

File No. 260212

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date April 8, 2026

Board of Supervisors Meeting Date _____

Cmte Board

☐	☐	Motion
☒	☐	Resolution
☐	☐	Ordinance
☐	☐	Legislative Digest
☒	☐	Budget and Legislative Analyst Report
☐	☐	Youth Commission Report
☐	☐	Introduction Form
☒	☐	Department/Agency Cover Letter and/or Report
☐	☐	MOU
☐	☐	Grant Information Form
☐	☐	Grant Budget
☐	☐	Subcontract Budget
☒	☐	Contract/Agreement
		• Draft Project Participation Share Agreement
		• Draft Buyer Liability Pass Through Agreement
☒	☐	Form 126 – Ethics Commission
☐	☐	Notice of Award/Award Letter
☐	☐	Application
☐	☐	Public Correspondence

OTHER (Use back side if additional space is needed)

☒	☐	<u>Resource Adequacy and TB4 Agreement Cover Sheet</u>
☒	☐	<u>CPUC and CEQA Final Decision</u>
☒	☐	<u>SFPUC Resolution No. 26-0031 2/24/2026</u>
☒	☐	<u>PUC Presentation 4/8/2026</u>
☐	☐	_____
☐	☐	_____
☐	☐	_____
☐	☐	_____
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Completed by: Brent Jalipa Date April 2, 2026

Completed by: Brent Jalipa Date _____

1 [Agreements - Long Duration Storage - California Community Power - CleanPowerSF - Not to
2 Exceed \$75,900,000]

3 **Resolution approving and authorizing the General Manager of the San Francisco Public**
4 **Utilities Commission, on behalf of CleanPowerSF, to participate in California**
5 **Community Power's procurement of the Willow Rock Long Duration Storage Project by**
6 **1) entering into the Buyer Liability Pass Through Agreement and 2) entering into the**
7 **Willow Rock Long Duration Storage Project Participation Share Agreement, for a total**
8 **not to exceed amount of \$75,900,000 with a contract duration of 20 years, estimated to**
9 **begin July 1, 2030, through June 30, 2050, pursuant to Charter, Section 9.118.**

10
11 WHEREAS, Long-Duration Storage resources are defined as those that can deliver
12 stored energy to the electric grid at their maximum power capacity for eight hours or more;
13 and

14 WHEREAS, On June 24, 2021, the California Public Utilities Commission (CPUC)
15 adopted Decision (D.) 21-06-035 ordering the procurement of 11,500 megawatts (MW) of new
16 electricity resources with online dates between 2023 and 2026 to meet grid reliability needs,
17 including 1,000 MW of new Long-Duration Storage (LDS) resources by CPUC-jurisdictional
18 load serving entities, including CleanPowerSF; and

19 WHEREAS, CleanPowerSF's share of the LDS procurement in this CPUC procurement
20 order is 15.5 MW of Net Qualifying Capacity to be operational by the middle of 2026; and

21 WHEREAS, CleanPowerSF is a member of California Community Power (CC Power),
22 a Joint Powers Agency formed by community choice energy programs in Northern California;
23 and

1 WHEREAS, The Board of Supervisors authorized CleanPowerSF's membership in
2 CCPower in Ordinance No. 25-21, and CleanPowerSF agreed to participate in two Long
3 Duration Storage projects, Goal Line and Tumbleweed in 2022; and

4 WHEREAS, While the Tumbleweed project is on schedule to reach commercial
5 operation in June of 2026, the Goal Line project was terminated in July 2025 due to default by
6 the Seller; and

7 WHEREAS, In anticipation of additional member procurement needs, CC Power issued
8 a solicitation in late 2024 and received offers from 30 Long Duration Storage Projects, with
9 Willow Rock LDS Project being the only proposal utilizing a technology other than lithium-ion
10 batteries; and

