storage at a large scale.

Many of the fossil-fueled generators currently on the grid have been developed within the past 20 years and are relatively clean and efficient.

Consistent with the recommendation in the ALJ ruling, we are not recommending any extensions to the compliance deadlines for the OTC regulations of the Water Board in this order, with the exception of the discussion that is already ongoing at the Water Board with respect to a possible two-year extension for Redondo Beach Units 5, 6, and 8 to December 31, 2023. This potential extension, if granted, would help with any uncertainty about the availability of new resources to come online by 2023 as a result of this order, and would help ensure reliability in the interim. Other than with respect to Redondo Beach, there is very little advocacy for additional extensions to OTC deadlines.

With respect to the combined heat and power (CHP) generators, they represent a class of resources that will need long-term contracts in order to remain online and potentially upgrade their efficiencies, or otherwise they may find it more economic to retire the facilities. However, in recent years, for reliability reasons, the CAISO has needed to designate a number of them as reliability must run (RMR), often because of their importance for local grid reliability. To the extent that they are necessary for reliability of the system, we would prefer that they receive long-term contracts with the potential to upgrade their heat rates, instead of continuing to run older units.

One further important point with respect to fossil-fueled resources is that the best-case scenario is that we may need these types of resources for capacity purposes and to remain on standby, but if we have enough renewable and zero-emissions generation in the system, the fossil-fueled resources ideally will not have to run much or produce much energy, and therefore will have very few emissions. Having them available, but running at their minimum levels or not running at all, still acts as an insurance policy during the operational transition to more renewables and energy storage on the system, as we make steady and significant progress towards the SB 100 decarbonization goals for 2045.

When considering all of these factors, we are faced with a series of difficult choices. On balance, we find that allowing some incremental and efficient natural gas generation at utility scale or at CHP facilities, at existing sites, is preferable to the public safety risks posed by widespread outages or allowing the proliferation of diesel backup generators in an emergency. It is also preferable to retaining inefficient plants that have outlived their useful lives and are significantly higher-emitting than their newer alternatives.

We also note that the risks are asymmetrical: failure to provide insurance to keep grid reliability is a far greater threat to public confidence and public health than running state-of-the-art fossil-fueled generators a few extra hours a year. In addition, adding a small amount of efficient natural gas capacity will not necessarily lead to an increase in the generation from fossil-fueled units overall, but rather will likely lead to less dispatch of the higher-emitting and less efficient units.

Because of this hierarchy of less-than-ideal choices, and in response to comments from numerous parties on the proposed decision representing a broad spectrum of viewpoints, we find that we would like additional analysis of the

reliability impacts before requiring additional fossil-fueled capacity procurement. The considerations discussed above are all important. In addition, we will collectively benefit from additional analysis of the individual LSE IRPs, leading to the PSP for our consideration later this year.

We also are aware that the CEC has been conducting additional loss of load production cost modeling and potentially other studies to try to answer the question of the need for fossil-based resources in a more focused manner. We intend to coordinate our own ongoing staff analysis, both quantitative and qualitative, with the CEC's, and if appropriate, utilize their analyses within the context and deliberation in this proceeding in the next several months. More generally, we will also take into consideration the relationship of electric reliability analysis to the use of the Aliso Canyon natural gas storage facility.

We are confident this additional information will help inform our next PSP decision and potential procurement requirements that may follow before the end of 2021. This will also give us time to evaluate how our newest reliability resource, battery storage, performs over the course of this summer, and how our electricity system performs overall.

Therefore, for purposes of this order, we are not authorizing fossil-fueled resources to count toward the 11,500 MW of total capacity required by this order. We will reevaluate the need for these types of resources in the very near future in this proceeding. In the planning track of this proceeding, we will continue to explore coordinated planning for resource buildout and resource retirement to inform an orderly and equitable path to SB 100 goals, optimizing for GHG reductions, reliability, and costs.

5.2.3. Diablo Canyon replacement

D.19-04-040 contains an extensive discussion of our planning for replacement of the capacity of Diablo Canyon, and we will not repeat all of it here. The most important elements, however, are that the expectation that Diablo Canyon will retire in 2024/2025 has been included in all IRP analysis conducted since 2016, and other long-term procurement analysis prior to that, and we are satisfied that LSEs have been in the process of securing replacement capacity for some time. In addition, nearly all of the procurement that has been conducted to meet IRP requirements thus far has been from renewable or zero-emission resources, and we expect all of the resources procured as a result of this order will be in those categories.

Nonetheless, to ensure no ambiguity, we will require that at least 2,500 MW of the resources procured by the LSEs collectively, between 2023 and 2025, be from zero-emission resources that generate electricity, or generation resources paired with storage, to replace Diablo Canyon. Zero-emissions refers to zero on-site emissions or, if the resources have emissions, they must otherwise qualify under the RPS eligibility requirements. These resources are expected to be largely incremental renewables paired with storage (physically and/or contractually) that can deliver continuous power, at a minimum, during five hours (5 p.m. through 10 p.m. or from the beginning of hour ending 1800 through the end of hour ending 2200 Pacific Time), every day. To make this requirement attribute-based, this means that the resources must be incremental, available every day during 5 p.m. through 10 p.m. Pacific Time, and for every 1 MW of incremental capacity, able to deliver at least 5 megawatt hours (MWh) of energy during this daily time period. We also will not allow standalone storage only that charges from the grid to count for this category of resources. The

resource must be from generation or generation paired with storage, either physically or contractually. Demand response resources may also be able to count if they are available during the required time period and can be shown to be incremental according to the criteria already laid out in D.19-11-016.

In addition, we are requiring 2,000 MW, in addition, from long-duration storage resources and zero-emitting firm resources with higher capacity factors by 2026, as discussed in Section 5.2.1 above.

In an abundance of caution and to make it crystal clear that the retirement of Diablo Canyon is not resulting in an increase in GHG emissions, we will include this requirement for no less than 2,500 MW zero-emitting replacement power in the form of generation, generation paired with storage, or demand response, which is consistent with and augments our implementation of SB 1090 (Monning, 2018), as further discussed in D.19-04-040[5] and D.18-02-018.

5.2.4. Imports

As a starting point, we are reluctant to set new and different rules for the counting of imported power each time we adopt procurement requirements in IRP. We are also sympathetic to those parties who advocate for consistency between the resource adequacy program and IRP procurement, and find no compelling reason to deviate from the basic resource adequacy rules for counting imports here. We avoid citing the specific resource adequacy rules here, because those rules for imports in resource adequacy are constantly evolving and may change again during the compliance period of this order. Therefore, here, we simply state that imports may be counted toward compliance with the requirements of this order if they comply with the import rules associated with

[5] *See*, especially, D.19-04-040, at 147-149.

the resource adequacy program in place at the time that the import contracts are signed, for purposes of compliance with this order.

In addition, we add one additional requirement, consistent with the overall purpose of this order. That is, imports used for compliance with the capacity requirements of this order must show that they are associated with a new resource, or expansion of an existing resource, with a commercial online date after the date of this order, and under a long-term contract of at least ten years. This will ensure that the imports will be from truly incremental resources.

In addition, an import contract may be counted toward any of the categories of procurement required by this order, including the 2,500 MW of replacement capacity for Diablo Canyon and/or the LLT categories by 2026, if the import contract otherwise meets the eligibility requirements for those categories.

5.2.5. Conclusion

To sum of all of the requirements included in this section (5) of this decision, Table 5 below gives the full set of requirements for procurement in particular years of specific types of resources.

In response to comments on the proposed decision from numerous parties, including CalCCA and NRDC, we state definitively that demand-side resources and distributed energy resources, are eligible to count toward the capacity requirements in this decision. We also emphasize that these types of resources are our highest priority. They are still subject to the counting rules and other requirements established in D.19-11-016 and the incrementality principles adopted in D.16-12-036.

In response to comments from SCE on the proposed decision, we also clarify that utility-owned resources are eligible to qualify in any of these

categories. However, as further discussed in Section 8 below, any IOU proposing utility-owned resources to qualify for any portion of the capacity requirements in this order will be required to file an application and not simply an advice letter, to seek Commission approval.

In response to comments from CalWEA on the proposed decision, we clarify that standalone wind resources are eligible to meet any of the 7,000 MW of capacity requirements that are not specified in particular categories, and wind resources may also be paired with storage to qualify under the 2,500 MW capacity category to replace Diablo Canyon.

We further clarify, in response to CalWEA, that if any offshore wind (OSW) projects are able to come online in this timeframe, they would also be eligible to qualify. In addition, since OSW is likely to represent an additional category of LLT resources that require separate treatment, we expect to address the needs of OSW projects more fully in our next procurement and PSP decision later this year. In the meantime, we agree with CalWEA that the recent announcement by the Biden Administration and Governor Newsom about the plan for OSW development in California is a very positive development and we strongly support moving forward with this technology as expeditiously as possible. This announcement occurred just as this proposed decision was being issued; therefore, we expect to address this resource potential more fully in our next procurement decision.

In addition, in D.21-02-008, the Commission already asked the CAISO to study an OSW sensitivity portfolio to evaluate the transmission needs and costs to interconnect approximately 8,000 MW of OSW at various potential locations. As soon as this information is available, we plan to use it for IRP analysis, which will provide additional basis for potential future procurement requirements.

We also summarize the earlier sections by stating definitively here that fossil-fueled resources will not be eligible to meet any of the capacity requirements in this order and summarized in Table 5.

Finally, in response to comments on the proposed decision from Middle River, we specify that the NQC requirements in all years are defined in terms of the September NQC values.

Table 5. Total Minimum Mid-Term Procurement Requirements (in September NQC MW)

Procurement Category	2023	2024	2025	2026*	Total
Zero-emissions generation, generation paired with storage, or demand response resources, required *by* 2025, not necessarily in 2025**	-	-	2,500	-	2,500
Firm zero-emitting resources*	-	-	-	1,000	1,000
Long-duration storage resources*	-	-	-	1,000	1,000
Total annual capacity requirements	**2,000**	**6,000**	**1,500**	**2,000**	**11,500**

**LSEs may request an extension by February 1, 2023 up to 2028 for the LLT resources.*

*** The zero-emissions resources required to replace Diablo Canyon must be procured by 2025, but may occur in any of the years 2023-2025; therefore, the columns do not add to the total.*

6. Need Allocation to LSEs

D.19-11-016 allocated procurement responsibility to LSEs on the basis of their proportional load share at the time the requirement was adopted. The February 22, 2021 ALJ ruling proposed to improve upon that approach by taking into account the contract positions of individual LSEs relative to one another and to the overall procurement need identified. This would be done by calculating each LSE's load and resource balance for each year to determine their resource

shortfall, if any, and then apportioning their responsibility for the overall procurement need based on that shortfall relative to that of the other LSEs.

Contract data would be extracted from the September 1, 2020 IRP filings of the individual LSEs, reflecting contracted resources by year, measured in September NQC amounts, for existing resources and those in development as of June 30, 2020. This approach was expected to mitigate the need for the use of cost allocation mechanisms such as CAM or the power charge indifference adjustment (PCIA), while enhancing the ability of electric service providers (ESPs) and community choice aggregators (CCAs) to control their own resource portfolios and costs, by more accurately assigning responsibility for physical capacity procurement to the entities serving the load.

The ruling also suggested that one way to handle load migration during the compliance period would be to utilize the PCIA process, for the 2023-2025 vintage of contracts, or alternatively, reflecting the date when this order is issued.

6.1. Comments of Parties

Among parties' comment on these issues, the CCAs and ESPs generally preferred the peak share allocation method, while the IOUs, ratepayer advocates, and some industry and environmental group preferring the contract position method. Among the groups supporting the contract position method, however, nearly all parties recommended modifications, the most significant of which called for allocating the resource adequacy attributes of PCIA resources pro rata to all LSEs paying PCIA, based on vintage load share, when setting the need allocations.

In general, the contract position method was supported by Cal Advocates, Calpine, CalWEA, EDF, GPI, NRDC, PCF, PG&E, SDG&E, and TURN. Most of these parties recommended modifications to the method proposed in the ruling.

Calpine would prefer to set requirements as long-term system resource adequacy requirements where LSEs are obligated to procure sufficient capacity to meet their projected load. However, Calpine supports the contract method if this order only focuses on procurement of incremental capacity.

AReM, CalCCA, Shell, and SVCE/3CE all supported the peak share method. SCE would prefer the contract method proposed in the ALJ ruling, but accepts using the peak share method for this order while the details are worked out for modifying the contract method for future procurement orders. Both Cal Advocates and SCE support further exploration of these issues after this order is issued, with particular focus on allocating procurement based on whether each LSE has sufficient net peak load capacity, sufficient energy to meet net load, and sufficient energy to charge storage resources.

CalCCA and PCF argued that LSEs should be given a pro-rata allocation of all contracts for which they pay the PCIA. They argue that any other approach is unfair because under the PCIA, non-IOU LSEs pay for IOU contracts while IOUs hold the resource adequacy credit. They argue this puts non-IOU LSEs at a disadvantage on need allocation by creating a situation where LSEs pay for the resources that only the IOUs can count toward their IRP obligations.

Responding to this in reply comments, AReM stated a preference for handling PCIA issues in the PCIA proceeding (R.17-06-026). PG&E argued that whatever happens in the PCIA working group 3 outcome should be reflected in need allocation here, while SDG&E similarly argued that the PCIA proceeding will address this issue. SCE argued that any of these proposals should be vetted and considered only for future procurement orders.

PG&E also commented that the obligation should be based on the LSE's share of the 2026 shortfall, in particular. PG&E also felt that the load share

should be based on draft 2022 resource adequacy year-ahead forecasts, while SDG&E argued that the basis should be energy forecasts for 2024-2026.

SCE argued, if the peak share method is adopted, that the resource adequacy year-ahead forecasts alone be the basis, because energy-based allocations are inequitable. PG&E also requested that all LSE allocations be published, similar to D.19-11-016. And several LSEs sought an opportunity to review and comment on their allocations prior to their being finalized, including CCSF.

With respect to the ALJ ruling suggestion of using PCIA vintaging to deal with load migration issues, the IOUs supported this suggestion. PG&E and SDG&E preferred a PCIA vintage tied to the year of the load share forecast used to allocate procurement need, while SCE preferred the PCIA vintage tied to the date this order is issued. In reply comments, Cal Advocates supported these positions using PCIA vintaging.

CalCCA, CCSF, and EDF opposed using PCIA, and CalCCA and CCSF recommended that the Commission create a cost recovery mechanism that all LSEs can use, that would apply when customers move between any type of LSE. Shell would support adjusting procurement obligations up or down annually to track load migration.

AReM argued that all of this mid-term reliability procurement should be handled in the context of resource adequacy, with those requirements changing as load changes. They argued that extending system resource adequacy requirements three years forward will properly incentive longer-term resource adequacy contracting.

EDF recommended allowing for "fractional assignment" where contracts could be broken up and moved to new buyers, as needed. Finally, PCF recommended that IOU contracts be limited to three years.

CalWEA advocated for distinguishing between system resource adequacy and system integration needs, implying that system integration resources help with ramping and moving energy across days. Therefore, CalWEA recommends setting procurement obligations for each type of resource and allocating them across LSEs.

6.2. Discussion

Ideally, we would be inclined to prefer the contract position method in the long term, because, in theory, it would be more equitable to all LSEs and would take into account the LSE causing any system integration shortfalls.

We note that Assembly Bill (AB) 1584 (Quirk, 2019) requires us to "develop methodologies for allocating electrical system integration resource procurement needs to each load-serving entity…based on the contribution of the load-serving entity's load and resource portfolio to the electrical system conditions that created the need for the procurement and for determining any costs resulting from a failure of a load-serving entity to satisfy its allocated procurement needs."[6]

With these requirements in mind, to date we have allocated procurement requirements to all LSEs based on load share, because we have not made any findings that any LSE has created any differential need for system integration resources. Should we make such a determination in the future, we would need to develop methodologies to allocate the responsibilities differentially.

[6] Codified as Public Utilities Code Section 397.

However, as proposed in the ALJ ruling and as discussed in several party comments, including CalWEA's, allocating procurement based on contract position is not a self-executing methodology and has many complexities that are based on distinctions between types of resources that are not readily obvious. Many parties pointed out issues with the contract position method that would need to be resolved in order for us to adopt it for the procurement required in this decision. We will need to do more work to design and vet the finer points of a methodology taking into account contract positions of all LSEs, not the least of which will be related to confidentiality of contract data and valuing the long-term capacity attributes of IOU contracts for which other LSEs pay the PCIA. These are issues that will need to be worked through in a process to be conducted later in this proceeding. We intend to explore this option more fully before potentially pivoting to this type of allocation.

In the meantime, we will utilize the same basic method of assigning procurement allocations to LSEs based on load share, and implemented in a similar manner to the procurement obligations assigned in D.19-11-016. At present, the system integration needs are not attributable to any particular LSE as distinguished from any other LSE. By allocating procurement responsibility to all LSEs, we are ensuring fair distribution of costs across the customer base, for system integration resources.

The method we will use is basically a hybrid allocation method, utilizing both year-ahead peak load and energy load forecasts of individual LSEs. The hybrid allocation avoids using energy load forecasts that are considered confidential by ESPs. For the procurement required in this order, for IOUs and CCAs, we will use the 2021 year-ahead resource adequacy forecasts and the 2021 energy forecasts that were adopted via ALJ ruling on May 20, 2020 in this

proceeding, for use in the current cycle of IRP. For ESPs, we will use only their 2021 year-ahead resource adequacy forecasts. Then, load migration for existing IOU customers will be handled by vintaging the PCIA costs to the date of this order, which will also be in 2021. As suggested by SCE in comments on the proposed decision, we will authorize the IOUs to file Tier 2 advice letters to implement this PCIA vintaging.

This procurement allocation approach has several advantages. First, it allows us to publish all procurement obligations for all LSEs individually, except for ESPs, whose class obligation will be published, but individual ESPs will be given their allocations confidentially. In response to comments from AReM on the proposed decision, Commission staff will consult informally with the ESPs, individually or with AReM on behalf of the ESP community, before finalizing the procurement obligations to each ESP. This generally-public approach (with the exception of individual ESPs) sets us up better for understanding progress toward the obligations, along with our general preference for making obligations public wherever possible.

Using the 2021 vintage of forecasts for both energy and peak load also allows us to avoid PCIA implementation challenges that would be associated with using later energy forecasts (like 2024-2026). In addition, 2021 vintage forecasts will mean that new LSEs that begin serving load next year, but which did not have a 2021 forecast, will not have an obligation under this order. This effectively allows new LSEs to opt out until their procurement operations are more mature. (See further discussion in the next section of this decision about opt-out options.)

Finally, if the Commission later develops and adopts a methodology for procurement obligations based on the contract position of individual LSEs, LSEs

that have procured to meet the obligations herein will have an advantage in that they will be better positioned relative to future obligations. Thus, the allocation based on hybrid peak/energy forecasts adopted here will facilitate a potential transition to a more sophisticated and equitable method in the future.

A different approach is being taken for ESPs because their 2021 energy and peak demand forecasts are both confidential, meaning that even under the hybrid peak/energy approach, individual ESP procurement obligations would have to remain confidential. Thus, the hybrid approach offers no transparency advantage for ESPs, so their requirements will be set based on peak share alone.

Based on the comments of SDG&E and SDCP on the proposed decision, we will also implement a slightly modified approach to their procurement allocations, to account for the unique situation they face together. It is expected that a large percentage of load will migrate from SDG&E to SDCP in 2022. Therefore, basing the allocation on 2021 forecasts is clearly inadequate in a major way. To account for this problem, just for these two LSEs, we have reallocated their obligations under this order, only relative to each other and without affecting the obligation of any other LSE, based on their individual energy load forecasts for 2022.

In addition, as suggested by SDCP, we will authorize any IOU that mutually agrees with another LSE serving load within its service territory, to file a Tier 2 advice letter to adjust their respective capacity allocations, as long as the full assigned procurement in this order is accounted for. This may include the situation where a non-IOU LSE fails and returns load to the incumbent IOU (for example, a bankruptcy or a decision to otherwise cease serving load, such as recently noticed by Western Community Energy).

Finally, in response to comments from SDG&E that pointed out that there are more recent energy forecasts from the CEC's IEPR than were used in the proposed decision, the allocations for all LSEs have been updated in the final decision to be based on the CEC's most recent Form 1.1c from the IEPR (adopted in April 2021).

The individual LSE obligations, based on these determinations, are given in Table 6 below.