11 WHEREAS, After conducting initial discussions with the highest scoring projects, CC
12 Power ultimately decided to negotiate with the developer Hydrostor's Willow Rock LDS project
13 due to its portfolio technology diversity benefits and higher project viability; and

14 WHEREAS, The Willow Rock Long-Duration Storage Project will purchase storage
15 capacity from the Willow Rock Energy Storage Center, which is a 500 MW eight-hour
16 compressed air energy storage battery to be constructed in Rosamond, California; and

17 WHEREAS, The Project is expected to reach commercial operations on July 1, 2030,
18 and will help CleanPowerSF meet CPUC procurement order and Resource Adequacy
19 capacity requirements; and

20 WHEREAS, CleanPowerSF's expected share of the Willow Rock Long-Duration
21 Storage project is 11.5 MW with a possible increase, if another CC Power participating
22 member is no longer able to fulfill its obligations and defaults under the Project Participation
23 and Share Agreement; and

24 WHEREAS, On January 28, 2026, the CC Power Board approved the Willow Rock
25 Long-Duration Storage Project and authorized the CC Power General Manager to execute the

1 Energy Storage Agreement (ESA) with the project and additional agreement with participating
2 members on behalf of CC Power; and

3 WHEREAS, For CleanPowerSF to participate in the CC Power Long-Duration Storage
4 Project, the SFPUC will need to execute the following agreements: 1) Project Participation
5 Share Agreement which specifies the products and benefits from the project, payment
6 timelines from each CCA to CC Power, and terms and procedures if a CCA does not make
7 payments when due and 2) Buyer Liability Pass Through Agreement: an appendix to the
8 energy storage agreement by which CleanPowerSF agrees to pay its share of CC Power's
9 payment obligations under the Energy Storage Agreement; and

10 WHEREAS, The contract term is 20 years, with total project costs not to exceed
11 \$75,900,000 funded entirely from CleanPowerSF customer revenues; and

12 WHEREAS, On December 19, 2025, the California Energy Commission, acting as the
13 California Environmental Quality Act (CEQA) lead agency, adopted a final decision for the
14 Willow Rock Energy Storage Project, which includes an environmental assessment, Findings
15 of Fact, and a Compliance Monitoring Plan that are functionally equivalent to an
16 Environmental Impact Report, CEQA findings, and a Mitigation Monitoring and Reporting
17 Program, respectively under CEQA; and

18 WHEREAS, The California Energy Commission has adopted the mitigation measures
19 in the compliance monitoring plan, which is included in the final decision to avoid or
20 substantially lessen the significant environmental effects identified in the Final Decision and
21 has assumed responsibility for their implementation; and

22 WHEREAS, The SFPUC has reviewed and considered the Final Decision and
23 determined that approval of the Agreements is within the scope of the Final Decision, and that
24 the Final Decision is adequate for these actions; and

1 WHEREAS, On February 24, 2026, by Resolution No. 26-0031, the SFPUC
2 Commission approved and authorized CleanPowerSF's participation in California Community
3 Power's Willow Rock Long-Duration Storage Project; and

4 WHEREAS, Charter, Section 9.118(b), requires Board of Supervisors' approval by
5 Resolution of any contract or agreement with a term exceeding 10 years, or costs of
6 \$10,000,000 or more; and

7 WHEREAS, The draft agreements contained in File No. 260212, are substantially in
8 final form, with all material terms and conditions included, and only remain to be executed by
9 the parties upon approval of this Resolution; now, therefore, be it

10 RESOLVED, That this Board of Supervisors hereby authorizes the General Manager of
11 the SFPUC, on behalf of CleanPowerSF, to participate in California Community Power's
12 procurement of the Willow Rock Long Duration Storage Project by 1) entering into the Buyer
13 Liability Pass Through Agreement and 2) entering into the Willow Rock Long Duration Storage
14 Project Participation Share Agreement, for a not to exceed contract amount of \$75,900,000
15 with a contract duration of 20 years, estimated to begin July 1, 2030, through June 30, 2050;
16 and