Table 6. Individual LSE Procurement Minimum Obligations (in September NQC MW)

LSE	2023	2024	2025	2026 (LLT resources)*	Minimum zero-emitting capacity by 2025**	Total
PG&E Bundled	400	1,201	300	400	500	2,302
PG&E Direct Access (Aggregated)	77	230	58	77	96	441
Clean Power San Francisco	31	93	23	31	39	179
East Bay Community Energy	73	218	55	73	91	418
King City Community Power	0.3	1.0	0.3	0.3	0.4	1.9
Marin Clean Energy	58	173	43	58	72	332
Monterey Bay Community Power Authority	51	152	38	51	63	291
Peninsula Clean Energy Authority	38	113	28	38	47	217
Pioneer Community Energy	12	37	9	12	15	70
Redwood Coast Energy Authority	7	20	5	7	8	38

LSE	2023	2024	2025	2026 (LLT resources)*	Minimum zero-emitting capacity by 2025**	Total
San Jose Clean Energy	43	129	32	43	54	248
Silicon Valley Clean Energy	41	124	31	41	52	237
Sonoma Clean Power Authority	25	74	18	25	31	141
Valley Clean Energy Alliance	8	23	6	8	10	44
SCE Bundled	687	2,060	515	687	858	3,948
SCE Direct Access (aggregated)	90	271	68	90	113	520
Apple Valley Choice Energy	3	8	2	3	3	16
Baldwin Park, City of	3	8	2	3	3	15
Pomona, City of	5	14	3	5	6	26
Clean Power Alliance of Southern California	118	354	89	118	148	679
Desert Community Energy	6	18	4	6	7	34
Lancaster Clean Energy	6	19	5	6	8	37
Pico Rivera Innovative Municipal Energy	2	7	2	2	3	14
Rancho Mirage Energy Authority	3	9	2	3	4	18
San Jacinto Power	2	5	1	2	2	10
Santa Barbara Clean Energy	2	7	2	2	3	13
Western Community Energy	15	46	12	15	19	89
SDG&E Bundled	63	188	47	63	78	361

LSE	2023	2024	2025	2026 (LLT resources)*	Minimum zero-emitting capacity by 2025**	Total
SDG&E Direct Access	26	79	20	26	33	152
Clean Energy Alliance	7	20	5	7	8	38
San Diego Community Power	99	297	75	99	124	570
Total	**2,000**	**6,000**	**1,500**	**2,000**	**2,500**	**11,500**

**The LLT resource requirements are divided into half from long-duration storage and half from firm, zero-emitting generation resources. LSEs with an odd-numbered procurement obligation may choose how to round their obligation in whatever way results in the total capacity in this column of the table being delivered.*
***The amount in this column is a subset of the 2023, 2024, and 2025 columns, and is therefore not also added to the total for each LSE.*

7. Backstop Procurement and Associated Cost Allocation

For the capacity required by D.19-11-016, the Commission allowed LSEs to opt out, up front, of self-providing capacity to meet the requirements. Any LSE could elect to have the IOUs procure the capacity on their behalf, and have the costs assigned to them and/or their customers. The February 22, 2021 ALJ ruling did not propose that option, and instead proposed that all LSEs be required to procure the capacity assigned to them by the Commission.

The ruling also addressed the possibility that LSEs could try but fail to procure the required capacity, creating a possible reliability shortfall for the system as a whole. To address this situation, the ruling proposed that the aspects of D.19-11-016 associated with backstop procurement, recently adopted in D.20-12-044, be continued for the procurement addressed in this order. In broad terms, this means continuing the biennial compliance filing requirements (currently scheduled on February 1 and August 1 of every year) through at least

2026, and triggering backstop procurement to be performed by the IOUs after each February showing, to the extent LSEs do not show enough progress toward meeting the capacity requirements for the upcoming summer season. There would also be an additional summer trigger point, to occur after the final compliance filing associated with the new procurement requirements.

The cost allocation methodology associated with backstop procurement related to D.19-11-016 requirements (which has yet to be decided) would then also be utilized for the procurement associated with the requirements in this order.

7.1. Comments of Parties

Parties' comments were mixed on whether the option to opt out of self-providing capacity should be preserved from D.19-11-016 or removed, as proposed by the ALJ ruling. Cal Advocates, GPI, PCF, PG&E, SCE, SDG&E, SEIA/LSA/Vote Solar, and Shell supported the ruling's proposal not to allow LSEs to opt out. AReM, CCSF, CESA, and TURN would prefer to preserve the option for individual LSEs to opt out of self-provision and instead pay for the capacity provided by the IOUs. CalCCA commented that it would be a good idea to allow CCAs formed after January 1, 2021 to opt out because it may be likely that their procurement operations have not yet reached maturity and they should be given a chance to transition into the role.

In reply comments, a number of parties emphasized the particular need to allow opting out for resource- or attribute-specific procurement requirements, and/or for new LSE entrants to the energy markets. AReM and TURN supported allowing all non-IOU LSEs to opt out, and to use the cost allocation method (CAM) for LLT resources. CalCCA recommended that the IOUs should not be required to procure the LLT resources, and therefore CAM should not be used

unless there is an opt-out option, or if backstop procurement is triggered. CESA recommended allowing LSEs to opt out if they are new entrants and for LLT resources. SCE recommended that the IOUs should serve as front-stop providers of LLT resources, and not just backstop. CalWEA and SDG&E commented that self-provision should be required with no exceptions.

With respect to the backstop provisions, in the event that individual LSEs fail to procure their requirements, most parties were supportive of continuing the backstop provisions in D.20-12-044 and requiring the IOUs to provide the backstop procurement, if needed. AReM, Cal Advocates, CESA, GPI, LDESAC, PG&E, SCE, SDG&E, SEIA/LSA/Vote Solar, Shell, and TURN all filed generally supportive comments. Some (GPI, PG&E, and TURN) distinguished between what makes sense for this order and what might be preferable in the long term, such as an independent central procurement entity (CPE).

PCF opposed the use of the backstop mechanism and Hydrostor opposed backstop procurement provisions for purposes of LLT resources. SDG&E supported the backstop mechanism but preferred the CPE be the largest LSE in a service territory, rather than automatically the IOU. Cal Advocates also argued that the Commission should adopt rules, for this procurement context, similar to those established in resource adequacy in D.20-12-006 to ensure competitive neutrality by the IOUs acting in a CPE capacity for backstop procurement.

PG&E, in its comments, proposed early dates for LSEs to show compliance, in order to give time for backstop procurement to come online on time. In reply comments, GPI warned that pushing up the procurement deadlines to allow more time for backstop procurement could further risk resource diversity. Hydrostor, in contrast, pointed to the need for longer timeframes, particularly for long-duration storage.

7.2. Discussion

In general, we favor self-provision of required resources by all LSEs individually for their proportional share. Procurement of diverse resources is an important skill and obligation for all LSEs if we are to achieve the state's reliability and environmental goals. We continue to endorse the basic principles of load-proportional procurement and procurement being a core function of serving load, except in instances where there are specific reasons that self-provision is unworkable or unlikely to succeed. Therefore, we will adopt the ALJ ruling recommendation that LSEs will not be given the option to opt out up front from providing their proportional share of the capacity required by this order.

One specific exception was discussed earlier, with respect to entities that were not yet serving load as of January 1, 2021. For those entities that are beginning to serve load after this date, they have not been given an allocation in this order for the mid-term period. Therefore, effectively, those LSEs have been automatically opted out of self-providing their required capacity, and the costs of providing the capacity for customers migrating to their service will be handled through the PCIA vintaging as of the date of this order.

We also extend the self-provision requirement to LLT resources. As proposed in the ALJ ruling, LSEs are encouraged to continue to work together and/or transact with one another, brokers, or other market participants, to procure the resources meeting these requirements, but ultimately each LSE is responsible to show contracts to meet its individual allocation. However, because the procurement of the LLT resources may be more of a challenge for individual LSEs in the timeframe we adopt here, we will not include a penalty provision for now for LSEs that can show that they attempted to procure the LLT

resources in good faith, but were unable to do so in the timeframe required. In the future, we will consider what to do in this situation, once we see more information about the market and feasibility of these LLT resources.

In addition, we see no reason to make major changes to the backstop procurement provisions just recently adopted in D.20-12-044. As adopted in that order, LSEs will be required to report twice a year on their progress toward the procurement requirements in D.19-11-016 and now this order. Beginning after the August 1, 2023 biennial reporting deadline, the reporting and trigger dates will move to June 1 and December 1, instead of August and February. Beginning in 2023, backstop procurement may be triggered on December 1 for the following year's procurement requirements. If backstop procurement is triggered, the administrative and procurement costs of the IOU conducting backstop procurement shall be recoverable in rates and subject to the forthcoming modified CAM.

We also will not make changes at this stage to the timeline for triggering or bringing online backstop procurement. We understand that if backstop procurement needs to be triggered, it will take longer to bring the resources online than the original deadline for the self-providing LSEs. Our hope is that minimal, if any, backstop procurement is required. We are also erring on the side of selecting the high-need scenario, partly in order to ensure adequate resources even if a small amount needs to be backstopped due to contract or other failures.

Table 7 below gives the applicable dates where compliance filings are due and when backstop procurement may be triggered.

Table 7. Compliance Filing and Backstop Trigger Dates

Date	D.19-11-016 Action	Action resulting from this decision
August 1, 2021	Compliance filing	None
February 1, 2022	Compliance filing/ Backstop procurement trigger	None
August 1, 2022	Compliance filing	None
February 1, 2023	Compliance filing/ Backstop procurement trigger	Compliance filing/ Backstop procurement trigger Extension request for LLT resources
August 1, 2023	Compliance filing/ Backstop procurement trigger (final)	Compliance filing
December 1, 2023	None	Compliance filing/ Backstop procurement trigger / LLT backstop procurement trigger
June 1, 2024	None	Compliance filing
December 1, 2024	None	Compliance filing/ Backstop procurement trigger
June 1, 2025	None	Compliance filing
December 1, 2025	None	Compliance filing/ Backstop procurement trigger
June 1, 2026	None	Compliance filing/ Backstop procurement trigger (final – not extended)
Dec 1, 2027	None	Compliance filing
June 1, 2028	None	Compliance filing/ Backstop procurement trigger (final – LLT extended)

8. Approval Process

The February 22, 2021 ALJ ruling proposed that the LSEs that require Commission approval of their procurement, which are the IOUs, file Tier 3

advice letters for Commission approval. At their discretion, they would also be authorized to file a separate application. And in instances where they propose fossil-fueled resources, the ALJ ruling recommended that a full application would be required.

8.1. Comments of Parties

The majority of parties commenting on this topic supported the proposal of a Tier 3 advice letter filing by IOUs for procurement required in this order. Those parties included CEERT, CEJA/Sierra Club, Geothermal Rising, LDESAC, PG&E, SCE, and SEIA/LSA/Vote Solar.

CESA and SDG&E recommended Tier 2 advice letters for all procurement except fossil-fueled resources. CESA and Hydrostor recommended that applications not be required for LLT resources. Cal Advocates requested that the protest deadlines on the Tier 3 advice letters be automatically extended from 20 days to 30 days, and that the IOUs be required to include bid and valuation information in their initial advice letters. Cal Advocates also recommended that a limited common resource valuation methodology (CRVM) be adopted to support this procurement. CEJA and Sierra Club recommended that IOUs be required to include total GHG and local air emissions information, as well as project impacts on disadvantaged communities, in their advice letters or applications.

GPI and PCF, on the other hand, requested that the Commission require full applications for all IOU contracts signed in response to this order.

In reply comments, the IOUs opposed the suggestion for a CRVM to be adopted, because it would require more robust stakeholder engagement and analysis. CESA supported a Tier 2 or Tier 3 advice letter process, while Cal Advocates opposed the use of Tier 2 advice letters. Cal Advocates endorsed

the CEJA and Sierra Club recommendations on air emissions, GHG emissions, and disadvantaged community impacts.

8.2. Discussion

After reviewing the comments and experience to date with Tier 3 advice letters facilitating IOU procurement to meet IRP reliability needs, we will maintain a Tier 3 advice letter requirement for the majority of procurement associated with this order. Tier 3 advice letters are a familiar tool, both in the IRP and the RPS context, and provide the best balance between efficiency and stakeholder engagement for clean or preferred resources. If an IOU procures resources that would count toward both their IRP and RPS procurement goals, the IOU should make only one request for PPA approval through a single Tier 3 advice letter, served on both the RPS and IRP proceeding service lists.

There are two exceptions to the Tier 3 advice letter approach. The first is related to any proposal for utility-owned resources. If the IOU proposes to own any of the resources to be used for compliance with this order, the IOU must submit a full application detailing the proposal, including the cost recovery aspects.

The second exception to the Tier 3 advice letter process requirement for IOU procurement is that the IOUs must file a full application for any pumped storage projects proposed as part of the long-duration storage category, to meet their 2026 requirements as detailed in Section 5 of this order. This is because it is likely that those pumped storage projects may raise other environmental issues that would be best considered in a full application. We have removed the requirement for applications for other long-duration storage technologies that was specified in the proposed decision, in response to the comments from numerous parties including Form and PG&E.

In response to comments on the proposed decision from PG&E, we also allow the IOUs to file Tier 1 advice letters to claim compliance with this decision for any incremental resources that have already been approved by the Commission for other reasons (RPS, etc.).

9. Compliance

The February 22, 2021 ALJ ruling proposed that LSEs demonstrate compliance with the required procurement by showing evidence of long-term (10 year or more) contracting with eligible resources. The resources would have to be shown to be incremental to the baseline used in need determination, meaning it would need to be contracted and approved by the Commission and/or the LSE's highest decision making authority after June 30, 2020. The 2019-2020 IRP RESOLVE/SERVM baseline generator list that includes all online and in-development resources would be made available and serve as the baseline for the procurement proposed in this ruling.

The ruling proposed that any resource used to satisfy an LSE's procurement obligation under D.19-11-016 or the storage mandate would not be eligible to satisfy the requirements of this order. However, resources eligible under the rules of the renewables portfolio standard (RPS) program may be eligible, if they remain online for the required time period. Even though some baseline and other mandated resources may not count toward compliance, they would still be included in the calculation of an individual LSE's portfolio contracting position.

According to the ALJ ruling proposal, each LSE would be required to demonstrate that the contracted new resource is online and contributing system resource adequacy on or before the online date required. The ruling also

proposed that new resources be required to contract for at least ten years forward from the compliance date required.

Compliance would be measured based on NQC calculations using marginal ELCCs calculated by the Commission for each resource type for each future online year.

9.1. Comments of Parties

Parties had mixed responses to the idea of requiring minimum 10-year contracts to support the procurement in this order. Numerous parties wanted to prohibit long-term contracts for fossil-fueled resources. Other parties felt that there should not be minimum requirements and that LSEs should be able to choose contract lengths that work for their portfolios.

Parties supporting the ten-year minimum included ACP-CA, CalWEA, CESA, Golden State, GPI, Hydrostor, LDSEC, Ormat, SCE, SEIA/LSA/Vote Solar, SWPG, and TURN. CEJA/Sierra Club, Hydrostor, and PCF argued that ten-year contracts should be prohibited with fossil-fueled resources. EDF supported a five-year maximum for fossil-fuel contracts, and a clean replacement plan which details how the LSE intends to replace the fossil capacity with clean new resources once the contract expires.

CESA also commented that longer-term (longer than 10 years) contracts are likely required for long-duration storage projects.

Parties opposing ten-year contract requirements entirely included AReM, CCSF, CEERT, Diamond, IEP, Middle River, PCF, SDG&E, and Shell.

Several parties expressed concerns in comments about the confidential nature of some data in the baseline generator list. ACP-CA and AReM argued that in-development contract data should be held confidential at least for some period of time. Shell recommended that some in-development generator list

data, including resource name, developer and/or seller, and contract details such as quantity, should be confidential until a project or procurement is publicly announced. Shell stated that other information, such as resource type, size, and location can be made public.

CCSF supported making data public as long as it does not reveal individual positions for specific LSEs. CEJA/Sierra Club supported making as much data public as possible, with the burden of proof on LSEs to prove why any data should be confidential. LDESAC voiced general support for public sharing of data and transparency. CAISO asked for clarity from the Commission on making the following data public, at a minimum: resource type; MW size and duration, if applicable; expected commercial online month and year; CAISO participating transmission owner and interconnection queue number; locational description such as county; and utility footprint.

Most parties generally supported the use of marginal ELCCs for compliance accounting, including AReM, CAISO, CalCCA, Cal Advocates, Calpine, CalWEA, CEERT, GPI, Hydrostor, PG&E, SDG&E, Shell, TURN, UCS, and SBUA. ACP-CA, while supporting use of a marginal ELCC methodology for planning purposes, argued it is important that the IRP procurement compliance accounting process align with how resources are actually valued in the resource adequacy program and recommended waiting for longer-term reform in that program. A handful of parties would prefer that average ELCC values be used, referring back to the resource adequacy proceeding. Those parties included CESA, Golden State, PCF, and SEIA/LSA/Vote Solar.

9.2. Discussion

Because this decision contemplates the use of new/incremental resources to satisfy the capacity requirements, as shown in the staff analysis that led to the

ALJ ruling, the baseline will consist of existing resources online or in-development and contracted and approved by the Commission and/or the LSE's highest decision-making authority as of June 30, 2020.

On the matter of confidentiality of data in the baseline generator list, and particularly data about in-development resources, we agree with the CAISO that the following information should be publicly available without any risk of revealing confidential or market-sensitive contractual information: resource type; MW size and duration, if applicable; expected commercial online month and year; CAISO participating transmission owner and interconnection queue number; locational description such as county; and utility footprint in which the resource is located. If an LSE submits an adequate request for confidential treatment, other information should be made available publicly once the contract is publicly announced, by the individual LSE, and/or by the Commission, in keeping with our own confidentiality rules with respect to contract price and terms, as governed by D.06-06-066 and its related successor decisions.

Commission staff should work with LSEs to improve procurement progress data collection so that baseline update for future IRP modeling and potential procurement action contains sufficient detail.

By no later than 60 days after the effective date of this order, Commission staff will post to our web site a final baseline list, so that parties may know exactly what resources are included in the baseline. The final baseline list will be the same as the baseline list included in the need determination model that was posted on the Commission's website on February 22, 2021,[7] but with the added detail describe above of in-development resources. It is worth noting that LSEs

[7] Available at: https://www.cpuc.ca.gov/General.aspx?id=6442463413

should already know which resources they contracted with before the June 30, 2020 cutoff date, and therefore need not wait on the posting of the final baseline list before commencing their procurement processes.

Consistent with D.19-11-016, as well as § 454.51(d) requirements surrounding long-term commitments to renewable integration resources, we also find that it is necessary to require long-term contracts for the procurement specified herein. Long-term is defined as at least ten years. This ten-year requirement applies to the period of the contract, and is not based on the resource's online date.

This long-term contract requirement is also in the interest of ratepayers, since the purpose of this order is to develop new resources. In order to induce developers of resources to make large capital investments and finance their projects, it is likely that at least a 10-year contract is necessary. Shorter-term contracts for new resources will likely just lead to higher annual costs, because the total costs will need to be amortized over a shorter period of time.

We also clarify, in response to comments from EBCE on the proposed decision, that it is permissible to allow LSEs, in their long-term contracts, to cover the risk of a delay in a project online date with developers offering other capacity as a "bridge" until the contracted-for resource can come online. Inherent in this is the suggestion in the CAISO's comments to allow short-term contracts for imports to count in this same fashion. This is a reasonable accommodation, and we will allow this type of arrangement for compliance purposes.

We also expect that the Commission will need to consider the necessity of further action, including possible revisions or expansions to the existing resource adequacy program, to require that these tranches of new clean energy resources stay online after they come online. LSEs should expect there will be some kind of

ongoing obligation to maintain the new resources brought online as a result of this order.

In terms of the ELCC values that should be used to calculate individual resource contributions to the required capacity, we will utilize marginal ELCC values as recommended by the February 22, 2021 ALJ ruling. Though several parties commented on the proposed decision to recommend that this proceeding use average ELCC values like those being recommended for the resource adequacy program, we do not see a compelling reason why the ELCC values must be the same for both purposes. The marginal ELCC values will be annual and aim to ensure LSEs develop resources that will meet the mid-term reliability needs of the system identified in this decision. We will ask Commission staff to finalize the marginal ELCC values that will be used to count the procurement required to be online in 2023 and 2024 by no later than August 31, 2021. This first set of marginal ELCCs will be provided for energy storage at various durations, solar, solar plus storage of various durations and configurations, and wind in various regions, and may also include demand response, in order for LSEs and developers to be able to rely on those values for the 2023 and 2024 capacity required in this order.

In addition, Commission staff will provide guidance on what resource counting LSEs should assume for geothermal, long duration storage, out-of-state wind, and offshore wind for online years through 2028.

For all other resource types, counting will be in accordance with the system resource adequacy NQC counting rules at the time the contract for the new resource or capacity added to an existing resource is executed. In response to comments on the proposed decision from Middle River, we specify that the

NQC requirements in all years are defined in terms of the September NQC values.

For some resource types, the marginal ELCC will only be accurate up to a certain level of additional procurement of that resource, and depends on factors including the type and amount of other resources serving load in the future. Accordingly, Commission staff may provide indicative ELCCs for energy storage, solar, solar plus storage, and wind for online years beyond 2024, and then may update those values to final compliance ELCCs for those years as updated data on LSEs' resource additions becomes available. Commission staff will likely utilize the inputs and assumptions process of future IRP cycles to finalize marginal ELCCs for the capacity required online by this decision beyond 2024. This will include taking stakeholder feedback before finalizing the marginal ELCC values.

In response to comments on the proposed decision from SCE, we clarify that excess procurement to meet one year's target can be used to count toward any future year's target. SVCE and 3CE also requested that we state that any excess capacity procured to comply with this order may be used for compliance with future orders. We agree, as long as the excess capacity otherwise meets the requirements set by the Commission.

10. Penalties for Noncompliance

The February 22, 2021 ALJ ruling proposed that, in addition to the backstop provisions in the event that an LSE fails to procure its required capacity, there would be a financial penalty to the individual LSE. The penalty would be set at the cost of new entry (CONE) figure published annually by the CEC, for any required capacity (in MW) that the LSE failed to procure. LSEs

would also be subject to citations for failure to comply with the overall reporting requirements that will also apply to the procurement required herein.

10.1. Comments of Parties

In comments, parties generally recognized the need for a meaningful deterrent to non-compliance with incremental capacity requirements. Most parties supported an appropriate penalty, alongside backstop procurement costs, to be assessed to LSEs that do not meet procurement requirements and/or to their customers.

Several parties, including GPI, Cal Advocates, PCF, and Shell, supported using CONE as the basis for a penalty structure.

The IOUs and CalWEA generally recognized the need for a penalty and did not object to CONE, but sought more details on how a penalty would be applied. SCE also emphasized that penalties should not be applied to LSEs that make good faith efforts to procure, but have project delays or failures that are truly outside of their control.

IEP supported a sufficiently high penalty, but believes that CONE is likely excessive because it would effectively require a non-compliant LSE to pay twice for new capacity. Hydrostor opposed use of a generic CONE value, and instead suggested referencing costs of the resource that failed to be procured, such as long-duration storage.

CalCCA and AReM both opposed penalties for LSEs that fail to procure. CalCCA argued that any penalty in the short term is unreasonable, due to the limited availability of resources and limited time to conduct procurement, "coupled with the myriad reasons that could produce non-compliant outcomes despite conducting best efforts procurement." AReM stated that the backstop procurement obligation should provide sufficient incentive for LSEs to perform.

10.2. Discussion

Consistent with the recommendations in the ALJ ruling, we will set up a penalty structure for LSEs that fail to comply with the procurement requirement in this order that includes both the threat of backstop procurement by IOUs (with associated costs assigned to the relevant LSE and/or its customers), as well as a further penalty per MW of capacity not procured.

After consideration of parties' comments, we agree that CONE may be a high penalty, and will instead set the penalty at the level of "net CONE." The "net" portion refers to CONE, net of estimated energy market and ancillary services revenues. The net CONE value shall be based on the cost of a new battery storage facility, which is a technology that is highly likely to be procured as part of the requirements of this order. We consider this level of penalty appropriate but not excessive.

This estimate is already regularly updated for purposes of battery storage procurement, using RESOLVE inputs and outputs. The most recent estimate of net CONE is embedded in our Avoided Cost Calculator for demand-side resources, which was last updated in D.20-04-010 as part of the integrated distributed energy resource (IDER) proceeding.

For purposes of the procurement required herein, we will issue a potential penalty for failure to procure resources once, shortly after the June 1, 2025 milestone compliance date. This will take into account accrued penalties for each year where backstop procurement may have been triggered in 2023, 2024, and 2025, so that LSEs will still have an opportunity and incentive to catch up to their total requirement by the June 1, 2025 milestone compliance date.

In response to numerous questions by parties about the form a penalty application may take, we refer parties to the Commission's general enforcement

policy adopted in 2020.[8] Penalties could be imposed through an Administrative Consent Order or and Administrative Enforcement Order, both of which would be subject to a vote by the full Commission, or using other existing Commission enforcement tools. This process will allow the Commission to take into consideration good faith efforts, as proposed by AReM and others in comments on the proposed decision.

We also note, in response to comments from the IOUs, that automatic penalties for backstop procurement will not apply on the original timeframes required for the underlying procurement by the originally-responsible LSEs named in this order. The Commission will still have the discretion to consider penalties if backstop procurement is not conducted timely or reasonably in response to a backstop procurement requirement imposed by the Commission on an IOU in a future resolution.

If an LSE failed to achieve its share of the capacity procurement in this decision by the June 1, 2025 milestone, for all capacity required between 2023 and 2025 by this order, the LSE will be subject to an assessment of a penalty for each year that the LSE has been non-compliant. The penalty will be set at the level for net CONE specified in the Avoided Cost Calculator.

As noted earlier in Section 5, we will allow LSEs to request an extension up to 2028 for the 2,000 MW of required LLT resources to be procured by 2026, unless the LSE does not submit evidence of a good faith effort to effect such procurement. If requesting an extension, LSEs must submit this evidence, including evidence of having held a solicitation, contract documentation, bid data, other documentation or affidavits from developers about timing

[8] See Commission Resolution M-4846.

considerations, interconnection agreement, site control, and notice to proceed, by the February 1, 2023 milestone date. The Commission will then make a determination about whether to grant an extension, or alternatively, authorize backstop procurement. Much of this data may be submitted confidentially, but should be provided at the milestone date in order to show documentation of the good faith effort to procure these LLT resources. If an LSE can show by February 1, 2023 that it can bring the LLT resources online by 2028, no penalty will be imposed and no backstop procurement will be required.

11. Relationship to Central Procurement Entity

The February 22, 2021 ALJ ruling also included suggested clarification of the relationship between an individual LSE and the hybrid central buyer framework and central procurement entity (CPE) adopted in D.20-06-002 for the procurement of local resource adequacy capacity.

The ruling proposed the clarification that if an LSE procures a resource to meet its IRP procurement requirements and then chooses to show or sell the capacity of this resource to the CPE (which would not have an IRP procurement obligation), the LSE could still count this resource towards meeting its IRP compliance requirements for D.19-11-016 and any subsequent requirements in this order.

The ruling stated that this clarification should not be viewed as creating a compliance product or unbundling an IRP compliance attribute. Rather, it is intended to clarify the accounting for IRP compliance only.

11.1. Comments of Parties

Parties that commented on this issue included Cal Advocates, Calpine, CCSF, CEJA/Sierra Club, CESA, GPI, LDESAC, Middle River, PCF, PG&E, SCE, and Shell. Most commenting parties generally supported the clarification in the

ALJ ruling. Middle River and Shell sought further clarification on the CPE, with specific reference to how the Commission would treat compliance for an LSE that sells resource adequacy to another LSE.

11.2. Discussion

As proposed in the ALJ ruling, we clarify that if an LSE procures a resource to meet its IRP procurement requirements and then chooses to show or sell the capacity of this resource to the CPE (which would not have an IRP procurement obligation), the LSE could still count this resource towards meeting its IRP compliance requirements for D.19-11-016 or this order. In response to Shell's comment, an LSE may retain the IRP compliance attribute of an incremental resource it procured, even if it sells that resource to another LSE within the CAISO territory. The buyer of this resource will not be able to show the same resource for IRP procurement compliance purposes, but can purchase the resource adequacy attributes.

Simply put, only one LSE may show a particular resource for IRP compliance and retains that attribute so long as the resource remains within the CAISO. LSEs will continue to have the ability to transact for excess procurement from another LSE, as long as that procurement has not yet been shown for IRP compliance by the first LSE.

12. Alternative Compliance Regimes to Address Longer-Term System Reliability Requirements

Commission staff are in the process of aggregating the individual LSE IRPs filed on September 1, 2020, in order to determine if additional procurement may be warranted out to 2030 to address both reliability and environmental goals. In their individual IRPs, LSEs were required to provide proposed resource portfolios to meet the 2030 GHG targets of both 46 MMT and 38 MMT. As stated in the ALJ ruling, it is likely that additional procurement will be necessary to

meet the 38 MMT target, which the Commission is evaluating and strongly inclined to adopt in a decision later this year. This may result in the requirement for additional procurement action, in addition to the capacity required by D.19-11-016 and in this order. As noted in the ALJ ruling, there is also procurement required to address resource adequacy requirements (in R.19-11-009), as well as the extreme weather event reliability proceeding (R.20-11-003). And of course, there is also procurement related to the ongoing RPS requirements.

As stated in the ALJ ruling, this sets up an increasing level of complexity to determine compliance with all of these separate resource procurement requirements in many different venues. The ruling sought party input on whether it would be preferable to institute a forward system resource adequacy requirement similar to the one for local capacity in the resource adequacy program. Similar concepts are already being evaluated in R.19-11-009.

12.1. Comments of Parties

Parties have disparate views on this complex topic. Several parties, including CAISO, Cal Advocates, CCSF, Middle River, and SCE, urged that the Commission continue to consider these topics in this proceeding. AReM, on the other hand, preferred that these topics be addressed in resource adequacy.

TURN, CESA, Hydrostor, IEP, and Vistra encouraged greater alignment between resource adequacy and IRP proceedings on planning and procurement in general. IEP's comments included specific suggested distinctions between IRP long-term analysis and need determinations compared to capacity monitoring and enforcement under the resource adequacy program.

A number of parties, including AReM, CCSF, IEP, SBUA, Shell, TURN, and Calpine, urged the Commission to explore the possibility of enforcing IRP-

based procurement mandates through longer-term forward resource adequacy compliance obligations.

Middle River suggested the IRP and resource adequacy processes incorporate mechanisms to ensure that generation needed for reliability is retained over the procurement horizon in an effective manner. Middle River is concerned that the assumption that existing merchant resources will continue to exist and be available in the long term may be flawed, without structural changes to either the resource adequacy and/or IRP structure.

IEP and PG&E also suggested a joint IRP and resource adequacy workshop to review common issues.

12.2. Discussion

These are complex issues and parties are obviously correct to point out the ongoing need for coordination between the long-term planning being undertaken in this proceeding and the compliance regime represented by the resource adequacy program. We will continue to explore opportunities for greater alignment with, or expansion of, resource adequacy program obligations and compliance to accommodate IRP long-term objectives, as recommended by several parties.

As noted by many parties in their comments, this will require additional examination and vetting by the Commission and parties. Thus, it is not something we can accomplish in this decision immediately. However, we do commit to continuing to explore these issues in this proceeding, in coordination with the resource adequacy proceeding. We will also consider holding a joint workshop in the near future to further explore the ideas brought forward by parties in response to the February 22, 2021 ALJ ruling. We will also continue to

explore the ideas presented in the Staff Proposal on Resource Procurement Framework issued via ALJ ruling on November 18, 2020.[9]

Meanwhile, for the capacity procurement requirements in this order, we will allow LSEs to show procurement that they have conducted to support the Commission's orders or requirements in the context of the RPS program, as well as for emergency reliability purposes in R.20-11-003, as compliance toward the requirements herein. As stated earlier, procurement to support the requirements of D.19-11-016 are considered in the baseline and will not count towards the requirements of this order, unless the amounts are in excess of the LSE's obligation under D.19-11-016, in which case they may be counted toward the capacity requirements herein if they otherwise qualify.

13. Comments on Proposed Decision

The proposed decision of ALJ Fitch in this matter was mailed to the parties in accordance with Pub. Util. Code section 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on or before June 10, 2021 by the following 53 parties: ACP-CA; AEE; AReM; BAC; CAISO; CalCCA; California Choice Energy Authority (CalChoice); CalWEA; CBEA; CCSF and Peninsula Clean Energy (PCE), jointly; California Efficiency + Demand Management Council (CEDMC); CEERT; CESA; Californians for Green Nuclear Power (CGNP); California Hydrogen Business Council (CHBC); Coalition for the Optimization of Renewable Development (CORD); Diamond; Earthjustice, CEJA, DOW, and Sierra Club, jointly; East Bay Community Energy (EBCE); EDF; Electrochaea; Enchanted Rock; Energy Producers and Users Coalition (EPUC); Form; GHC;

[9] *See* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M351/K577/351577446.PDF

Hydrostor; IEP; Joint Environmental Parties; LDESAC; LS Power; Middle River; NRDC; Ormat; PCF; PG&E; Cal Advocates; SBUA; SCE; San Diego Community Power (SDCP); SDG&E; SEIA and LSA, jointly; Shell; SVCE and C3E, jointly; SWPG and Pattern, jointly; TURN; UCS; Vote Solar; Watson; Wärtsilä North America (Wärtsilä); and WPTF.

Reply comments were filed on or before June 15, 2021 by the following parties: ACP-CA; AEE; AReM; BAC; CAISO; CalCCA; CalChoice; Calpine; CalWEA; CBEA; CEDMC; CEERT; CESA; CGNP; CHBC; CORD; Diamond; Earthjustice, CEJA, DOW, and Sierra Club, jointly; EBCE; EDF; Electrochaea; Enchanted Rock; EPUC; Form; GHC; GridLiance; GPI; Hydrostor; IEP; Joint Environmental Parties; LDESAC; LS Power; Middle River; NRDC; NRDC; Ormat; PCF; PG&E; Cal Advocates; SBUA; SCE; SDCP; SDG&E; SEIA and LSA, jointly; Shell; SVCE and 3CE, jointly; SWPG and Pattern, jointly; TURN; UCS; Vote Solar; Watson; Wärtsilä; and WPTF.

This section organizes and summarizes the comments of parties thematically. Relevant revisions have been made in the text of the decision corresponding to the changes summarized in short form here.

As we anticipated, the most controversial portion of the proposed decision is in the area of requirements and/or eligibility of fossil-fueled generation to count toward meeting the capacity requirements in the decision. Numerous parties completely or partially opposed allowing fossil-fueled generation to count towards the capacity requirements, including, but not limited to TURN, CEERT, CEJA/Sierra Club/DOW, GPI, PCF, AEE, NRDC, Vote Solar, Form, LDESAC, EDF, and UCS. Most of these parties argued that no specific need has been shown for fossil-fueled capacity.

In addition, numerous LSEs, including all of the IOUs and Shell, were opposed to requiring fossil-fueled capacity to be procured only by the IOUs, with costs allocated via CAM. The decision has been revised to remove consideration of fossil-fueled capacity for the requirements of this order, while pointing to our commitment to conduct additional analysis, in coordination with the CEC, about whether and when such capacity will be needed for reliability, to be addressed in the decision adopting the PSP by the end of 2021.

This also obviates the need, in this decision, to clarify the definition of green hydrogen. This comment was the most frequent among all parties, including BAC, EDF, NRDC, TURN, CEERT, CHBC, GHC, IEP, Cal Advocates, and UCS. The majority of parties were encouraged to see us address green hydrogen, but wanted assurances that the green hydrogen would actually result in GHG emissions benefits. We will keep these comments under advisement for subsequent decisions in this proceeding.

In response to comments from Cal Advocates, we have also noted the consideration occurring at the Water Board with respect to an OTC deadline extension for Redondo Beach Units 5, 6, and 8. We note that such an extension would allow a glide path for new resources associated with the procurement required in this order.

Numerous parties, including SCE, IEP, and CCSF/PCE, commented that a 40 percent acceleration of procurement one-year ahead to 2023 is too much, too fast, and at least some of the requirements for 2023 should be deferred to 2024. We agree and have modified the annual requirements accordingly, while still maintaining enough requirements to satisfy the identified reliability need in 2024 of approximately 7,500 MW.

NRDC, CalCCA, and CEDMC all commented with concern about the eligibility of distribution energy resources and/or demand-side resources to count toward the capacity requirements in this decision. The intention was always absolutely to allow and encourage these types of resources, which are highest in the policy "loading order" in the Energy Action Plan dating back nearly 20 years. Demand-side resources, whether in-front-of-the-meter or behind-the-meter, are eligible to count toward the capacity requirements herein. These clarifications have been made to the decision, with references to the counting conventions in D.19-11-016, which will also apply.

Numerous parties commented on the 2,500 MW "firm" renewables requirement by 2025 to replace the Diablo Canyon capacity, but the parties did not all agree. TURN suggested that the 85 percent capacity factor requirement should be applied to this capacity requirement. Cal Advocates suggested that standalone storage charging from the grid and not paired with dedicated renewables should not count toward the requirement. The Joint Environmental Parties were concerned that the requirements do not do enough to replace the energy output from Diablo Canyon, beyond just capacity, and therefore the GHG impacts of Diablo Canyon's retirements will still be detrimental. Still other parties, including IEP and WPTF, pointed out that the dispatchability requirements for hours 17 through 22 (in the proposed decision) were unclear and needed clarification. To address all of these concerns, we have made clarifications to the requirements for the 2,500 MW of Diablo Canyon replacement capacity to specify that this category of capacity requirement must be met with a generation resource or generation paired with storage, but may not be met with standalone storage only. We do not go as far as requiring an 85% capacity factor for this or a full energy replacement requirement, because a lot of

energy has already been purchased to replace Diablo Canyon's energy, and we have a capacity concern for reliability and not an energy sufficiency concern during this timeframe.

In a similar fashion, numerous parties commented on the requirements for LLT resources in 2026. SCE specifically requested that we clarify whether the requirements for the long-duration storage category, requiring at least 8-hour discharge, must be met by a single resource or multiple resources that could be dispatched sequentially. We intended it to be met by a single resource and have modified the decision to make this clear.

For the other category of LLT resources, numerous parties asked us to clarify the resource attribute requirements, including CalCCA and Cal Advocates, among others. Hydrostor also suggested we eliminate language referring to "de minimis" emissions. GPI and CBEA asked that we not bias the category toward geothermal energy only. We have made modifications to clarify that firm zero-emitting category of 1,000 MW by 2026 is intended for renewables that have no on-site emissions unless they otherwise qualify for the RPS. The resources also must not be use-limited or weather. We have also retained the capacity factor requirement, but lowered it to 80 percent to accommodate some additional resources. While it is most likely that biomass and geothermal resources are well-suited to fulfill this category, there may be other resources that meet the requirements as well. Regardless, they may not be fossil-fueled resources to qualify.

In response to comments from Ormat, we have clarified that incremental capacity from out-of-state resources that comes online after the date of this decision may also qualify as long as it meets the other requirements.

In response to comments from AReM, we have clarified that the import rules consistent with the resource adequacy program requirements should be associated with the date the import contract is signed, instead of the compliance date. Similarly, in response to EBCE and SCE comments, we have clarified that the ten-year contract requirement applies to the contract period, and not the resource online date. In addition, developers would be allowed to make contractual commitments for "bridge" capacity in the event of a delay in the online date for a particular contracted resource.

EPUC and Watson, in their comments, in various ways suggested that we address retention of existing CHP resources in this decision. We agree this is an issue that requires attention, along with the need to retain numerous other types of resources including existing renewables, but disagree that this decision is the place to address it.

Several parties had particular suggestions with respect to the allocation of procurement responsibility among LSEs. We have updated the individual LSE allocations based on the most recent CEC IEPR Form 1.1c, as suggested by SDG&E.

CalChoice pointed out that the City of Commerce will not be serving load in 2021, and therefore should be removed from this list of LSEs with an obligation, according to the terms of the decision. We have made this correction.

AReM requested that we order a "meet and confer" session with Commission staff before LSE allocations are finalized. Since the allocations for all LSEs except ESPs are already included in this order, we will instead suggest that Commission staff consult informally with the ESPs prior to finalizing their confidential allocations, to ensure accuracy.

In response to SDG&E and SDCP, we have reallocated the capacity requirements between them only, based on 2022 forecasts, because of the unique shift of load expected between them in 2022. We also allow any IOU to file a Tier 2 advice letter to reallocate capacity procurement responsibility within their service territories, if mutually agreed with another LSE and/or in the event of an LSE failure such as bankruptcy.

In response to comments from PG&E, Form, Hydrostor, and several other parties, we have allowed the IOUs to file Tier 3 advice letters for all long-duration storage projects except pumped storage, due to its land-use implications. We also allow, as suggested by PG&E, any IOU to file a Tier 1 advice letter to show compliance with this decision's requirements from an incremental project that has already been approved by the Commission for another purpose, such as RPS compliance.

In response to SCE's comments, we allow utility-owned resources to count toward the capacity requirements in this decision, but the IOU must file a full application to propose approval of any such projects and their cost recovery treatment.

14. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Julie A. Fitch is the assigned ALJ in this proceeding.

Findings of Fact

1. More analysis is needed before revising the planning reserve margin for long-term planning in the IRP proceeding on a permanent basis.

2. The purposes of the resource adequacy program requirements and the IRP long-term planning assumptions are sufficiently distinct that the PRM used for each need not be identical.

3. The analysis conducted by Commission staff to analyze the need for procurement addressed in this decision includes addressing the net peak by utilizing ELCC values that were developed in a probabilistic manner.

4. The electricity market in California is changing rapidly in many respects, including the large number of new LSEs, the major shifts in the resource mix, weather and climate uncertainty, and increasing acceleration of electrification of building and transportation energy use.

5. The electric grid within the California Independent System Operator's balancing authority requires that at least 11,500 megawatts of incremental September net qualifying capacity be ordered for procurement compared to resources online, or contracted and approved to come online, as of June 30, 2020, in order to maintain grid reliability and help achieve GHG emissions targets.

6. The resources required by this order will contribute to meeting a 38 MMT GHG emissions limit in the electricity sector by 2030.

7. More analysis about the system reliability impacts is needed before requiring additional procurement from fossil-fueled resources.

8. Requiring 2,500 MW of incremental procurement of capacity from zero-emissions generation, generation paired with storage, or demand response resources by 2025 will further ensure that there is no increase in GHG emissions as a result of the closure of Diablo Canyon.

9. Import availability has been on the decline in recent years, for many reasons, including retirement of fossil-fueled resources in the West, warming climate, increasing loads, and lower availability of hydroelectric resources.

10. Procurement conducted within a year or two of the actual system need is likely to result in higher costs and lower resource diversity than procurement with more lead time.

11. Acceleration of some procurement requirements one year ahead can help mitigate cost and reliability risks.

12. Procurement must begin now to ensure delivery of LLT resources by mid-to-late in this decade.

13. LLT resources will provide important resource diversity, renewable integration, and system reliability benefits.

14. Specification of long-duration storage as LLT requirements by 2025 will help diversify the grid resources and improve reliability and renewables integration.

15. Specification of firm generation resources that are not weather dependent or use limited, that have at least an 80 percent capacity factor, and produce no on-site emissions unless they are otherwise eligible to count under the RPS requirements, will help diversify the grid resources and improve reliability and renewables integration.