17 FURTHER RESOLVED, That this Board of Supervisors authorizes the General
18 Manager to enter into any amendments or modifications to the agreements that the General
19 Manager determines, in consultation with the City Attorney, are in the best interest of the City,
20 do not materially increase the obligations or liabilities of the City or materially diminish the
21 benefits to the City, are necessary or advisable to effectuate the purposes and intent of this
22 resolution, and are in compliance with all applicable laws, including the City Charter; and

23 FURTHER RESOLVED, That within 30 days of the agreements being fully executed by
24 all parties, the SFPUC shall provide signed copies to the Clerk of the Board for inclusion in the
25 official file.

Item 2 File 26-0212	Department: Public Utilities Commission (PUC)
EXECUTIVE SUMMARY	
Legislative Objectives - The proposed resolution would authorize the San Francisco Public Utilities' Commission (SFPUC) to participate in California Community Power's (CC Power) procurement of the Willow Rock Long Duration Storage (LDS) Project by (1) entering into the Buyer Liability Pass Through Agreement and (2) entering into the Willow Rock Long Duration Storage Project Participation Share Agreement, for a contract duration of 20 years, from approximately July 2030 through June 2050, for a total amount not to exceed \$75,900,000. Key Points - CleanPowerSF is a member of the CC Power Joint Powers Authority. CC Power selected the Willow Rock LDS Project 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 2026 to support grid reliability. LDS would allow CleanPowerSF to store energy when it is abundant (such as the middle of the day when solar is available) and discharge it when demand for electricity is high and generation from resources like solar has tapered off. - The Board of Supervisors previously approved CleanPowerSF's participation in two other LDS projects. Although the Tumbleweed project is on track to begin commercial operations by June 2026, the Goal Line project was terminated in July 2025 due to vendor default. - CleanPowerSF's share of the Willow Rock LDS Project's capacity (11.5 megawatts) together with CleanPowerSF's share of the Tumbleweed LDS Project (12.045 megawatts) more than covers CPUC's requirement of 15.5 megawatts of qualifying capacity. - The Project Participation Share Agreement authorizes CC power to purchase storage capacity from the Willow Rock LDS Project on behalf of the participating members, and the Buyer Liability Pass Through Agreement defines CleanPowerSF's obligation to make its share of the monthly payment owed to the Willow Rock LDS Project. Fiscal Impact - CleanPowerSF would make monthly payments for the Willow Rock LDS Project over 20 years. CleanPowerSF would have a total cost not to exceed \$75,900,000, or \$3,795,000 per year, which includes a potential step-up payment in case other participating members default. The monthly costs may be offset with project revenues. CleanPowerSF's payments for the LDS Willow Rock Project are funded by ratepayer revenues 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.

Administrative Code Section 21.43(c) delegates authority to the General Manager of the SFPUC to enter into purchase of power and related products using contracts with terms over 10 years or requiring expenditures of \$10 million or more as long as the contract term does not exceed 25 years and annual expenditures for all agreements entered into under the delegated authority does not exceed \$300 million per year.

BACKGROUND

CleanPowerSF, operated by the San Francisco Public Utilities Commission (SFPUC) Power Enterprise, provides electricity generated from renewable sources to approximately 385,000 San Francisco customers. CleanPowerSF began serving customers in 2016 following enactment of California Public Utilities Code Sections 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. In 2021, the Board of Supervisors authorized CleanPowerSF to join a 10-member Joint Powers Agency (JPA) with other community choice aggregators in Northern and Central California (File 20-1344). The JPA, called California Community Power, or "CC Power," was formed in April 2021.¹

In June 2021, the California Public Utilities Commission (CPUC) issued a new procurement order to increase electricity system reliability by requiring electricity retailers to bring online an additional 11,500 megawatts of energy storage and renewable generation resources between 2023 and 2026 to meet grid reliability needs, including 1,000 megawatts of long duration energy storage (LDS). LDS is a technology that can store energy and then discharge it for at least eight hours at its maximum rated capacity. LDS would allow CleanPowerSF to store energy when it is abundant (such as the middle of the day when solar is available) and discharge it when demand for electricity is high and generation from resources like solar has tapered off. Under the order, CleanPowerSF was required to procure 15.5 megawatts of Net Qualifying Capacity (NQC) of LDS resources by 2026.