16. The OTC units still on the electric grid represent some of the oldest and least efficient fossil-fueled units.

17. One potential OTC extension being contemplated by the Water Board, of the Redondo Beach Units 5, 6, and 8, can help facilitate reliability while mitigating against uncertainty of new resources coming online in 2023 as a result of this order and D.19-11-016.

18. The Reference System Plan adopted in D.20-03-028 did not show a requirement for new natural gas capacity by 2030, but did not analyze whether replacement of existing, inefficient natural gas capacity with newer, more efficient gas would contribute to system reliability and renewables integration.

19. Replacement capacity for Diablo Canyon has been in the process of being procured since 2018.

20. Imports are an important part of the resource mix in California to ensure reliability.

21. Section 397 of the Public Utilities Code requires the Commission to allocate procurement needs to each LSE based on load and resource portfolio considerations. The Commission has not found that any particular LSE's portfolio has a differential impact on system reliability at this time.

22. Allowing the IOUs to file Tier 2 advice letters to propose different capacity allocations if mutually agreed upon with another LSE and without modifying the total procurement requirements in this decision will address any future load migration, including as a result of LSE failure.

23. D.20-12-044 adopted the milestone dates for compliance filings and triggers for backstop procurement associated with D.19-11-016.

24. The Commission utilizes Tier 3 advice letters to approve cost recovery for numerous low-emission and clean energy procurement programs, including for the RPS program.

25. Calculating the system reliability benefits of specific resources will be more accurate if marginal ELCCs are used.

26. Net CONE represents the cost of new entry for new battery storage resources, net of estimated energy market and ancillary service revenues, which is a technology highly likely to be procured in response to this order.

Conclusions of Law

1. The Commission should conduct additional analysis to consider whether the current methods for defining the appropriate planning reserve margin are adequate to meet emerging challenges, and consider whether new planning objectives and principles should be adopted to use for long-term planning in this proceeding.

2. The Commission should continue to work with the CEC on issues affecting the demand forecast, particularly around weather variants and the impacts of the changing climate.

3. The PRM assumption of 20.7 percent, with the addition of several other assumptions and variables that effectively raise the PRM to approximately 22 percent, is appropriate to use for the medium-term to support the need for some procurement in order to support system reliability.

4. The Commission should adopt the 38 MMT GHG limit for 2030 when considering the aggregated IRPs of all LSEs when we consider the PSP later this year as long as the resource mix results in a reliable system with a 0.1 LOLE or less.

5. The Commission should use the high-need scenario, as corrected herein and using the most recent 2021 IEPR demand forecast, analyzed by Commission staff to form the procurement need required in this order.

6. The Commission should require some resources to be procured and come online at least one year prior to their being needed for reliability, in order to provide insurance against imperfect analysis, contingency for procurement failure, and the costs of lack of reliability leading to unplanned outages in real time.

7. The Commission should require all LSEs, in aggregate, to procure the resource amounts in the timeframe given in Table 3 of this decision.

8. The Commission should require the procurement, in aggregate, of at least 1,000 MW of long-duration storage resources by 2026, with the option of an extension to 2028 for compliance, if good cause and a good faith effort to procure are shown.

9. The Commission should require the procurement, in aggregate, of at least 1,000 MW of generation resources with at least an 80 percent capacity factor, that have zero on-site emissions or otherwise qualify under the RPS program eligibility rules, by 2026, with the option of an extension to 2028 for compliance, if good cause and a good faith effort to procure are shown.

10. The Commission should allow the procurement of long-duration storage resources, or firm zero-emissions resources, that has occurred since D.19-11-016 was issued, to count toward the obligations for these LLT resources in this order, as long as the total resource obligation by LSE is still met.

11. Joint and/or coordinated procurement of LLT resources by multiple LSEs should be encouraged but not required.

12. If individual LSEs are unable to procure the required LLT resources in this order, it is reasonable for the Commission to allow an extension and/or to require the IOUs to procure the LLT resources to backstop other LSEs, and have the costs allocated according to the modified CAM that will be forthcoming in this proceeding.

13. The Commission should not request from the Water Board any further extensions to OTC compliance dates for the affected units, beyond those already under consideration with respect to Redondo Beach units 5, 6, and 8.

14. To ensure no ambiguity about the emissions profile of replacement capacity for Diablo Canyon, the Commission should require that a minimum of 2,500 MW of incremental NQC be from zero-emitting generation, generation paired with storage, or demand response resources, that are available every day between 5 p.m. and 10 p.m. daily (the beginning of hour ending 1800 and the end of hour ending 2200), and can deliver 5 MWh of energy during each of those

periods for every MW of incremental capacity used to comply with the requirements of this order.

15. The Commission should conduct additional analysis, in coordination with the CEC, on the reliability need for procurement from fossil-fueled resources in the medium term.

16. The Commission should maintain consistent rules for counting of imported power for both this order and the resource adequacy program.

17. Requiring imports to be associated with a new resource or additional capacity from an existing resource with a commercial online date after the date of this order will ensure the capacity is incremental.

18. It is reasonable to allow modifications to existing resources that occurred after June 30, 2020 and that increase the capacity value of the modified resource to satisfy the requirements of this order.

19. It is reasonable and in compliance with §397 to allocate procurement responsibility to LSEs based on a hybrid of their 2021 energy forecasts and 2021 year-ahead resource adequacy forecasts, except for ESPs, where we will use only the resource adequacy forecasts and convey their individual allocations confidentially. It is also reasonable to ask that Commission staff confer informally with the ESPs prior to finalizing their procurement obligations and publicly disclose other LSE obligations in this order.

20. It is reasonable to allow any IOU to file a Tier 2 advice letter to change its capacity procurement obligation under this order in the event of an LSE failure within its service territory or when the IOU and another LSE mutually agree to modify their allocations, as long as these allocation changes do not change the total capacity procurement requirements in this decision.

21. It is reasonable to continue a similar compliance filing and milestone trigger system for backstop procurement to the schedule and filing requirements adopted in D.20-12-044 for procurement associated with D.19-11-016. Therefore, the dates given in Table 7 of this decision are reasonable and will facilitate orderly compliance monitoring.

22. The Commission should require the IOUs procuring in response to this order to file Tier 3 advice letters for approval and cost recovery for the majority of their capacity, except for utility-owned resources and pumped storage projects, where full applications should be required.

23. LLT pumped storage resources involve more complex and potentially controversial environmental issues and therefore should require the filing of a full application by the IOUs procuring these resources as described in this order.

24. The Commission should allow IOUs to propose utility ownership of a portion of their procurement under the same parameters as included in D.19-11-016 and require the IOUs to file full applications for any utility-owned projects proposed to comply with the capacity requirements in this order.

25. The Commission should use marginal ELCC values provided by Commission staff to estimate the reliability contributions of various resources to be procured in response to this order.

26. It is reasonable to set the penalty for non-compliance with the procurement required in this order at the level of net CONE included in the Avoided Cost Calculator, after assessing compliance after the June 1, 2025 compliance filing date.

27. Assessment of any penalties should follow the process outlined in Resolution M-4846 and may take into consideration good faith efforts to procure the required capacity.

28. It is reasonable to allow LSEs to count excess resources that were procured in compliance with D.19-11-016 if they otherwise qualify or resources procured in compliance with this order toward the requirements of these orders, even if the LSE subsequently shows or sells the capacity to the CPE.

29. It is reasonable to allow resources procured to support the requirements of D.19-11-016 that are in excess of the compliance requirements to be used to satisfy the requirements of this order if they otherwise qualify.

30. It is reasonable to allow resources procured to support the requirements of this order to be used to count towards future procurement requirements if such procurement otherwise qualifies and contributes to grid reliability and the state's GHG reduction goals.

O R D E R

IT IS ORDERED that:

1. Procurement of 11,500 megawatts (MW) of incremental September net qualifying capacity shall be conducted by all load-serving entities under the Commission's integrated resource planning purview over the course of four years, with 2,000 MW online by August 1, 2023, an additional 6,000 MW online by June 1, 2024, an additional 1,500 MW online by June 1, 2025, and an additional 2,000 MW online by June 1, 2026. Demand-side and/or distributed energy resources shall be eligible as a priority to qualify for the capacity requirements, as long as they meet the incrementality qualifications described in Decision 19-11-016, and otherwise meet the qualifications laid out for the various categories of capacity specified in this decision.

2. Long lead-time resources required by this order by June 1, 2026 shall be defined as:

(a) at least 1,000 megawatts (MW) of long-duration storage (able to deliver at maximum capacity for at least eight hours from a single resource); and

(b) at least 1,000 MW of generation capacity that has no on-site emissions or is eligible under the requirements of the renewables portfolio standard program, and has at least an 80 percent capacity factor. The resource must not be use limited or weather dependent. No storage projects shall qualify under this provision.

3. All load-serving entities named in Table 6 of this order, plus the individual electric service providers who will receive their individual allocations confidentially from Commission staff, shall procure the September net qualifying capacity amounts given in Table 6, and shall file and serve on the service list of this proceeding or any successor proceeding compliance filings according to the schedule given in Table 7 of this order.

4. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company may each file a Tier 2 advice letter to adjust the capacity requirements given in Table 6 in this order in the event of the failure of another load-serving entity (LSE) within its service territory or, upon mutual agreement with another LSE, to adjust their respective capacity allocations, so long as the total capacity requirements in this order remain the same.

5. All load-serving entities named in Table 6 of this order, plus the individual electric service providers who will receive their allocations confidentially from Commission staff, shall submit evidence of a good faith effort by February 1, 2023 to procure long lead-time (LLT) resources defined in Ordering Paragraph 2. The Commission will decide after the February 1, 2023 milestone filing whether

to allow an extension up to June 1, 2028 for the LLT resources to come online, or whether to order backstop procurement of the LLT resources. Evidence of a good faith effort shall include, but may not be limited to, at least two of the following:

(a) Evidence of a solicitation;
(b) Evidence of bids in a solicitation;
(c) An executed contract;
(d) Evidence of site control;
(e) An interconnection agreement; and
(f) A notice to proceed.

6. Collectively, to ensure that the capacity retiring at the Diablo Canyon Power Plant is replaced entirely with zero-emitting resources, all load-serving entities shall collectively procure a minimum of 2,500 megawatts (MW) of incremental zero-emissions capacity out of the total of 11,500 MW required in this decision. This zero-emitting capacity shall have the following characteristics:

(a) Be from a generation resource, a generation resource paired with storage (physically or contractually), or a demand response resource;
(b) Be available every day from 5 p.m. to 10 p.m. (the beginning of hour ending 1800 through the end of hour ending 2200), Pacific Time, at a minimum; and
(c) Be able to deliver at least 5 megawatt-hours of energy during each of these daily periods for every megawatt of incremental capacity claimed.

7. Any imports used to show compliance with the procurement required by this order shall follow the eligibility and counting rules of the resource adequacy program in place at the time of contract execution and shall be associated with a new resource or an increase of capacity from an existing resource with a commercial online date that is after the date of this order. Imports may also

qualify under any category of procurement required in this order, as long as the import meets the other required characteristics of the category.

8. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company may propose to meet a portion of their capacity required by this order with utility-owned resources under the terms set in Decision 19-11-016, and must file a full application with any such proposal, for the Commission's consideration.

9. All contracts for resources, including imports, used to satisfy the requirements of this procurement order shall have a minimum duration of 10 years.

10. In the event of any delay of a resource coming online when contracted to meet a capacity requirement in this decision, a load-serving entity may include a contract provision for other capacity to serve as a bridge to the new resource.

11. Any excess procurement from one compliance year in this decision may be used to satisfy an obligation in a future year. This includes any future procurement order from the Commission, as long as the excess capacity procurement otherwise meets the eligibility requirements set by the Commission.

12. To the extent that any resources procured in response to this order are subject to allocation using the power charge indifference adjustment (PCIA), the date of that adjustment shall be vintaged by the date of this order. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each file Tier 2 advice letters to update their balancing accounts to address the PCIA treatment as a result of this order.

13. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each file Tier 3 advice letters to request cost recovery for any procurement conducted as a result of this order,

except if the procurement is associated with a pumped storage resource or a utility-owned resource, a full application is required.

14. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company may file Tier 1 advice letters to claim compliance with the capacity requirements in this decision for any contract or resource that has already been approved by the Commission for another purpose in another venue.

15. Commission staff shall publish on our web site marginal effective load carrying capability values to be used for the 2023 and 2024 compliance dates in this decision by no later than August 31, 2021 and for the 2025 and 2026 compliance dates by no later than December 31, 2022.

16. Any load-serving entity (LSE) that procures a resource for purposes of the requirements of this order or Decision (D.) 19-11-016 and subsequently shows or sells the attributes of the resource to the resource adequacy central procurement entity may still count the resource for purposes of compliance with this order and D.19-11-016 if the resource otherwise qualifies. Any resource (or a portion thereof) may only be used to show compliance with this order or D.19-11-016 once by one LSE.

17. Any load-serving entity that procured resources to comply with Decision 19-11-016 in excess of their minimum requirements that otherwise qualify under this order may use those resources to satisfy the requirements of this decision, as long as the resources are contracted, approved, and come online after June 30, 2020.

This order is effective today.

Dated _______________________, at San Francisco, California.

California Community Power
Resolution 22-01-02

APPROVAL OF TUMBLEWEED LDS PROJECT AND AUTHORIZATION TO EXECUTE ASSOCIATED AGREEMENTS

WHEREAS, California Community Power ("CC Power") was created by a Joint Powers Agreement ("JPA") to develop, acquire, construct, own, manage, contract for, engage in, finance and/or provide energy related programs for the use of and by its Members; and

WHEREAS, the current Members of CC Power began a solicitation process in 2020, in advance of CC Power formation, to consider and evaluate Long Duration Energy Storage ("LDS") projects; and

WHEREAS, the CC Power Board accepted the Project Development Process establishing a roadmap for the development and progress of CC Power projects and programs; and

WHEREAS, the LDS Project Oversight Committee made up of CC Power member staff, along with project negotiators and project counsel ("Project Team"), has completed negotiations on the Tumbleweed LDS Project, an 8-hour discharge duration, lithium-ion battery project; and

WHEREAS, the Project Team, through the negotiation process, has developed and negotiated an Energy Storage Service Agreement, Buyer Liability Pass Through Agreement, and Project Participation Share Agreement associated with the Tumbleweed Project; and

WHEREAS, pursuant to Section 6.02 of the CC Power JPA, on October 8, 2021, the CC Power Board was provided written notice of intent to bring the Tumbleweed Project to the Board for approval; and

WHEREAS, while the structure of CC Power is predicated on voluntary project participation and not all Members will be participating in the Tumbleweed LDS project, the JPA requires action by the full Board, not simply the project participating members, to approve projects within the purview of CC Power; and

WHEREAS, it is the intent that the CC Power Board approve the Tumbleweed LDS Project and associated agreements with the understanding that approval by participating members is a condition precedent to the effectiveness of the agreements.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of CC Power hereby:

1. Approve the Tumbleweed Project as within the purpose and power of CC Power.

2. Approve the Energy Storage Service Agreement and associated Buyer Liability Pass Through Agreement, in substantially final form, attached hereto as Attachment A.

3. Approve the Project Participation Share Agreement, in substantially final form, attached hereto as Attachment B.

4. Delegate the authority to the General Manager to execute the Tumbleweed Project Agreements described above and attached hereto, on behalf of CC Power.

Joint CCA
2020 Request for Offers
for
Long Duration Energy Storage Capacity

RFO RELEASE DATE: October 15, 2020

RESPONSE DEADLINE: December 1, 2020 at 5:00 PM PDT

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1 General Information

1.1 Introduction & Purpose

Central Coast Community Energy, CleanPowerSF, Marin Clean Energy, Peninsula Clean Energy, Redwood Coast Energy Authority, San Jose Clean Energy, Silicon Valley Clean Energy, and Sonoma Clean Power (collectively, the "Joint CCAs") are seeking to procure long duration energy storage ("LDS") to cost effectively enhance the integration of their respective renewable energy portfolios into the California Independent System Operator ("CAISO") grid and to aid in meeting California's aggressive greenhouse gas reduction targets by 2030 as outlined in the California Public Utilities Commission's ("CPUC") 2021-2030 Integrated Resource Plan Reference System Plan for the 38 and 46 million metric tonnes ("MMT") reduction targets.

Information specific to each of the CCAs listed above can be found here.

The Joint CCAs hereby issue this Request for Offers ("Joint RFO" or "RFO") for the sale of LDS capacity and energy consistent with the terms and provisions in this RFO. The Joint CCAs are seeking to acquire through one or more LDS Projects up to 500 MWs of Capacity, Energy, and any associated Ancillary Products and Resource Adequacy ("Full Toll") and/or simply Resource Adequacy ("RA Only"), with deliveries beginning no later than June 1, 2026.

1.2 Joint RFO Documents

This RFO document consists of a main body and three (3) Appendices. Among other things, the main body (i) offers general information pertaining to this RFO, (ii) describes the purpose and drivers of this RFO and provides high-level considerations for Offerors, (iii) includes a milestone schedule for this RFO, (iv) sets forth terms governing the preparation and submission of offers and RFO-related communications with the Joint CCAs, and (v) provides a high-level overview of the process for evaluating and selecting offers submitted in response to this RFO. The three Appendices are as follows:

- Appendix A - Offer Form
- Appendix B - Pro Forma Term Sheet
- Appendix C - Reservation of Rights

Offerors are responsible for familiarizing themselves with and being fully aware of the terms of this RFO, including the terms of each Appendix.

1.3 Joint RFO Website

This RFO and related materials and information will be posted on a Joint RFO website, which will be administered by the Joint RFO Administrator. The website will be updated from time-to-time with additional information related to this RFO. Interested persons and Offerors are responsible for monitoring the websites to ensure the timely receipt of information about this RFO.

1.4 Joint RFO Administrator

The RFO Administrator is Silicon Valley Clean Energy ("SVCE").

The RFO Administrator's responsibilities include (i) acting as a liaison between the participants in this RFO and the Joint CCAs on all RFO-related matters, (ii) ensuring that Offeror questions the Joint CCAs receive are addressed in an appropriate manner, (iii) receiving, recording and maintaining Offeror offers, (iv) and managing other administrative matters relating to this RFO, including the Joint RFO website.

As detailed in Section 3.3 below, all questions, requests, and other inquiries or communications from or on behalf of Offerors to the Joint CCAs about this RFO must be directed in email to the RFO Administrator.

The contact information for the RFO Administrator is:

Monica Padilla, SVCE Director of Power Resources

Email: JointLDSRFO@svcleanenergy.org

2 RFO Overview

2.1 RFO Purpose

Offers submitted pursuant to this RFO will be evaluated for their ability to meet the Joint CCAs' capacity target in accordance with the terms of this RFO. The evaluation is based on a best fit and value and at the lowest reasonable cost considering, without limitation, reliability, risk mitigation, and other relevant factors including the ability to provide enhanced grid reliability by providing Resource Adequacy attributes as defined by the California Public Utilities Commission and the California Independent System Operator[1].

It is the intent of the Joint CCAs to select one or more resources offered for consideration for this RFO (each such resource, a "Project") with the added intent of negotiating and executing a Single Energy Storage Services agreement ("ESSA") per Project under a yet to be formed Joint Powers Authority ("JPA") representing all or a subset of the above mentioned CCAs. If the JPA is not formed or one or more CCAs decides not to join the JPA, then multiple ESSAs may be executed for a single Project.

2.2 Eligible Project, Products Sought, and Requirements

Eligible Project	Grid-charged long duration storage technology types with a minimum of 8 hours of discharge duration. Resources must meet minimum California Public Utilities Commission and CAISO requirements for participation in the Resource Adequacy program.

[1] Definitions and documentation regarding Resource Adequacy may be found at: http://www.caiso.com/planning/Pages/ReliabilityRequirements/Default.aspx and http://www.cpuc.ca.gov/ra/.

Product & Attributes	Full Toll: Energy, Capacity, Ancillary Services and RA counting rights. Buyer will have full rights. RA Only: RA counting rights
Project Location	Resources must interconnect directly to the transmission or distribution system (i.e. "in front of the meter") and be able to participate directly in CAISO electricity markets or if not directly interconnected to the CAISO must have the ability to provide RA as a dynamic transfer.
Delivery Term	Commercial Operation must occur no later than June 1, 2026. Minimum delivery term of 10 years. Delivery term lengths longer than 10 years will be considered.
Scheduling and Dispatch Flexibility	If a Full Toll, the Joint CCAs, their designee, or, if applicable, a single CCA, will act as the Scheduling Coordinator with full dispatch and flexibility rights. Not applicable if offer is RA only.
Price	Pricing must be provided as follows: • Capacity pricing will be on an $/kW-month basis, with no escalator. • Offeror may submit multiple prices per Project based on varying term, capacity, and discharge duration. • Pricing should assume one ESSA per Project. If there are any differences in price based on the Offeror entering multiple ESSAs for a Project, these differences must be noted in the offer. • Alternative pricing structures may be considered.
Minimum Project Capacity	50 MW per Project

The foregoing is intended as a high-level overview and is not an exhaustive list of important commercial terms for an ESSA resulting from this RFO. Please refer to Appendix B and the sections below for other relevant commercial provisions or considerations.

3 RFO Milestones and Offer Submission

3.1 Schedule

The RFO Schedule below sets out critical milestone events and deadlines for Offerors interested in participating in this RFO. Notice of any change to the RFO Schedule will be posted on the Joint RFO website.

Activity	**Scheduled Date**
Issuance of RFO	October 15, 2020
Offerors Webinar	October 28, 2020 3:30-4:30 PM (PDT)
Deadline to submit questions	October 30, 2020
Responses to questions published	November 3, 2020
Deadline to submit proposals	December 1, 2020 by 5:00 pm PST
Review, evaluation and ranking of projects	December 1, 2020 to February 2, 2021
Project(s) shortlisting	March 2, 2021
Developer/Buyer Negotiations	March – July 2021
Final contract approval (Tentative)	July 2021

3.2 Offerors' Webinar

The Joint CCAs will be holding an Offerors' Webinar on **October 28, 2020 from 3:30-4:30 PM (PDT)** to review the RFO and respond to questions from prospective Offerors.

Please click the link below to join the webinar:

https://zoom.us/j/99215822291?pwd=a1B2VW12ZEM3NnpORzFuekZTZS90QT09

Passcode: 624662

Or iPhone one-tap:

US: +16699009128,,99215822291#,,,,,,0#,,624662# or +13462487799,,99215822291#,,,,,,0#,,624662#

Or Telephone:

Dial (for higher quality, dial a number based on your current location):

US: +1 669 900 9128 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592

Webinar ID: 992 1582 2291

Passcode: 624662

International numbers available: https://zoom.us/u/adUtdIagYK

3.3 Submission and Posting of RFO Questions

Offerors and other interested Persons are encouraged to submit questions about this RFO, to the RFO Administrator (using the contact information provided above in Joint RFO Administrator 1.4). All questions regarding this RFO must be submitted by email by **October 30, 2020.**

Subject to consideration of confidentiality concerns, the Joint CCAs intend to post all questions submitted by Offerors, as well as responses to those questions on the Joint RFO website. All questions will be posted anonymously, to shield the identity of Offerors who posed the questions. The Joint CCA's objective in posting questions and answers is to afford Offerors equal access to information potentially relevant to their offers. Offerors are urged to submit RFO questions as early as possible, in consideration of the offer submission deadlines. Responses to questions will be posted by **November 3, 2020**.

3.4 Offer Submission

The Offer Submission Process requires each Offeror to submit a completed offer package, including detailed responses to Appendix A and Appendix B (and/collectively referred to as the "Offer Package"), in order to have its offer(s) evaluated under this RFO. Under the current schedule, Offerors must submit a completed Offer Package by 5 p.m. PST on December 1, 2020.

Offerors will each bear the risk of any failure to submit the completed Offer Package by the required deadline as required by this RFO. Offers for which Offeror does not submit all appendices, information, and material as required by this RFO may be considered non-conforming and eliminated from consideration. Responsive offers are those which are deemed conforming to all requirements listed in this RFO document.

All offers must be submitted in email form with the appropriate attached documents to the following email address: JointLDSRFO@svcleanenergy.org

4 Offer Evaluation

4.1 Offer Requirements

The following is a list of requirements for Offers to be considered complete and eligible in this RFO process:

a) The Project must meet the requirements as provided in Section 2.2 of this RFO.

b) The completed Offer Package must be received by the Joint RFO Administrator by 5 p.m. PST on December 1, 2020.

c) All portions of the Offer Package must be received in the appropriate digital formats – pdf for narrative documents and Excel spreadsheets for the associated data templates. Requested edits to Appendix B, as applicable, must be sent in Office Word format and include either tracked changes or similar redline indicating requested edits.

d) All associated data templates must be completed satisfactorily and provided with the Offer Package. It is the duty of the Offeror to contact the Joint RFO Administrator for clarification regarding completion of data templates and Appendix B. Incomplete templates are grounds for non-consideration of an offer.

e) Submission must include a section summarizing offer characteristics and qualifications related to each scoring category (see below in Section 4.2.1).

f) After receipt of offers, the Joint CCAs may contact Offerors to request clarification about unclear portions of offers. Offerors will have 5 business days to respond or the offer may be removed from further consideration.

g) The Delivery Term for the proposed ESSA must be a minimum of ten (10) consecutive years.

4.2 Evaluation and Shortlisting Process

4.2.1 Phases of Offer Evaluation

After removal of non-compliant offers, the RFO evaluation process will consist of two phases:

Phase 1

All compliant offers will be scored and ranked according to the scoring rubric detailed below.

Phase 2

Top-scoring offers will be modeled to yield a final, in-depth understanding of their expected performance and cost effectiveness. These results will reveal the highest-value resources for the Joint CCAs, and those Offerors will be Shortlisted and contacted for negotiation of contracts.

Explanation of Scoring Categories

Offers **must** contain an executive summary section (max 2 pages) summarizing the characteristics and qualifications of the proposed project related to each of the following scoring categories (in the order listed below).

The scoring will be based on the categories detailed in Table 1 below:

Table 1: Phase 1 Scoring Rubric

Criteria Component	Points
Expected Value (ESSA Cost minus Project value)	50
Project Risk	15
Technology/viability	10
Offeror Experience delivering projects of similar scope and magnitude	10
Environmental impact	5
Delivery Term	10
Total	100

Expected Value

The expected value of the proposed resource is a primary concern for ranking offers. Offers will be scored based on the competitiveness of their total cost relative to the value of the project. The value of the project will be derived from stochastic modeling conducted by the Joint CCAs along with stress testing under various market and/or regulatory scenarios.

Project Risk

Offers will be scored based on a qualitative assessment of the risks inherent in the proposed project. Considerations in this category may include position in an interconnection queue, project feasibility including financing plan, deliverability concerns, concerns about cost structure or contract terms, project susceptibility to changes in legislation, etc.

Technology/Viability

Although the RFO is technology agnostic, Offerors will need to provide examples of a proof of concept of their Project whether it is a pilot project or commercial deployment.

Offeror Experience Delivering Projects of Similar Scope and Magnitude

Offerors will be assessed for experience as a firm and/or based on the experience of the members of the project team. The Joint CCAs are seeking Offerors with demonstrated experience delivering projects of similar scope and magnitude to the projects proposed in this RFO and will be scored accordingly in this category.

Environmental Impact

Each Project will be assessed on its ability to assist with meeting California's greenhouse gas reduction targets by 2030. Additionally, Projects will be evaluated on the environmental footprint and impact of the project relative to its ability to help reduce greenhouse gas emissions throughout its installation, operation, and ultimate decommissioning.

Delivery Term

Projects will be evaluated based on a scale with more points being awarded to shorter term Projects and/or projects demonstrating the ability to come online no later than June 1, 2026.

4.3 Shortlisting and Exclusivity Agreement

After the completion of Phase I, the RFO Administrator will communicate to each Offeror the status of its offer(s) and whether additional discussions or negotiations are warranted. If additional discussions or negotiations are warranted, an Offeror will be offered an opportunity to be placed on a shortlist (the "Shortlist") for further negotiations of an ESSA with respect to Offeror's offer (the "Offer").

In order to be placed on the Shortlist, an Offeror will need to execute an Exclusivity Agreement, per Shortlist Offer, giving the Joint CCAs exclusivity in negotiating with Offeror for the Project. A deposit in the form of cash or Letter of Credit ("LOC") in the amount of $3/kW (the "Shortlist Deposit") is required to secure the Exclusivity Agreement. The Shortlist Deposit will be promptly returned to Offeror in its entirety under one or more of the following conditions: (i) following execution of an ESSA, (ii) the Joint CCAs' rejection of Offeror's offer following shortlist selection, (iii) failure of both Joint CCAs and Offeror to agree on the terms of an ESSA, or (iv) the Joint CCAs' termination of the Joint RFO process. Notwithstanding the foregoing, Offeror hereby acknowledges and agrees that Offeror will forfeit its Shortlist Deposit and the Joint CCAs' shall have the right to draw on the Shortlist Deposit in its entirety, as its sole and exclusive remedy, if (i) it is determined that Offeror made any material misrepresentations in its offer or the Offer, (ii) Offeror materially breaches its obligations under the Exclusivity Agreement, (iii) Offeror unilaterally withdraws the Offer or attempts to materially modify the terms of its Offer prior to the Exclusivity Deadline, or (iv) prior to the Exclusivity Deadline, Offeror enters into discussions with any third party under which such third party, or any of such third party's affiliates may agree, conditionally or unconditionally, to enter into an agreement for the sale of the capacity associated with the Offer.

Placement of an offer on the Shortlist or execution of the Exclusivity Agreement does not constitute or indicate acceptance of any offer, any term thereof, or any related contract term. Without limiting Appendix C, the Joint CCAs have (i) no obligation and make no commitment of

any kind to enter into a transaction with any Offeror, including a Offeror with an offer on the Shortlist, or to be bound by any term proposed by Offeror, and (ii) no obligation or liability with respect to any proposed transaction arising out of this RFO except as may be expressly set forth in a fully-executed ESSA.

5 Miscellaneous RFO Matters

Without limiting the generality of Appendix C, the Joint CCAs reserve the right to withdraw, suspend, cancel, or terminate this RFO, or to modify any term of this RFO, including, without limitation, any term concerning the RFO Schedule (including any date), at any time in its sole discretion. The Joint CCAs will endeavor to notify all participants of any such withdrawal, suspension, cancellation, termination, or modification made prior to the Required Offer Submission Time and to post notice of any such action.

Appendix A Offer Form

Please provide an executive summary in PDF form (max 2 pages) summarizing the characteristics and qualifications of the proposed project related to each of the following scoring categories based on Table 1: Phase 1 Scoring Rubric.

In addition, please fill out the following CSV file titled, “Appendix-A-Offer Form (LDS RFO)” located here.

Appendix B Proforma Term Sheet

THIS TERM SHEET FOR ENERGY STORAGE SERVICES AGREEMENT ("**Term Sheet**") is entered into as of [ ], 2020 (the "**Effective Date**"), between Central Coast Community Energy, CleanPowerSF, Marin Clean Energy, Peninsula Clean Energy, Redwood Coast Energy Authority, San Jose Clean Energy, Silicon Valley Clean Energy and Sonoma Clean Power, (collectively, the "**Joint CCAs**") and [*Respondent*] ("**Respondent**"). This Term Sheet includes the key commercial terms and conditions to be included in a proposed energy storage service agreement ("**ESSA**") to be negotiated between the Joint CCAs ("**Buyer**") and [*e.g., Project Company LLC*] ("**Seller**") (the "**Proposed Transaction**"). As used herein, Buyer and Seller are each a "**Party**" and collectively the "**Parties**." Notwithstanding anything herein to the contrary, that until a definitive agreement is approved by Buyer's Joint Procurement Authority and signed and delivered by each Buyer and Seller, no Party shall have any legal obligations, expressed or implied, or arising in any other manner under this Term Sheet to continue negotiations or enter into the Proposed Transaction or the ESSA.

1. ESSA Terms and Conditions.

Storage Product:	**Option 1:** RA Product – includes Resource Adequacy Benefits only. "**Resource Adequacy Benefits**" means the rights and privileges attached to the Storage Facility that satisfy any entity's resource adequacy obligations, and includes any local, zonal or otherwise locational attributes associated with the Storage Facility, in addition to flex attributes. [***Please note that, subject to the agreement of Buyer and Seller, the ESSA for an RA Only product may take the form of an EEI confirmation between Buyer and Seller.***] **Option 2:** Storage Product – includes all energy, capacity, Resource Adequacy Benefits, and ancillary services produced by or associated with the Storage Facility. Buyer receives full dispatchable rights and energy revenues earned. **Option 3:** RA Product with Revenue Sharing – includes Resource Adequacy Benefits, and percent sharing of benefits (TBD) of revenues from energy and ancillary services produced by or associated with the Storage Facility. Seller will schedule and dispatch the energy. **Option 4:** RA Product + Energy Discharge – includes Resource Adequacy Benefits and blocks of 8 hours of discharge at the hours of Buyer's choosing. **Option 5:** Unique Offer [*Include detail.*]
Storage Facility:	"**Storage Facility**" or "**Project**" means the [ ] project, located in [County], in the State of [California].
Storage Capacity:	[XX] MW_{AC}
RA Capacity:	[XX] MW [NQC]

Contract Price:	RA Product: $[XX]/kW-month of delivered RA Capacity. Storage Product: $[XX]/kW-month of Storage Capacity, as adjusted for the Storage Capacity Test (as set forth in the ESSA), multiplied by the actual round-trip efficiency, and subject to the Availability Adjustment. RA Product with Revenue Sharing: [TBD] RA Product + Energy Discharge: [TBD] Unique Offer: [TBD]
Delivery Term:	[___] Contract Years from the Commercial Operation Date, with each 12-month period following the Commercial Operation Date considered a "**Contract Year**."
Commercial Operation Date:	The "**Commercial Operation Date**" or "**COD**" shall be the later of (a) the Expected Commercial Operation Date or (b) the date on which Commercial Operation is achieved. "**Commercial Operation**" means the condition existing when Seller has fulfilled the following conditions precedent in the ESSA and provided notice of same to Buyer, including providing a certificate from an independent engineer to Buyer with respect to subparts (i), (iii), (iv) and (v): (i) Storage Facility has met all Interconnection Agreement requirements or Agreements required to set Dynamic Transfer and is capable of receiving charging energy from, and delivering discharging energy to, the CAISO Balancing Authority; (ii) Seller has provided Buyer with a copy of written notice from the CAISO that the Storage Facility has achieved Full Capacity Deliverability Status (as defined in the CAISO tariff), if applicable; (iii) Seller has provided Buyer Maximum Import Capability (MIC) rights for full RA Product, if applicable; (iv) Commissioning of equipment has been completed in accordance with the manufacturer's specifications; (v) 95% of Storage Capacity has been installed and commissioned; (vi) Storage Facility has successfully completed all testing required by prudent utility practices or any requirement of law to operate the Storage Facility; (vii) All applicable permits and government approvals required for the operation of the Storage Facility have been obtained; (viii) Seller has obtained all real property rights;

	(ix) Security requirements for the Delivery Term have been met; and (x) Insurance requirements for the Storage Facility have been met, with evidence provided in writing to Buyer. Seller shall provide notice of expected COD to Buyer in writing no less than sixty (60) days in advance of such date. Seller shall notify Buyer in writing when Seller believes that it has provided the required documentation to Buyer and met the conditions for achieving COD. Buyer shall have five (5) Business Days to approve or reject Seller's request for COD. Upon Buyer's approval of Seller's achievement of COD, Buyer shall provide Seller with written acknowledgement of the COD.
Guaranteed Construction Start Date:	The "**Guaranteed Construction Start Date**" means the following date [ ], subject to extensions on a day-for-day basis due to Force Majeure or delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&E) that are outside of the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure, shall be no longer than one-hundred twenty (120) days on a cumulative basis. For clarity, these permitted extensions extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously. In the event that Seller fails to achieve the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer, (the "**Daily Delay Damages**") for each day of delay, in the amount of the Development Security divided by 120. The Daily Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD. Failure to achieve Guaranteed Construction Start within 180 days of the Guaranteed Construction Start Date shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the ESSA and retain the Development Security.
Guaranteed Commercial Operation Date:	The "**Guaranteed Commercial Operation Date**" or "**Guaranteed COD**" means the following date [ ], subject to extensions on a day-for-day basis due to Force Majeure or delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&E) that are outside of the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure, shall be no longer than one-hundred twenty (120) days on a cumulative basis. For clarity, these permitted extensions extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.

	If the Seller does not achieve COD of the Facility by the Guaranteed COD, Seller shall pay Delay Damages to the Buyer for each day of delay until Seller achieves COD. "**Delay Damages**" are equal to the Development Security divided by 60. Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance monthly. A prorated amount will be returned to Seller if COD is achieved during the month for which Delay Damages were paid in advance. Failure to achieve COD within 60 days of the Guaranteed COD shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the ESSA and retain the Development Security.
Project Interconnection Point:	The Project shall interconnect to [*e.g., XX substation*] (the "**Interconnection Point**"). Seller shall be responsible for all costs of interconnecting the Project to the Interconnection Point.
Delivery Point:	"**Delivery Point** means [the Storage Facility Pnode] on the CAISO grid.
Deliverability:	The Facility will have Full Capacity Deliverability Status by the Commercial Operation Date.
Site Control:	Seller shall maintain site control throughout the Delivery Term.
Permits and Approvals:	Seller shall obtain any and all permits and approvals, including without limitation, environmental clearance under the California Environmental Quality Act ("**CEQA**") or other environmental law, from the local jurisdiction where the Project is or will be constructed. Buyer is simply purchasing power and does not intend to be the lead agency for the Project.
Project Development Milestones:	[date] – receipt of CEC pre-certification [date] – execution of Interconnection Agreement [date] – procurement of major equipment [date] – obtain federal and state discretionary permits [date] – Guaranteed Construction Start Date [date] – obtain Full Capacity Deliverability Status, if applicable [date] – Guaranteed Commercial Operation Date
Maximum Storage Level:	[XX] MWh [number in MWh representing maximum amount of energy that may be discharged from the Storage Facility]
Minimum Storage	[XX] MWh [number in MWh representing the lowest level to which

Level:	the Storage Facility may be discharged]
Maximum Charging Capacity:	[XX] MW [highest level at which Storage Facility may be charged]
Maximum Discharging Capacity:	[XX] MW [number in MW representing the highest level at which the Storage Facility may be discharged]
Maximum State of Charge (SOC) during Charging:	100%
Minimum State of Charge (SOC) during Discharging:	0%
Maximum Round-Trip Efficiency:	[XX]% [peak efficiency of conversion between charging energy and discharging energy (i.e. ratio of maximum charging energy to maximum discharging energy)] If actual round-trip efficiency is greater than or equal to Maximum Round-Trip Efficiency, then for purposes of calculating the monthly payment amount, the actual round-trip efficiency will be deemed to be 100%.
Minimum Round-Trip Efficiency:	[XX]% [minimum guaranteed efficiency of conversion between charging energy and discharging energy (i.e. ratio of maximum charging energy to maximum discharging energy)] measured at the point of interconnection. If actual round-trip efficiency is less than Minimum Round-Trip Efficiency, then for purposes of calculating the monthly payment amount, the actual round-trip efficiency will be deemed to be 0%.
Ramp Rate Range:	[XX] MW/minute to [XX] MW/minute
Monthly/Annual Cycles:	[Number of times per contract term Buyer may fully charge and discharge the Storage Facility. A full charge will be deemed to have occurred when the cumulative amount of energy added to the Storage Facility over the course of a calendar month equals the Maximum Storage Level. This could occur in one continuous charge or over multiple charges, even if some energy is discharged in between. The

	inverse is true for a full discharge.]
Additional Energy Storage Products:	All ancillary services and environmental attributes produced by the Storage Facility.
Ancillary Services Capabilit y:	[List frequency regulation, spin, regulation up, regulation down, etc., and specify relevant operating parameters for each.]
Scheduling Coordinator:	[Seller/Buyer] For RA Product: Seller or Seller's agent shall act as Scheduling Coordinator (as defined by the CAISO) for the Storage Facility. Seller shall be financially responsible for such services and shall pay for all CAISO charges and retain all CAISO payments. For Storage Product: Buyer or Buyer's agent shall act as Scheduling Coordinator (as defined by the CAISO) for the Storage Facility. Buyer shall be financially responsible for such services and shall pay for all CAISO charges (including for charging energy) and retain all CAISO payments (including for discharging energy); provided however, that notwithstanding the foregoing, Seller shall assume all liability and reimburse Buyer for any and all costs or charges (i) incurred by Buyer because of Seller's failure to perform, (ii) incurred by Buyer because of any outages for which notice has not been provided as required, (iii) associated with Resource Adequacy Capacity (as defined by the CAISO) from the Storage Facility (including Non-Availability Charges (as defined by the CAISO)), if applicable or (iv) to the extent arising as a result of Seller's failure to comply with a timely Buyer Curtailment Order if such failure results in incremental costs to Buyer. Outage and curtailment notifications will be required by Buyer as well as access to Storage Facility charging and discharging data.
Station Use:	Buyer will not be responsible for Station Use and Station Use will not be provided by the Storage Facility. Expected Station Use: [XX] MWh per year.
Guaranteed Storage Availability:	[98%] [percentage of hours each month that Seller agrees the Storage Facility will be available]
Availability Adjustment:	The Availability Adjustment ("**AA**"), which is calculated as follows: If the monthly storage availability is greater than or equal to the Guaranteed Storage Availability, then:

	AA = 100% If the monthly storage availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then: AA = 100% - [(98% - monthly storage availability) × 2] If the monthly storage availability is less than 70%, then: AA = 0
Local Workforce:	[include % of workforce from Buyer's service territory Seller will utilize]
Monthly Settlement and Invoice:	Within ten (10) days after the end of each month of the Delivery Term, Seller shall send a detailed invoice to Buyer for the amount due for Product delivered during such month. The invoice shall include all information necessary to confirm the amount due. Payment for undisputed amounts shall be due to the applicable party thirty (30) days from the invoice date, with disputed payments subject to Buyer's billing dispute process.
Operations and Maintenance:	During the months of June through September Seller shall not schedule any non-emergency maintenance that reduces the energy storage capability of the Storage Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Storage Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such outage is required in accordance with prudent electrical practices, or (iv) the Parties agree otherwise in writing.
Progress Reporting:	After execution of the ESSA, Seller shall provide a quarterly report until the COD followed by a monthly report to Buyer that (a) describes the progress towards meeting the Storage Facility Development Milestones; (b) identifies any missed Storage Facility Development Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Storage Facility Development Milestones and all subsequent

	Storage Facility Development Milestones by the Guaranteed Commercial Operation Date. If applicable, progress reporting shall also include reporting on small business activities. In the event Seller misses any Project Development Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Buyer shall have the right to terminate the ESSA and retain the Development Security as damages, in addition to any other remedies it may have at law or equity.
Credit Requirements:	The Seller shall post security as follows: Development Security – $90/kW of Guaranteed Capacity Performance Security – $105/kW of Guaranteed Capacity To secure its obligations under the ESSA, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Development Security shall be in the form of cash or a Letter of Credit. Within five (5) Business Days following any draw by Buyer on the Development Security or the Performance Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount. To secure its obligations under the ESSA, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.
Compliance with Laws:	Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees.
Business Tax: [2]	The Seller shall obtain a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Proposed Transaction term.
Assignment:	Neither Party may assign the ESSA without prior written consent of the other party, which will not be unreasonably withheld; provided, that Seller has the right to assign the ESSA as collateral for any financing or refinancing of the Facility without the consent of Buyer. Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require

[2] This language is applicable if San Jose is the Buyer.

	the prior written consent of Buyer, which will not be unreasonably withheld. Seller shall pay Buyer's reasonable expenses, including attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing for the Facility. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under the ESSA, or to modify such ESSA.
No Recourse to Members of Buyer[3]	Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer's constituent members, in connection with this Confirmation.
Appropriation of Funds:[4]	[Buyer is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies, and, therefore, nothing in the ESSA shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the ESSA; provided, however, that (a) Buyer has created and set aside the Designated Fund for payment of its obligations under the ESSA and (b) subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Special Fund necessary to pay its obligations under the ESSA and all of Buyer's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer's payment obligations under the ESSA are special limited obligations of Buyer payable solely from the Special Fund and are not a charge upon the revenues or general fund of the City of San

[3] This language is applicable if the Buyer is either the new JPA or a CCA that is a JPA.
[4] This language is applicable if San Jose is the Buyer.