In March 2026, the CPUC issued another procurement order, requiring CleanPowerSF and other power suppliers under its jurisdiction to procure additional LDS and other resources. CleanPowerSF's share of the new order includes an additional 27 megawatts of Net Qualifying Capacity of LDS and/or Firm Clean Resources by 2032.

¹ The JPA members include CleanPowerSF; Ava Community Energy (Alameda County, formerly known as East Bay Community Energy); Central Coast Community Power (Monterey, San Benito, Santa Cruz, San Luis Obispo, and Santa Barbara Counties); Redwood Coast Energy Authority (Humboldt County); Peninsula Clean Energy (San Mateo County); San Jose Clean Energy (City of San Jose); Silicon Valley Clean Energy (Santa Clara County); Sonoma Clean Power (Sonoma and Mendocino Counties); and Valley Clean Energy (Yolo County). Marin Clean Energy Authority (Contra Costa, Marin, Napa, and Solano Counties) was previously a member of CC Power.

In 2022, following a Request for Offers (RFO) issued in 2020, CC Power approved LDS contracts with the Tumbleweed LDS Project and Goal Line Battery Energy Storage System 1, LLC (Goal Line). The Board of Supervisors approved CleanPowerSF's participation in these projects (Files 22-0145, 22-0331). Although the Tumbleweed project is on track to begin commercial operations by June 2026, the Goal Line project was terminated in July 2025 due to vendor default.

In anticipation of additional procurement needs, CC Power issued a new RFO in 2024 and received offers from 30 LDS projects. After initial discussions with the highest scoring proposers, CC Power decided to negotiate with Hydrostor for the Willow Rock LDS Project because of its portfolio technology diversity benefits and higher project viability. The Willow Rock LDS Project uses a compressed air energy-storage battery (as discussed below), unlike the other proposed projects which use lithium-ion batteries. In January 2026, the CC Power Board approved the Willow Rock Energy Storage Agreement.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize CleanPowerSF to participate in CC Power's Willow Rock LDS Project. This authorization covers two agreements, including (1) the Buyer Liability Pass Through Agreement, and (2) the Willow Rock LDS Project Participation Share Agreement, for a term of 20 years from approximately July 2030 through June 2050, for a total not to exceed \$75,900,000.

Although the SFPUC General Manager has delegated authority to approve contracts related to the purchase of power under Administrative Code Section 21.43, the SFPUC has committed to bringing contracts to the Board of Supervisors for approval if time allows according to SFPUC staff. Therefore, the SFPUC is seeking Board of Supervisors' approval for the proposed agreements.

LDS Project Agreements

Participation in the project is voluntary for CC Power members. Participating members include CleanPowerSF, Peninsula Clean Energy, Redwood Coast Clean Energy, San Jose Clean Energy, Silicon Valley Clean Energy, and Valley Clean Energy. CleanPowerSF's share of the Willow Rock LDS Project's capacity of 11.5 megawatts exceeds CleanPowerSF's share of the terminated Goal Line energy storage facility, which was 10.75 megawatts. CleanPowerSF's share of the Willow Rock LDS Project's capacity (11.5 megawatts) together with CleanPowerSF's share of the Tumbleweed LDS Project (12.045 megawatts) more than covers CPUC's requirement of 15.5 megawatts qualifying capacity.² Any excess capacity CleanPowerSF receives from the Willow Rock LDS Project can be used towards future compliance obligations for this resource type, including the incremental LDS capacity ordered by the CPUC in March 2026.