	José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the term of the ESSA.
Designated Fund and Limited Obligation:	**Designated Fund**. Buyer's payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund ("Designated Fund") that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement. Subject to the requirements and limitations of Applicable Law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, the Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term. **Limited Obligations**. Buyer's payment obligations are special limited obligations of the Buyer payable solely from the Designated Fund. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.]
Force Majeure:	"Force Majeure Event" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide;

	mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below. Notwithstanding the foregoing, the term "Force Majeure Event" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Energy at a lower price, or Seller's ability to sell Energy at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Storage Facility, except to the extent expressly permitted as an extension under the ESSA.
Other Standard Contract Terms to be included in the ESSA:	**<u>Event of Default</u>**: Events of Default shall include, but not be limited to, failure to pay any amounts when due, breach of representations and warranties, failure to perform covenants and material obligations in the ESSA, bankruptcy, assignment not permitted by the ESSA, Seller failure to achieve Construction Start within one hundred eighty (180) days of Guaranteed Construction Start Date, and Seller failure to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date. **<u>Indemnification</u>**: Seller to indemnify Buyer for third party claims arising from Seller's negligence, willful misconduct, or breach of the ESSA. **<u>Governing Law</u>**: State of California **<u>Venue</u>**: Santa Clara County

Definitions:	The following terms, when used herein with initial capitalization, shall have the meanings set forth below: "**CAISO**" means the California Independent System Operator. "**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC. "**CEC**" means the California Energy Commission, or any successor agency performing similar statutory functions. "**CEQA**" means the California Environmental Quality Act. "**Delivery Term**" shall mean the period of Contract Years beginning on the Commercial Operation Date. "**Full Capacity Deliverability Status**" has the meaning set forth in the CAISO Tariff. "**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a credit rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's or (b) being reasonably acceptable to Buyer. "**MW**" means megawatts in alternating current, unless expressly stated in terms of direct current. "**MWh**" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

2. **Neither Party Obligated to Enter Into Proposed Transaction**. This Term Sheet is intended to provide an overview of the Proposed Transaction and is not intended to constitute a binding contract or an offer to enter into a ESSA with respect to the Proposed Transaction and does not obligate either Party to enter into the Proposed Transaction or execute any agreement, including the ESSA, in connection with the Proposed Transaction. Neither Party will be deemed to have agreed to the ESSA and will not be bound by any term thereof, unless and until authorized representatives of both Parties execute final definitive documents, enforceable in accordance with their terms.

3. **Other Agreements**. In connection with this Term Sheet, Seller shall execute that certain Exclusivity Agreement ("**Exclusivity Agreement**") with Buyer and provide a Shortlist Deposit (as defined in such agreement) of $3 per KW to Buyer within three (3) Business

Days after execution of the Exclusivity Agreement. The Shortlist Deposit will be returned in accordance with, and subject to, the terms of the Exclusivity Agreement.

4. **Expenses**. Each Party will pay its own costs and expenses (whether internal or out-of-pocket, and whether for legal, financial, technical, or other consultants, or other purposes) in connection with the Term Sheet and any definitive agreements.

5. **Termination**. This Term Sheet will terminate upon the earlier of (a) execution of the ESSA or (b) expiration of the Exclusivity Period (as defined in the Exclusivity Agreement), as such Exclusivity Period may be extended by the Parties in accordance with the Exclusivity Agreement.

6. **Governing Law**. This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.

7. **Counterparts**. This Term Sheet may be executed in counterparts, each of which will be enforceable against the Parties actually executing such counterparts, and all of which together will constitute one instrument. Delivery of an executed signature page of this Term Sheet by email transmission of a PDF image shall be the same as delivery of an original executed signature page.

8. **Prior Agreements**. This Term Sheet supersedes all prior communications and agreements, oral or written, between the Parties regarding the subject matter herein contemplated.

9. **Assignment**. This Term Sheet will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party will assign, pledge or otherwise transfer this Term Sheet or any right or obligation under this Term Sheet without first obtaining the other Party's prior written consent (which consent will not be unreasonably withheld, delayed, or encumbered).

10. **No Consequential Damages**. IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES AND/OR REPRESENTATIVES BE LIABLE FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR EXEMPLARY DAMAGES UNDER OR IN RESPECT TO THIS TERM SHEET.

IN WITNESS WHEREOF, the Parties have signed this Term Sheet effective as of the Effective Date.

[*JOINT CCAS/BUYER*]	**[*RESPONDENT/SELLER*]**
By: ____________________________	By: ____________________________
Printed Name: ______________________	Printed Name: ______________________
Title: ____________________________	Title: ____________________________

Appendix C Reservation of Rights

1. Reservation of Rights

Notwithstanding anything to the contrary, the Joint CCAs may, and expressly reserve the right to, at any time and from time to time, without prior notice and without assigning or providing any reason therefore:

- cancel, suspend, withdraw, or terminate this RFO (including, without limitation, after the selection under this RFO of one or more Offerors for an ESSA) or cancel or suspend its participation in this RFO;
- modify this RFO, including, without limitation, any Appendix to this RFO, or any of the dates, times or places set forth in the RFO or related to the RFO process;
- accept, refuse to accept, consider, not consider, favor, disfavor, recommend, not recommend, pursue or reject any offer, in its sole and absolute discretion, for any reason;
- without limitation of the generality of any of the other terms herein, reject or eliminate any offer submitted in response to this RFO that is incomplete, is nonconforming, or contains irregularities (or waive any irregularity in any offer), or that it determines was made with the intent to create artificial prices, terms, or conditions or would have that effect;
- carry out negotiations with any, some or all Offerors or other Persons related to this RFO, and suspend or terminate negotiations with any Offeror or other Person at any time, including, without limitation, as a result of any change in resource needs of the Joint CCAs giving rise to this RFO;
- discuss the terms of any offer or any other material submitted by Offeror with, and obtain clarification or additional information concerning such offer or such other material from, Offeror or its directors, officers, employees, agents, representatives, and advisors;
- request from Offeror information not detailed in or required by this RFO but that may be necessary or relevant to the evaluation of Offeror's offer(s) and utilize such information as the Joint CCAs deems appropriate in connection with such evaluation of this RFO;
- receive, consider, pursue, or transact on (i) opportunities to acquire other assets or resources offered or that become available outside of the RFO process as such opportunities arise or (ii) offers offered in response to this RFO that are nonconforming or eliminated from consideration in this RFO;
- invite further offers in or outside of this RFO or supplemental submissions of offers;
- allow for other load serving entities and/or agencies not part of the Joint CCAs to receive information submitted as part of this RFO or participate in one or more

ESSA;

- determine which Offerors or entities to allow, or continue to allow, to participate in the RFO process;
- pursue or transact on offers offered in response to this RFO regardless of any rank order established in the RFO evaluation process to promote diversity of supply in this RFO, gain experience with different technologies, limit exposure to a counterparty, technology or resource or a particular set of risks, or achieve other commercial goals the Joint CCAs deem appropriate;
- sign or not sign an ESSA with Offerors or other Persons relating to the Transactions solicited by this RFO;
- subject to the terms of any applicable confidentiality agreement entered into between the Joint CCAs and Offeror, retain, archive, or destroy any information or material provided to or for the benefit of the Joint CCAs in the Offer Submission Process; and
- take any and all other actions it deems necessary or appropriate, in its sole and absolute discretion, in connection with this RFO and the RFO process.

Each of the foregoing rights (including any right listed in a series of rights) may be exercised individually by the Joint CCAs or any director, officer, employee, or authorized agent or representative of the Joint CCAs or its of their respective parent. The reservation of rights contained herein is in addition to all other rights reserved or granted to the Joint CCAs or any of its Affiliates elsewhere in this RFO or otherwise held by or available to the Joint CCAs or any of its Affiliates.

2. No Warranties or Liabilities

BY PARTICIPATING IN THE RFO PROCESS, EACH OFFEROR AGREES THAT, EXCEPT TO THE EXTENT CONTAINED IN AN ENERGY STORAGE SERVICES AGREEMENT WITH OFFEROR:

(A) ALL MATERIAL AND OTHER INFORMATION FURNISHED BY OR ON BEHALF OF THE JOINT CCAS OR ANY OTHER AFFILIATE OF THE JOINT CCAS IN CONNECTION WITH THIS RFO IS PROVIDED WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, AND

(B) THE JOINT CCAS, THEIR AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND ADVISORS SHALL HAVE NO LIABILITY TO ANY OFFEROR, ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES, ADVISORS, LENDERS, OR INVESTORS RELATING TO OR ARISING FROM THE USE OF OR RELIANCE UPON ANY SUCH INFORMATION, ANY ERROR OR OMISSION

THEREIN, OR OTHERWISE IN CONNECTION WITH THIS RFO.

3. Acceptance of Offers

Without prejudice to the Joint CCAs' rights under law or in equity, no offer submitted by any Offeror shall be deemed accepted by, or otherwise binding upon, the Joint CCAs or any of its Affiliates and the Joint CCAs, its Affiliates and their respective directors, officers, members, employees, agents and representatives shall have no obligation or liability of any kind with respect to any such offer or otherwise in connection with this RFO, unless and until an ESSA has been mutually executed and delivered by the Joint CCAs or any of its Affiliates and Seller, and then such obligation or liability shall exist only if and to the extent expressly set forth or provided for therein or in another signed, binding written agreement entered into by the Joint CCAs or any of its Affiliates and Seller. Notwithstanding anything to the contrary in this RFO, all offers delivered to the Joint CCAs shall become the sole and exclusive property of the Joint CCAs upon receipt, and the Joint CCAs shall have all rights and privileges of ownership of such property, subject to any provision of this RFO relating to confidentiality and any applicable confidentiality or other signed, binding written agreement between the Joint CCAs and Offeror or Seller executed in connection with this RFO process.

4. Offeror Costs and Expenses

Each Offeror is solely responsible for all costs and expenses it incurs in connection with this RFO. Through its participation in this RFO, each Offeror agrees that under no circumstance, including, without limitation, the Joint CCAs' withdrawal from or suspension, cancellation, or termination of the RFO process, any of its Affiliates or any of their respective directors, officers, members, partners, employees, agents, representatives or advisors have any responsibility or liability of any kind to Offeror, its Affiliates or any of their respective directors, officers, members, partners, trustees, employees, agents, representatives, advisors or lenders for any cost or expense directly or indirectly incurred by Offeror (no matter how incurred) in connection with the RFO process. Nothing in this Section 4 shall be construed to limit the generality of Section 2 above.

5. Offeror Disclosure of RFO Information

No Offeror may, without the prior consent of the Joint CCAs, disclose to any other Person (except the Joint CCAs staff) its participation in the RFO process (other than by attendance at any meeting to which more than one participant is invited by the Joint CCAs, which attendance in and of itself will not violate this provision of this RFO). Further, no Offeror may disclose, collaborate on or discuss with any other Person (except the Joint CCAs staff) bidding strategies or the substance of offers, including, without limitation, the price or any other terms or conditions of any contemplated, indicative or final offer. Any such disclosure, collaboration or discussion would violate this RFO and the Offer Submission Agreement and may result in the rejection of Offeror's offer or elimination of Offeror from further participation in this RFO.

6. Public Records

All documents submitted in response to this Request will become the property of the Joint CCAs upon submittal and will be subject to the provisions of the California Public Records Act and any other applicable disclosure laws. Upon submission, all proposals shall be treated as confidential until the selection process is completed. Once a contract is awarded, all proposals shall be deemed public record. The Joint CCAs are required to comply with the California Public Records Act as it relates to the treatment of any information marked "confidential." Respondents requesting that portions of its submittal should be exempt from disclosure must clearly identify those portions with the word "Confidential" printed on the lower right-hand corner of the page. Each page shall be clearly marked and separable from the proposal in order to facilitate public inspection of the non-confidential portion of the proposal. The Joint CCAs will consider a respondent's request for an exemption from disclosure; however, if the Joint CCAs receive a request for documents under the California Public Records Act, the Joint CCAs will make a decision based upon applicable laws. Respondents should not over-designate material as confidential, and any requests or assertions by a respondent that the entire submittal, or significant portions thereof, are exempt from disclosure will not be honored.

7. Offeror Acceptance of this Appendix C

By participating in the RFO process, each Offeror agrees that it will be deemed to have accepted all the rights and terms included in this Appendix C and to have agreed that its participation in the RFO is subject to such rights and terms. The Joint CCAs are conducting this RFO and participating in the RFO process in reliance upon the foregoing agreement.

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO.: 21-0023

WHEREAS, The San Francisco Board of Supervisors established a Community Choice Aggregation (CCA) program in 2004 (Ordinance 86-04) and has implemented the program, called CleanPowerSF, through the work of the San Francisco Public Utilities Commission (SFPUC) in consultation with the San Francisco Local Agency Formation Commission (Ordinances 146-07, 147-07, and 232-09); and

WHEREAS, The SFPUC has adopted program goals for CleanPowerSF that guide CleanPowerSF's planning and operations, including leading with affordable and reliable service, providing cleaner electricity alternatives, and investing in local renewable projects and jobs while providing for long-term rate and financial stability; and

WHEREAS, The SFPUC is dedicated to equitable business practices and uplifting a culture of innovation, diversity and inclusion, environmental sustainability and standards, transparency, integrity, and a commitment to the communities we serve; and

WHEREAS, Consistent with the the Racial Equity Resolution (Resolution 20-0149), this Commission adopted on July 14, 2020, the SFPUC recognizes that a diverse and culturally competent workforce that is inclusive and reflective of the communities we serve is a key component for our agency to meet our core mission, goals, environmental standards, and better serve our diverse customers; and

WHEREAS, The SFPUC is committed to providing fair compensation and sustainable workforce opportunities for our diverse communities as CleanPowerSF delivers competitive and affordable power service and promotes the procurement and generation of renewable energy; and

WHEREAS, The SFPUC recognizes the opportunities that CleanPowerSF provides for workforce development and employment, and as such, the SFPUC supports fair compensation in hiring and in the development and procurement of renewable energy sources; and

WHEREAS, The SFPUC supports sustained job opportunities and job creation and recognizes and supports quality State of California approved apprenticeship and pre-apprenticeship training programs within SFPUC's service territory to foster long-term, fairly compensated employment opportunities and believes that apprenticeship and preapprenticeship programs are an efficient vehicle for delivering quality training in construction industry craft occupations; and

WHEREAS, CleanPowerSF and other interested CCAs wish to leverage their combined buying power to provide customers with cost effective services or programs and procure energy resources, products and related services by forming a new joint powers authority ("California Community Power Agency" or "CC Power"), comprised of the CCAs who choose to join; and

WHEREAS, a draft Agreement to form the California Community Power Agency has been prepared after extensive review by the staff of the SFPUC, the San Francisco City Attorney Office, and other interested CCAs; and

WHEREAS, CleanPowerSF desires to enter into the California Community Power Agency Joint Powers Agreement in order to acquire energy resources and promote energy resilience that would be difficult or not cost-effective for CleanPowerSF to achieve on its own; now, therefore be it

RESOLVED, That the Commission hereby approves the California Community Power Agency Joint Powers Agreement, attached hereto and authorizes the General Manager to execute the Agreement, with any minor, non-substantive modifications, and seek Board of Supervisors approval for the Agreement; and be it

FURTHER RESOLVED, That staff should work with other CC Power members as appropriate to develop policies and guidelines for procuring products and services in a manner that promotes the City's and SFPUC's environmental goals and efforts to foster an inclusive and sustainable workforce through support for measures such as fair and equitable compensation, local hiring, and support of local businesses, while maintaining affordable and stable rates for San Franciscans; including:

- Engaging in outreach efforts in local and diverse communities, including disadvantaged and low-income communities, to create a diverse pool of candidates for open positions, while providing fair compensation that aligns with regional market indicators for compensation;

- Conducting marketing and outreach in an inclusive manner in CC Power member communities, including attending important multi-cultural community events with multi-lingual materials and speakers as appropriate, using local, diverse media outlets, and other opportunities to increase awareness of CleanPowerSF services and programs pursued in partnership with CC Power;

- Sharing information and collateral with CC Power members about SFPUC's Racial Equity initiatives that are promoting inclusion, access, and diverse engagement in a manner consistent with the adopted SFPUC Racial Equity Resolution (Resolution 20-0149);

- Relying on a combination of local labor, union labor and apprenticeship programs, and following fair compensation practices, including proper assignment of work to crafts that traditionally perform the work, when constructing CC Power projects; and

- Promoting fair compensation, fair worker treatment, multi-trade collaboration, and support of the existing and prevailing wage base in local communities where CC Power-contracted projects will be located.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of February 9, 2021.

Donna Hood

Secretary, Public Utilities Commission

CALIFORNIA COMMUNITY POWER AGENCY
JOINT POWERS AGREEMENT

This Joint Powers Agreement ("Agreement") is made by and among those public agencies who are signatories to this Agreement, and those public agencies which may hereafter become signatories to this Agreement, for the purpose of operating a separate joint powers agency, which is named "California Community Power" or "CC Power."

WITNESSETH

WHEREAS, it is to the mutual benefit of the Members and in the public interest that the Members join together to engage in the exercise of powers they have in common including, but not limited to, (i) the acquisition and operation of wholesale power supplies, resource adequacy and renewable attributes, (ii) the provision of joint consulting and contracting services via master agreements and bulk purchasing and financing of decarbonization products, (iii) the offering of energy risk management and California Independent System Operator ("CAISO") scheduling services; and (iv) other energy services or programs which may be of benefit to Members (collectively, hereinafter "energy related programs");

WHEREAS, CC Power's primary objective is to provide for joint procurement of electrical power and storage and other energy projects for its Members, as set forth in this Agreement;

WHEREAS, the Members intend that CC Power shall better position the Members to administer community choice energy programs, and achieve their local agency goals, including but not limited to meeting or exceeding California's greenhouse gas emission reduction targets through procurement of renewable resources.

WHEREAS, each of the public community choice aggregation agencies which is a Member to this Agreement has the power to establish, manage, operate and maintain Community Choice Aggregation ("CCA") programs, electric service enterprises available to cities and counties pursuant to California Public Utilities Code Section 331.1(c) and 366.2 and to study, promote, develop, conduct, operate and manage energy related programs; and

WHEREAS, Title I, Division 7, Chapter 5, Article 1 of the California Government Code (the "Joint Powers Act" or "Act") authorizes the joint exercise by two or more public agencies of any power which is common to each of them.

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do hereby agree as follows:

Article I. DEFINITIONS

In addition to the other terms defined herein, the following terms, whether in the singular or in the plural, when used herein and initially capitalized, shall have the meanings specified throughout this Agreement.

Section 1.01 **"Board"** means the Board of Directors of CC Power as established by this Agreement.

Section 1.02 **"CC Power"** means the Joint Powers Authority established by this Agreement.

Section 1.03 **"Member"** means a Public CCA Agency, or other public agency the Board determines to be eligible pursuant to Section 3.02, that is a signatory to this Agreement and has met the requirements of

Article III; the term "Member" shall, however, exclude any Public CCA Agency or other eligible public agency which shall have withdrawn or been excluded from CC Power pursuant to Section 3.04 below.

Section 1.04 "Project" means any and all of the following matters, which are approved by the Board pursuant to Article VI: (i) the construction, financing or acquisition of a wholesale power resource, resource adequacy and/or renewable and environmental attributes for use by the Members, and such other transactions, services, and goods that may be necessary or convenient to construct, finance, acquire or optimize the value of such resources, (ii) the bulk purchasing and/or financing of decarbonization products, including, but not limited to, heat pump water heaters, space heater heat pumps and electric vehicle charging services, (iii) energy risk management and CAISO scheduling products and services, (iv) acquisition, construction and financing of facilities for the generation or transmission of electrical energy and any related transactions, services, and goods that may be necessary or convenient to acquire, construct, and finance these facilities, (v) grid integration services, (vi) acquisition of capacity rights in any facility for the generation or transmission of electric energy, and (vii) any other energy related programs.

Section 1.05 "Project Agreement" means a contract between and among CC Power and Project Participants.

Section 1.06 "Project Participants" means any Member or group of Members who participate in a Project pursuant to Article VI below.

Section 1.07 "Public CCA Agency" means any public agency, or such joint powers agencies/authorities consisting of one or more public agencies, that has implemented a CCA program pursuant to California Public Utilities Code Sections 331.1 and 366.2.

Article II. FORMATION OF AUTHORITY

Section 2.01 Creation of CC Power. Pursuant to the Joint Powers Act, there is hereby created a public entity, to be known as "CC Power," which shall be a public entity separate and apart from its Members.

Section 2.02 Purpose. The purpose of this Agreement is for CC Power to develop, acquire, construct, own, manage, contract for, engage in, finance and/or provide energy related programs for the use of and by its Members. CC Power is not intended to be a policy-maker or advocate, though it may, from time to time, advance or support public policies in support of its purpose that do not conflict with interests or policies advanced by any Member.

Section 2.03 Powers. CC Power is authorized, in its own name, to do all acts necessary to fulfill the purposes of this Agreement as referred to in Section 2.02 above, and engage in the exercise of powers the Members have in common including, but not limited to, each of the following:

- **(a)** Acquire, purchase, finance, offer, arrange, construct, maintain, utilize and/or operate one or more Projects;
- **(b)** Establish, operate, maintain and/or fund energy related programs;
- **(c)** Make and enter into contracts;
- **(d)** Employ agents and employees;
- **(e)** Acquire, contract, manage, maintain, sell or otherwise dispose of real and personal property and operate any buildings, infrastructure, works, or improvements;
- **(f)** Receive contributions and donations of property, funds, services and other forms of assistance from any source;
- **(g)** Lease real or personal property as lessee and as lessor;
- **(h)** Sue and be sued in its own name;

(i) Incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Sections 53850 et seq. and authority under the Act;

(j) Receive, collect, invest and disburse moneys;

(k) Issue revenue bonds and other forms of indebtedness, as provided by law;

(l) Apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;

(m) Make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer energy related programs;

(n) Adopt from time to time such policies, procedures, bylaws, rules or regulations for the conduct of its affairs as deemed necessary by the Board;

(o) Exercise all other powers necessary and proper to carry out this Agreement; and

(p) Defend, hold harmless, and indemnify, to the fullest extent permitted by law, each Member from any liability, claims, suits, or other actions.

Such powers shall be exercised in the manner provided in Section 6509 of the Government Code of the State of California, as amended, subject only to such restrictions upon the manner of exercising such powers as are imposed upon Silicon Valley Clean Energy in the exercise of similar powers. Should Silicon Valley Clean Energy withdraw or be excluded from this Agreement pursuant to Section 3.04 hereof, the manner of exercising any power shall be subject only to the restrictions upon the manner of exercising such powers as are imposed upon Marin Clean Energy.

Section 2.04 Compliance with Local Zoning and Building Laws and CEQA. Unless state or federal law provides otherwise, any facilities, buildings or structures located, constructed, or caused to be constructed by CC Power within the territory of CC Power shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed and comply with the California Environmental Quality Act.

Article III. MEMBERSHIP

Section 3.01 Member Agencies. Any Public CCA Agency, or other public agency determined by the Board to be eligible pursuant to Section 3.02, may become a Member upon meeting the following conditions:

(a) The Public CCA Agency or other eligible public agency shall file with the Board a certified copy of a resolution of its governing body whereby it (i) agrees to the provisions of this Agreement, and (ii) requests to become a Member; and

(b) No such Public CCA Agency or other eligible public agency shall become a Member until (i) its admission is approved at a regular or special meeting of the Board by at least two-thirds (2/3) of the entire Board, and (ii) it deposits or agrees to pay CC Power a share of organization, planning and other costs and charges as determined by the Board to be appropriate, if any.

Upon completion of the foregoing, the Public CCA Agency or other eligible public agency shall become a Member for all purposes of this Agreement.

Section 3.02 Eligible Public Agency Members. The Board may adopt policies to determine whether public agencies that are not Public CCA Agencies may be eligible to become a Member of CC Power.

Section 3.03 Cost Allocations.

(a) Unless otherwise determined by a two-thirds (2/3) vote of the entire Board, each Member shall pay an equal share of one member one share for general and administrative costs as determined by the Board associated with all operations of CC Power. General and administrative costs do not include any costs that relate solely to any specific Project Agreement.

(b) Project Agreements and other program agreements between and among any Member and/or CC Power will determine cost allocation and may consider, among other relevant factors, credit strength of the Members and may differ in price and collateral requirements as determined solely for such Project Agreement or other program agreements.

Section 3.04 Withdrawal or Exclusion of Member.

(a) Any Member may withdraw from CC Power upon the following conditions:

(i) The Member shall have filed with the Board Secretary a certified copy of a resolution of its governing body expressing its desire to so withdraw. Once a Member files a resolution to withdraw with the Board Secretary, that Member no longer has any voting rights on the Board;

(ii) Members participating in Projects, programs or services pursuant to Project Agreements or other program agreements approved by the Board are subject to the participation and withdrawal terms and conditions described in the applicable agreement; and

(iii) Prior to accepting the Member's filing of such resolution, any Member so terminating shall be obligated to pay its share of all debts, liabilities, and obligations of CC Power specifically assumed by the Member. However, this obligation shall take into account any refunds due to the Member and shall not extend to debts, liabilities and obligations secured or otherwise committed pursuant to Project Agreements or other program agreements between and among any Member and/or CC Power. The debts, liabilities and obligations of the Members to such Project Agreements or other program agreements shall be determined by their terms. Any obligations under this Agreement are subject to the limitations set forth in Article VIII.

(b) Upon compliance with the conditions specified in Section 3.04(a), the Board shall accept the withdrawing Member's resolution and the withdrawing Member shall no longer be considered a Member for any reason or purpose under this Agreement and its rights and obligations under this Agreement shall terminate. The withdrawal of a Member shall not affect any obligations of such Member under any Project Agreement or other program agreement.

(c) Any Member which has (i) defaulted under this Agreement, a Project Agreement, or other program agreement, (ii) failed to appoint a Director to serve on the Board in accordance with Section 4.02 below, or (iii) failed to pay any required share of costs in accordance with Sections 3.01 and 3.03 above, may have its rights under this Agreement terminated and may be excluded from participation in CC Power by the vote (taken at a regular or special meeting of the Board) of at least two-thirds (2/3) of the entire Board (including the Director representing the defaulting Member). Prior to any vote to terminate participation of any Member, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Member whose termination is proposed at least 60 days prior to the Board meeting at which such matter shall first be discussed as an agenda item. The written notice of the proposed termination shall specify the particular provisions of this Agreement or a Project Agreement or other program agreement which the Member has allegedly defaulted on, or whether the proposed termination is based on failure to appoint a Director or pay any required share of costs. The Member subject to possible termination shall have the opportunity to cure the violation prior to the meeting at which termination will be considered. At the meeting where termination of the Member is considered, the Member shall be given the opportunity to respond to any reasons and allegations that may be cited as a basis for termination prior to a termination vote. Any excluded Member shall continue to be liable for its obligations under any Project Agreement or other program agreement and for any unpaid contribution, payment, or advance approved by the Board prior to such Member's exclusion.

(d) The withdrawal or termination of a Member shall not affect the provisions or obligations set forth in Article VIII or Section 11.03 below.

Article IV. POWERS OF BOARD & MANAGEMENT OF CC POWER

Section 4.01 Board. CC Power shall be administered by a Board which shall consist of one Director representing each Member. Such Board shall be the governing body of this CC Power, and, as such, shall be vested with the powers set forth in this Agreement, and shall execute and administer this Agreement in accordance with the purposes and functions provided herein. The Board shall have the authority to provide for the general management and oversight of the affairs, property and business of CC Power.

Section 4.02 Appointment and Vacancies. Each Director shall be the Chief Executive Officer, General Manager, or designee of the Chief Executive Officer or General Manager of each Member and shall be appointed by and serve at the pleasure of the Member that the Director represents, and may be removed as Director by such Member at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed by the Member to fill the position of the previous Director in accordance with the provisions of this Article IV within 60 days of the date that such position becomes vacant or the Member shall be subject to the exclusion procedures in Section 3.04(c) above. Each Director may appoint an alternate to serve in their absence.

Section 4.03 Notices. The Board shall comply with the applicable provisions of Sections 6503.5, 6503.6 and 53051 of the Government Code requiring the filing of notices and a statement with the Secretary of State, the State Controller, the applicable county clerk and local agency formation commissions, including, but not limited to:

(a) Causing a notice of the Agreement or any amendment to the Agreement to be prepared and filed with the office of the Secretary of State within 30 days of the effective date of the Agreement or amendment, and

(b) Filing a statement of facts with the Secretary of State within 70 days after the date of commencement of CC Power's legal existence. Upon any change in the statement of facts presented to the Secretary of State, an amended statement of facts shall be filed with the Secretary of State within 10 days of the change.

Section 4.04 Committees. The Board may create committees to provide advice to the Board or conduct the business of CC Power subject to delegation of authority from the Board.

Section 4.05 Director Compensation. Compensation for work performed by Directors, including alternates, on behalf of CC Power shall be borne by the Member that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.

Section 4.06 Board Officers. At its first meeting in each calendar year, the Board shall elect or re-elect a Chair and a Vice-Chair each of whom shall be selected from among the Directors and shall also appoint or re-appoint a Secretary and a Treasurer/Controller each of whom may, but need not, be selected from among the Directors.

(a) **Chair and Vice-Chair**. The duties of the Chair shall be to preside over the Board meetings, sign all ordinances, resolutions, contracts and correspondence adopted or authorized by the Board, and to help ensure the Board's directives and resolutions are carried out. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair.

(b) **Treasurer and Controller.** The Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Controller, neither of whom needs to be a Director. If the Board so designates, and in accordance with the provisions of applicable law,

a qualified person may hold both the office of Treasurer and the office of Controller of CC Power. The Treasurer shall be the depository of CC Power to have custody of all the money of CC Power, from whatever source. The Controller shall draw warrants to pay demands against CC Power when the demands have been approved by the Chair or Vice Chair of CC Power. The Treasurer and Controller shall have the other powers, duties and responsibilities of such officers as specified in Section 6505 of the Government Code of the State of California, as amended, except insofar as such powers, duties and responsibilities are assigned to a trustee appointed, as is provided for and authorized in Section 6550 of the Government Code of the State of California, as amended, pursuant to any resolution, indenture or other instrument providing for the issuance of bonds or notes of CC Power pursuant to this Agreement. The Board may require the Treasurer and/or Controller to file with CC Power an official bond in an amount to be fixed by the Board, and if so requested CC Power shall pay the cost of premiums associated with the bond. The Treasurer and Controller shall cause an independent audit to be made by a certified public accountant, or public accountants, in compliance with Section 6505 of the Government Code.

(c) **Secretary.** The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of CC Power, and responding to public records requests of the JPA.

Section 4.07 Management of CC Power. The Board shall appoint a part-time or full-time General Manager, and may appoint one or more part-time or full-time Assistant General Managers, to serve at the pleasure of the Board. The General Manager shall be responsible for the day-to-day operation and management of CC Power. The General Manager may enter into and execute contracts in accordance with the policies established and direction provided by the Board, and shall file an official bond in the amount determined from time to time by the Board.

Section 4.08 Other Officers and Employees. The Board shall have the power to appoint such other officers and staff as it may deem necessary who shall have such powers, duties and responsibilities as are determined by the Board, and to retain independent accountants, legal counsel, engineers and other consultants. The Members may contract with CC Power to provide staff to perform services for CC Power, but such employees shall at all times, and for all purposes including benefits and compensation, remain employees of the Member only.

Section 4.09 Budget. The budget shall be approved by the Board. The Board may revise the budget from time-to-time as may be reasonably necessary to address contingencies and expected expenses. All subsequent budgets of CC Power shall be approved by the Board in accordance with rules as may be adopted by the Board from time to time. All expenditures must be made in accordance with the adopted budget.

Article V. MEETINGS OF THE BOARD

Section 5.01 Regular Meetings. The Board shall hold at least one regular meeting per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution of the Board. Regular meetings may be adjourned to another meeting time.

Section 5.02 Special Meetings. Special and emergency meetings of the Board may be called in accordance with the provisions of California Government Code Sections 54956 and 54956.5, as amended.

Section 5.03 Brown Act Compliance. All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Section 54950 et seq.), and as

augmented by rules of the Board not inconsistent therewith. Directors may participate in meetings telephonically or by other electronic means, with full voting rights, only to the extent permitted by law.

Section 5.04 Minutes. The Secretary shall cause to be kept minutes of the meetings of the Board, both regular and special, and shall cause a copy of the minutes to be forwarded promptly to each Director.

Section 5.05 Quorum. A quorum of the Board shall consist of a majority of the Directors, except that less than a quorum may adjourn from time to time in accordance with law.

Section 5.06 Voting. Except to the extent set forth in a Project Agreement or as otherwise specified in this Agreement, each Member shall have one vote, which may be cast on any matter before the Board by each Director or alternate. Except to the extent otherwise specified in this Agreement, or by law, a vote of the majority of the Directors in attendance shall be sufficient to constitute action, provided a quorum is established and maintained.

(a) Special Voting Requirements as specified in this Agreement:

(i) Action of the Board to amend Section 3.03 related to cost allocations shall require the affirmative vote of at least two-thirds (2/3) of the entire Board.

(ii) Action of the Board on the matters set forth in Section 3.04(c) related to involuntary termination of a Member shall require the affirmative vote of at least two-thirds (2/3) of the entire Board.

(iii) Action of the Board on the matters set forth in Section 9.01 related to termination of this Agreement shall require the affirmative vote of at least two-thirds (2/3) of the entire Board approved by resolution of each Member's governing body.

(iv) Action of the Board to amend this Agreement shall be subject to the voting requirements set forth in Section 11.02 below.

Article VI. PROJECTS

Section 6.01 Projects. The Board has the power, upon majority vote of the Directors in attendance, provided a quorum is established and maintained, to establish Projects within the purpose and power of CC Power and to adopt guidelines for their implementation.

Section 6.02 Right to Participate in Projects. The Board shall provide at least sixty (60) days prior written notice to all Members, unless such notice is otherwise waived, before any Project may be considered for adoption by a vote of the Board. Such notice shall be provided to the Director of each Member. Once a Project is approved by the Board as set forth in Section 6.01 above, all Members shall have the right, but not the obligation, to participate in a pro-rata share in the Project as determined by the Project Agreement. All Members who elect not to participate in the Project have no obligations under the Project.

Section 6.03 Project Agreement. All expenses, rights and obligations to any specific Projects will be handled through Project Agreements that will be separate and distinct from this Agreement.

Article VII. BONDS AND OTHER INDEBTEDNESS

CC Power shall also have the power to issue, sell and deliver bonds in accordance with the provisions of the Joint Powers Act for the purpose of acquiring, financing, performing or constructing one or more Projects and to enter into other indebtedness for the purpose of financing one or more studies or Projects and for the purpose of providing temporary financing of costs of development, construction or acquisition of one or more Projects. The terms and conditions of the issuance of any such bonds or indebtedness shall be set forth in such resolution, indenture or other instrument, as required by law and as approved by the Board. Bonds issued under this article and contracts or obligations entered into to carry out the purposes for which bonds are issued, payable in whole or in part from the proceeds of said bonds, shall not constitute a debt, liability or

obligation of any of the Members unless the governing body of the Member by resolution expressly agrees that the Member will be obligated under the bond or other indebtedness or the Member takes on obligations pursuant to a Project Agreement.

Article VIII. LIMITATION ON LIABILITY OF MEMBERS

Section 8.01 Pursuant to Section 6508.1 of the Government Code of the State of California, no debt, liability or obligation of CC Power shall be a debt, liability or obligation of any Member unless such Member agrees in writing to assume any of the debts, liabilities, or obligations of CC Power pursuant to a Project Agreement. Nothing contained in this Article VIII shall in any way diminish the liability of any Member with respect to any Project Agreement such Member enters into pursuant to this Agreement.

Section 8.02 Individual Member Provisions.

(a) The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement. Any obligations under this Agreement and any Project Agreement are special limited obligations of San José Clean Energy payable solely from the Designated Fund (defined as the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et seq.)* ("Designated Fund") and shall not be a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

(b) CleanPowerSF's payment obligations under this Agreement are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. CleanPowerSF's payment obligations under this Agreement are not a charge upon the revenues or general fund of the San Francisco Public Utilities Commission or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the San Francisco Public Utilities Commission or the City and County of San Francisco. CleanPowerSF's obligations hereunder shall not at any time exceed the amount certified by the San Francisco City Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of CleanPowerSF are not authorized to request, and CleanPowerSF is not required to reimburse CC Power for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of CleanPowerSF are not authorized to offer or promise, nor is CleanPowerSF required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the San Francisco City Controller. The San Francisco City Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

Article IX. TERM; TERMINATION; LIQUIDATION; DISTRIBUTION

Section 9.01 Term and Termination. This Agreement shall become effective when at least two Members execute this Agreement. This Agreement shall continue in full force and effect until terminated as provided in this Article; provided however, this Agreement cannot be terminated until such time as all principal of and interest on bonds and other forms of indebtedness issued by CC Power are paid in full. Thereafter, this Agreement may be terminated by a two-thirds (2/3) vote of the entire Board approved by resolution of each Member's governing body; provided, however, that this Agreement and CC Power shall continue to exist after termination for the purpose of disposing of all claims, distribution of assets and all other functions necessary to conclude the obligations and affairs of CC Power. In no event shall this

Agreement or the powers herein granted to CC Power be terminated until (a) all bonds and other indebtedness of CC Power and the interest thereon shall have been paid or adequate provision for such payment shall have been made in accordance with the instruments governing such bonds and indebtedness and (b) all other obligations and liabilities of CC Power shall have been met or adequately provided for.

Section 9.02 Liquidation; Distribution. Upon termination of this Agreement, the Board shall liquidate the business and assets and the property of CC Power as expeditiously as possible, and distribute any net proceeds, after the conclusions of all debts and obligations of CC Power, to any Members in proportion to the contributions made or in such manner as otherwise provided by law. The Board is vested with all powers of CC Power for the purpose of concluding and dissolving the business affairs of CC Power.

ARTICLE X. ACCOUNTS AND REPORTS

Section 10.01 Establishment and Administration of Funds. CC Power is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with every provision of law relating to the establishment and administration of funds, particularly Section 6505 of the California Government Code. CC Power shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any resolution, indenture or other instrument of CC Power securing its bonds or other indebtedness, except insofar as such powers, duties and responsibilities are assigned to a trustee appointed pursuant to such resolution, indenture or other instrument. The books and records of CC Power shall be open to inspection at all reasonable times to each Member and its representatives.

Section 10.02 Annual Audits and Audit Reports. The Treasurer/Controller shall cause an annual independent audit of the accounts and records of CC Power to be made by a certified public accountant or public accountant in accordance with all applicable laws. If permitted by applicable law and authorized by the Board, the audit(s) may be conducted at the longer interval authorized by applicable law. A report of the financial audit will be filed as a public record with each Member. CC Power will pay the cost of the financial audit and charge the cost against the Members in the same manner as other administrative costs.

ARTICLE XI. GENERAL PROVISIONS

Section 11.01 Successors and Assigns. No Member may assign any right or obligation under this Agreement without the consent of all other Members. This section shall not affect, in any respect, any right of assignment under any Project Agreement.

Section 11.02 Amendments. Subject to any requirements of law, a two-thirds (2/3) vote of the entire Board will be required to amend Articles II, III, VIII, and IX of this Agreement. Once an amendment of Articles II, III, VIII, or IX is adopted by the Board, the amendment must be approved by two-thirds of the Members pursuant to that Members' applicable approval process. All other provisions of this Agreement may be amended at any time or from time to time by an amendment approved by at least two-thirds (2/3) vote of the entire Board. Written notice shall be provided to all Members of proposed amendments to this Agreement, including the effective date of such amendments, at least 60 days prior to the date upon which the Board votes on such amendments.

Section 11.03 Indemnification and Insurance. To the fullest extent permitted by law, CC Power shall defend, indemnify, and hold harmless the Members and each of their respective Directors, alternates, officers, employees and agents from any and all claims losses damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of CC Power under this Agreement to the extent not otherwise provided under a Project Agreement. CC Power shall acquire such insurance coverage as the Board deems is necessary and appropriate to protect the interests of CC Power and the Members.

Section 11.04 Notices. The Board shall designate its principal office as the location at which it will receive notices, correspondence, and other communications, and shall designate one of its Directors or staff as an officer for the purpose of receiving service on behalf of the Board. Any notice given pursuant to this Agreement shall be in writing and shall be dated and signed by the Member giving such notice. Notice to each Member under this Agreement is sufficient if mailed to the Member and separately to the Member's Director to their respective addresses on file with CC Power.

Section 11.05 Severability. Should any portion, term, condition, or provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the remaining portions, terms, conditions, and provisions shall not be affected thereby.

Section 11.06 Section Headings. The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section to which they refer.

Section 11.07 Choice of Law. This Agreement will be governed and construed in accordance with the laws of the State of California.

Section 11.08 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all Members had signed the same instrument.

Section 11.09 Dispute Resolution. The Members shall make reasonable efforts to informally settle all disputes arising out of, or in connection with, this Agreement. Should such informal efforts to settle a dispute fail, the dispute shall be mediated in accordance with policies and procedures established by the Board.

[Signature Page Follows]

Signature Page

IN WITNESS WHEREOF, each of the Members hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

By: Geof Syphers
Geof Syphers (Jan 29, 2021 09:56 PST)

Name: Geof Syphers

Title: CEO

CCA Name: Sonoma Clean Power Authority

Date: Jan 29, 2021

Approved as to form:

By: Harriet Steiner
Harriet Steiner (Jan 29, 2021 09:46 PST)

Name: Harriet Steiner

Title: Special Counsel

Date: Jan 29, 2021

Signature Page

IN WITNESS WHEREOF, each of the Members hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

By: Nick Chaset
Nick Chaset (Jan 29, 2021 17:24 PST)

Name: Nick Chaset

Title: Chief Executive Officer

CCA Name: East Bay Community Energy

Date: Jan 29, 2021

Approved as to form:

By: Inder Khalsa
Inder Khalsa (Jan 29, 2021 16:09 PST)

Name: Inder Khalsa

Title: General Counsel

Date: Jan 29, 2021

Signature Page

IN WITNESS WHEREOF, each of the Members hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

By: Girish Balachandran
Girish Balachandran (Jan 29, 2021 09:12 PST)

Name: Girish Balachandran

Title: CEO

CCA Name: Silicon Valley Clean Energy

Date: Jan 29, 2021

Approved as to form:

By: Gregory Stepanicich
Gregory Stepanicich (Jan 29, 2021 13:42 PST)

Name: Gregory Stepanicich

Title: General Counsel

Date: Jan 29, 2021

Signature Page

IN WITNESS WHEREOF, each of the Members hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

By: ______________________________________

Name: Matthew Marshall

Title: Executive Director

CCA Name: Redwood Coast Energy Authority

Date: January 29, 2021

Approved as to form:

By: Nancy Diamond
Nancy Diamond (Jan 29, 2021 12:02 PST)

Name: Nancy Diamond

Title: General Counsel

Date: January 29, 2021

Signature Page

IN WITNESS WHEREOF, each of the Members hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

By: Janis C. Pepper
Janis C. Pepper (Jan 29, 2021 15:52 PST)

Name: Janis C. Pepper

Title: CEO

CCA Name: Peninsula Clean Energy

Date: Jan 29, 2021

Signature Page

IN WITNESS WHEREOF, each of the Members hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

By: ______________________

Name: Leland Wilcox

Title: Chief of Staff, Office of the City Manager

CCA Name: San José Clean Energy (SJCE)

Date: 1/29/21

Approved as to form:

By: ______________________

Name: Luisa Elkins

Title: Senior Deputy City Attorney

Date: Jan 29, 2021

DocuSign Envelope ID: 63900058-0E84-4DAE-9DB3-9D4F19487FAC

Signature Page

IN WITNESS WHEREOF, each of the Members hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

By: DocuSigned by: Tom Habashi 69C253774488497...

Name: Tom Habashi

Title: Chief Executive Officer

CCA Name: Central Coast Community Energy

Date: 1/29/2021

Signature Page

IN WITNESS WHEREOF, each of the Members hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

DocuSigned by:

By: Dawn Weisz
A59878416EBC4F8...

Name: Dawn Weisz

Title: CEO

CCA Name: MCE

Date: 1/29/21

1 [Authorizing Membership in Community Choice Aggregation Joint Powers Authority for CleanPowerSF]
2

3 **Ordinance authorizing the Public Utilities Commission to become a member of a Joint**
4 **Powers Authority consisting of Community Choice Aggregators for the purpose of joint**
5 **purchases of electricity and related products and services; and authorizing deviations**
6 **from certain otherwise applicable contract requirements in the Administrative Code**
7 **and the Environment Code for purchases that do not otherwise require Board approval.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
10 **Board amendment additions** are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.
12

13 Be it ordained by the People of the City and County of San Francisco:
14

15 Section 1. General Background.
16 (a) State law allows cities and counties to develop Community Choice Aggregation
17 ("CCA") programs, through which local governments supply electricity to serve the needs of
18 participating customers within their jurisdictions while the existing utility continues to provide
19 services such as customer billing, transmission, and distribution.
20 (b) The City implemented a CCA program to provide San Francisco residents and
21 businesses the option to receive cleaner, more sustainable electricity at rates comparable to
22 PG&E's rates. See Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12, and 78-14; and
23 Resolution Nos. 348-12, 331-13, and 75-15.
24 (c) In May 2016, the San Francisco Public Utilities Commission ("PUC") launched
25 CleanPowerSF with initial service to almost 8,000 accounts. In July 2019, the PUC completed

1 the final phase of customer enrollment, and CleanPowerSF now serves over 400,000
2 accounts.
3 (d) The goals of CleanPowerSF are to provide affordable and reliable electricity
4 services, invest in cleaner energy alternatives that advance the City's Greenhouse Gas
5 reduction goals, and ensure long-term rate and financial stability.
6 (e) There are currently 23 operational CCAs in California which collectively serve
7 more than 10,000,000 customers in more than 200 towns, cities, and counties. Over the last
8 10 years, CCAs have entered into long-term contracts for more than 3,600 megawatts of new,
9 clean generation resources and over 240 megawatts of energy storage capacity.
10
11 Section 2. CCA Joint Powers Authority.
12 (a) Pursuant to Chapter 5 of Division 7 of Title 1 of the California Government Code
13 commencing with Section 6500 ("JPA Law") the City, upon authorization of the Board of
14 Supervisors, may enter into a joint exercise of powers agreement ("JPA") with one or more
15 other public agencies through which the contracting parties may jointly exercise any power
16 common to them.
17 (b) Nine CCAs – CleanPowerSF, Central Coast Community Power, the East Bay
18 Community Energy Authority, the Marin Clean Energy Authority, the Redwood Coast Energy
19 Authority, San Jose Clean Energy, the Silicon Valley Clean Energy Authority, Peninsula Clean
20 Energy, and the Sonoma Clean Power Authority (collectively, "Participating CCAs") – have
21 determined that engaging in joint efforts for energy-related procurement and projects will be
22 beneficial to the Participating CCAs by leveraging economies of scale to achieve lower costs
23 and more favorable terms and conditions for products and services. Collectively, the
24 Participating CCAs provide electricity and related services such as self-generation and energy
25 efficiency programs to customers in Northern California.

(c) The Participating CCAs have agreed, subject to the approval of their governing bodies, to form a JPA called California Community Power ("CC Power") for the purpose of, among other things, (1) the construction, financing, or acquisition of wholesale power supplies, transmission facilities, resource adequacy, renewable and environmental attributes, and other services and goods needed to optimize the value of such resources, (2) the bulk purchasing and/or financing of decarbonization products, including, but not limited to, heat pump water heaters, space heater heat pumps, and electric vehicle charging services, and (3) contracting for energy risk management, grid integration, and scheduling products and services.

(d) The Participating CCAs have jointly prepared an agreement creating CC Power ("Agreement") which is on file with the Clerk of the Board of Supervisors in File No. 201344 and is incorporated by reference as if fully set forth herein. Under the JPA Law and the Agreement, CC Power is a public entity separate and apart from the parties to the Agreement and the debts, liabilities, and obligations of the JPA will not be the debts, liabilities, or obligations of the City or the other Participating CCAs. A Participating CCA may withdraw from CC Power at any time subject to the terms of the Agreement.

(e) As a public agency, CC Power will be subject to the state laws that apply to local government agencies, including but not limited to open meetings, public records, environmental review, conflict of interest, and competitive bidding.

(f) The Agreement requires the City to pay a proportional share of the start-up and on-going administrative costs of operating CC Power, which the PUC estimates will not exceed $50,000 per year.

(g) PUC anticipates that CC Power will be the contracting entity with the suppliers of products and services. Each Participating CCA will decide whether to participate in any CC Power project and will enter into separate project agreements with CC Power and the other

Participating CCAs that elect to participate in the project. Except as stated in Section 4 of this ordinance, any individual project agreement entered into by the PUC will be subject to applicable contracting rules under the Charter and the Municipal Code, including approval by the Board of Supervisors under Charter Section 9.118 for contracts over 10 years in duration or $10 million in amount and amendments over $500,000 for such contracts.

(h) The PUC Commission authorized the General Manager to join CC Power on February 9, 2021, in Resolution No. 21-0023, which is on file with the Clerk of the Board of Supervisors in File No. 201344.

(i) In its Resolution, the PUC Commission directed staff to work with other CC Power members as appropriate to develop policies and guidelines for procuring products and services in a manner that promotes the City's and SFPUC's environmental goals and efforts to foster an inclusive and sustainable workforce through support for measures such as fair and equitable compensation, local hiring, and support of local businesses, while maintaining affordable and stable rates for San Franciscans; including:

- Engaging in outreach efforts in local and diverse communities, including disadvantaged and low-income communities, to create a diverse pool of candidates for open positions, while providing fair compensation that aligns with regional market indicators for compensation;
- Conducting marketing and outreach in an inclusive manner in CC Power member communities, including attending important multi-cultural community events with multi-lingual materials and speakers as appropriate, using local, diverse media outlets, and other opportunities to increase awareness of CleanPowerSF services and programs pursued in partnership with CC Power;
- Sharing information and collateral with CC Power members about SFPUC's Racial Equity initiatives that are promoting inclusion, access, and diverse

engagement in a manner consistent with the adopted SFPUC Racial Equity Resolution (Resolution 20-0149);

- Relying on a combination of local labor, union labor and apprenticeship programs, and following fair compensation practices, including proper assignment of work to crafts that traditionally perform the work, when constructing CC Power projects; and
- Promoting fair compensation, fair worker treatment, multi-trade collaboration, and support of the existing and prevailing wage base in local communities where CC Power-contracted projects will be located.

Section 3. Grant of Authority to Join CC Power.

(a) The Board of Supervisors approves the Agreement and authorizes the General Manager of the PUC to execute the Agreement in substantially the same form, with necessary changes that do not materially affect the liabilities of or benefits to the City as a member of CC Power and to request approval from the CC Power governing board to become a member of CC Power, if necessary. The Board of Supervisors further authorizes te General Manager to take steps necessary to implement the Agreement.

(b) The Board of Supervisors approves PUC's payment of its share of the start-up and on-going administrative costs of CC Power in an amount not to exceed $50,000 for calendar years 2021, 2022, and 2023 and further authorizes PUC to seek approval from the Board of Supervisors for amendments to the not-to-exceed amount and reauthorization for the costs of participation in CC Power by resolution.

Section 4. Waiver of Certain Contract-Related Requirements in the Administrative Code and the Environment Code.

(a) As public agencies, the members of CC Power have their own contracting provisions and imposition of each member's rules would be infeasible in operating CC Power. In addition, CC Power is subject to state laws prohibiting discrimination in hiring (Ca. Govt. Code Section 12940) and consideration of criminal history in hiring (Ca. Govt. Code Section 12952).

(b) The Board of Supervisors hereby grants waivers of the following standard contract provisions for contracts for goods and services entered into with CC Power and other CCAs that do not otherwise require Board of Supervisors approval, and finds such waivers to be reasonable and in the public interest:

(1) Nondiscrimination in contracts (Administrative Code Chapter 12B);

(2) Implementing the MacBride Principles (Administrative Code Chapter 12F);

(3) Consideration of criminal history in hiring (Administrative Code Section 12T);

(4) Increased participation by small and micro local businesses in City contracts (Administrative Code Chapter 14B);

(5) The competitive bidding requirement (Administrative Code Section 21.1); and

(6) The tropical hardwood and virgin redwood ban (Environment Code Chapter 8).

Section 5. 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.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: ______/s/____________
THERESA CHO
Deputy City Attorney

n:\legana\as2021\2100204\01512360.docx

City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 201344 **Date Passed:** March 09, 2021

Ordinance authorizing the Public Utilities Commission to become a member of a Joint Powers Authority consisting of Community Choice Aggregators for the purpose of joint purchases of electricity and related products and services; and authorizing deviations from certain otherwise applicable contract requirements in the Administrative Code and the Environment Code for purchases that do not otherwise require Board approval.

January 27, 2021 Budget and Finance Committee - CONTINUED TO CALL OF THE CHAIR

February 24, 2021 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

February 24, 2021 Budget and Finance Committee - RECOMMENDED AS AMENDED

March 02, 2021 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

March 09, 2021 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 201344

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 3/9/2021 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

3·12·21

Date Approved

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO.: 22-0041

WHEREAS, The San Francisco Board of Supervisors ("Board") established a Community Choice Aggregation ("CCA") program in 2004 (Ordinance 86-04) and has implemented the program, called CleanPowerSF, through the work of the San Francisco Public Utilities Commission ("SFPUC" or "Commission") in consultation with the San Francisco Local Agency Formation Commission (Ordinances 146-07, 147-07, and 232-09); and

WHEREAS, The SFPUC has adopted program goals for CleanPowerSF that guide CleanPowerSF's planning and operations, including leading with affordable and reliable service, providing cleaner electricity alternatives, and investing in local renewable projects and jobs while providing for long-term rate and financial stability; and

WHEREAS, CleanPowerSF and other interested CCAs formed a new joint powers authority ("California Community Power Agency" or "CC Power") to leverage their combined buying power to achieve economies of scale, lower costs, and more favorable terms and conditions for products and services; and

WHEREAS, The Commission by Resolution No. 21-0023 and the Board by Ordinance No. 25-21, authorized CleanPowerSF to become a member of CC Power, and in April 2021 the CC Power Board approved CleanPowerSF's membership; and

WHEREAS, By Resolution No. 20-0182, the Commission adopted CleanPowerSF's 2020 Integrated Resources Plan, which called for CleanPowerSF to procure long-duration energy storage ("LDS") resources. LDS is a technology that can store and discharge energy for at least eight hours; and

WHEREAS, On June 24, 2021, the California Public Utilities Commission ("CPUC") ordered CleanPowerSF and other retail power providers under its authority to procure 11,500 megawatts of new resources, including 1,000 megawatts of LDS. CleanPowerSF's share of the LDS requirement is 15.5 megawatts; and

WHEREAS, CleanPowerSF's failure to comply with the CPUC order could result in significant financial penalties; and

WHEREAS, CleanPowerSF, as a member of the CC Power, has participated in a request for offers for LDS resources; and

WHEREAS, On January 19, 2022, the CC Power Board approved entering into an Energy Storage Service Agreement with Tumbleweed Energy Storage, LLC ("Tumbleweed ESSA") under which CC Power may purchase 69 megawatts of LDS with 552-megawatt hour eight-hour discharge capacity on behalf of CleanPowerSF and the other participating CCAs; and

WHEREAS, CleanPowerSF's share of the long-duration energy storage project with Tumbleweed Energy Storage, LLC, (Tumbleweed LDS Project) would be 16 percent of the project capacity, which would provide more than half of CleanPowerSF's LDS procurement obligation ordered by the CPUC; and

WHEREAS, To participate in the Tumbleweed LDS Project, CleanPowerSF must enter into three separate agreements:

- Project Participation Share Agreement ("Tumbleweed PPSA") between CC Power, CleanPowerSF and the other CCAs that are participants in the Tumbleweed LDS project. It defines the rights, duties, and obligations of CleanPowerSF and the other project participants;

- Buyer Liability Pass Through Agreement ("BLPTA") between CleanPowerSF, CC Power, and Tumbleweed Energy Storage, LLC. Under the BLPTA, CleanPowerSF guarantees the prompt payment of its share of CC Power's obligations; and

- Coordinated Operations Agreement between CleanPowerSF, CCPower, and the other participating CCAs. It details how the CCAs and CC Power will work together to operate the project including hiring a scheduling coordinator and making decisions on charging and discharging the project; and

WHEREAS, On January 19, 2022 the CC Power Board of Directors approved the Tumbleweed LDS Project and authorized the CC Power General Manager to execute the project agreements on behalf of CC Power; and

WHEREAS, The Tumbleweed LDS project is currently undergoing environmental review in Kern County and the ESSA and other Agreements allow CC Power, CleanPowerSF, and the other participating CCAs to terminate their participation in the project if the developer fails to obtain all applicable discretionary permits and complete CEQA review, which may include consideration of any alternatives and requirements for implementation of a mitigation monitoring and reporting program, and begin construction of the Tumbleweed LDS Project by the date specified in the ESSA; and

WHEREAS, The developer is required by the agreement to comply with all applicable laws during the term of the agreement, which includes CEQA requirements for implementation of mitigation measures, if any; now, therefore, be it

RESOLVED, That the Commission hereby approves and authorizes the General Manager to execute and seek Board of Supervisors approval for the Tumbleweed BLPTA, the Tumbleweed PPSA, and the Tumbleweed Operations Agreement for a not-to-exceed amount of $65,000,000 over a twenty (20) year term on behalf of CleanPowerSF; and be it

FURTHER RESOLVED, That the Commission authorizes the General Manager to make amendments to the agreements that the General Manager and the City Attorney agree are needed to fulfill the purposes of the Agreement and would not materially increase the obligations or liabilities or materially reduce the benefits to the City.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of February 22, 2022.

Donna Hood

Secretary, Public Utilities Commission

From:	Hernandez, Kelly (ADM)
To:	Hyams, Michael (PUC); Hansen, Matt (ADM)
Cc:	SANDERS, WILLIAM (CAT); Hua, Benson (PUC); Abueg, Ramon (PUC); Mulberg, Erin (PUC)
Subject:	RE: Request for Approval of Hold Harmless and Indemnification Provision for a CleanPowerSF Agreement
Date:	Tuesday, February 22, 2022 4:50:16 PM
Attachments:	image002.png

CAUTION: This email originated from **outside** of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Mike,

Risk Management supports the department's business decision to agree to the hold harmless and indemnification in the Tumbleweed Energy Storage Project Participation Agreement. Please forward a copy of the signed, final agreement so that we may include it in our quarterly report to the BOS. Thank you.

Kelly Hines-Hernandez, Deputy Director
(she, her, hers) What's this?
Office of the City Administrator
Risk Management Division
25 Van Ness Avenue, Suite 750
San Francisco, CA 94102
Phone: (415) 554-2301
Website: https://sfgsa.org/risk-management

From: Hyams, Michael <MHyams@sfwater.org>
Sent: Tuesday, February 15, 2022 12:17 PM
To: Hansen, Matt (ADM) <matt.hansen@sfgov.org>; Hernandez, Kelly (ADM) <kelly.hernandez@sfgov.org>
Cc: SANDERS, WILLIAM (CAT) <William.Sanders@sfcityatty.org>; Hua, Benson (PUC) <BHua@sfwater.org>; Abueg, Ramon (PUC) <RAbueg@sfwater.org>; Mulberg, Erin (PUC) <EMulberg@sfwater.org>
Subject: Request for Approval of Hold Harmless and Indemnification Provision for a CleanPowerSF Agreement

Dear Matt and Kelly,

Please find attached a memo requesting approval of a Hold Harmless and Indemnification provision in a proposed *Project Participation and Share Agreement* between the SFPUC's CleanPowerSF program and the California Community Power joint powers authority and some of its member agencies.

Note: this is a new and different request from the one sent on February 2nd.

Under the agreement, CleanPowerSF would participate in the procurement of electricity products from a new energy storage project (the Tumbleweed Project) being procured by California Community Power on behalf of its members.

I have also attached a copy of the *Project Participation and Share Agreement* for your refence.

Please let me know if you have any questions.

Thank you,
Mike

Michael A. Hyams
Deputy Assistant General Manager, CleanPowerSF
San Francisco Public Utilities Commission, Power Enterprise
525 Golden Gate Avenue, 7th Floor
San Francisco, CA. 94102
Office: (415) 554-1590
Mobile: (628) 231-4548

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cleanpowersf.org/privacy

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: **Jeremy Spitz, Policy and Government Affairs**

DATE: **February 7, 2022**

SUBJECT: **[Agreements – Long Duration Storage – CleanPowerSF – Public Utilities Commission – Not To Exceed $65,000,000]**

Please see attached a proposed Resolution authorizing the Public Utilities Commission to enter into three separate agreements to enable the City and County of San Francisco to purchase long duration energy storage to serve customers of CleanPowerSF with a not-to-exceed amount of $65,000,000 for a 15-year term of ________, 2022, through ________, 2037, pursuant to Charter, Section 9.118.

The following is a list of accompanying documents:

- Proposed BOS Resolution (Word Doc Version)
- PUC Resolution No. 21-0023 (PDF)
- CPUC Decision No. 20-05-003 (PDF)
- CC Power Resolution No. 22-01-02 (PDF)
- BOS Ordinance No. 25-21
- Tumbleweed Energy Storage Service Agreement (PDF)
- Tumbleweed Buyer Liability Pass Through Agreement (PDF)
- Tumbleweed Energy Storage Project Participation Share Agreement (PDF)

Please contact Jeremy Spitz at jspitz@sfwater.org if you need any additional information on these items.

London N. Breed
Mayor

Anson Moran
President

Newsha Ajami
Vice President

Sophie Maxwell
Commissioner

Tim Paulson
Commissioner

Dennis J. Herrera
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.