The Willow Rock LDS Project, located in Rosamond, California (Kern County), consists of a 500-megawatt to-be-constructed compressed air energy storage battery with eight hours of

² CleanPowerSF's share of the two facilities covers 128 percent of CPUC's requirement of 15.5 megawatts NQC after being adjusted by the resource's Effective Load Carrying Capability, which is a measure of a resource's reliability contributions and varies by technology type and the year a resource reaches commercial operation.

discharge capacity (4,000 megawatt-hours of energy storage).³ CC Power's share of the project is 50 megawatts. The Project is expected to be operational by July 2030.

Energy Storage Agreement

The Energy Storage Agreement is between CC Power and the Willow Rock LDS Project and is for 20 years from the date of commercial operation of the project in approximately July 2030. The agreement provides for a guaranteed 50 megawatts of capacity at eight hours of continuous discharge. CC Power would pay a fixed price each month with no escalation. CC Power would be entitled to the Resource Adequacy capacity and Top-Bottom 4 (TB4) CAISO market settlement revenues.⁴

The Energy Storage Agreement sets performance standards, progress reporting requirements, and requirements for project completion and electricity availability.

Project Participation Share Agreement

The Project Participation Share Agreement is between CC Power and the six participating members for the term of the Energy Storage Agreement. This agreement authorizes CC Power to purchase energy storage capacity from the Willow Rock LDS Project and specifies the costs and benefits for each member. Each participating member is entitled to the following share of project capacity:

Exhibit 1: Entitlement Share of Total Project Capacity

Participating Agency	Project Allocation (MW)	Project Allocation (%)
CleanPowerSF	11.5	23%
Peninsula Clean Energy	15.0	30%
Redwood Coast Energy Authority	3.1	6.2%
San Jose Clean Energy	12.0	24%
Silicon Valley Clean Energy	5.7	11.4%
Valley Clean Energy	2.7	5.4%
Total	50.0	100%

Source: SFPUC

Under the agreement, CC Power prepares the annual budget for the Willow Rock LDS Project, maintains financial records, and issues quarterly reports. The agreement defines the terms by which each participating member makes their monthly share of payments to the project. The agreement specifically states that the San Francisco payment obligations are limited to CleanPowerSF and are not obligations of SFPUC or the City.

The agreement also requires each member to increase its commitment if another member defaults and is removed from the agreement. The step-up payment is capped at 25 percent of

³ According to SFPUC, the project uses energy from the grid to create compressed air that is stored underground and covered with water. When energy is needed, the water is released, and air returns to the surface and is pushed through a turbine to generate electricity.

⁴ TB4 revenues occur when a battery storage operator charges during the four cheapest hours of the day for power and then discharges during the four most expensive hours, allowing for arbitrage opportunities.

the participating member's share, so therefore CleanPowerSF's step-up payment would not exceed 125 percent of CleanPowerSF's total share of the Willow Rock Project monthly payment.

Buyer Liability Pass Through Agreement

The Buyer Liability Pass-Through Agreement is between the Willow Rock LDS Project as the energy seller, CC Power as the energy buyer, and CleanPowerSF as the project participant. Each participant in the Willow Rock LDS Project is required to enter into a Buyer Liability Pass-Through Agreement, which is an appendix to the Energy Storage Agreement. The agreement defines CleanPowerSF's obligation to make its share of the monthly payment to CCPower for its Willow Rock LDS Project share and incorporates the City's Administrative Code contracting requirements.

FISCAL IMPACT

CleanPowerSF would make monthly payments for the Willow Rock LDS Project over 20 years, starting with commercial operation of the project in approximately July 2030. Over the 20-year term of the agreement, CleanPowerSF would have a total cost not to exceed \$75,900,000, or \$3,795,000 per year, inclusive of the 25 percent step up amount should another participating member default. As noted above, CleanPowerSF's annual costs could increase by up to 25 percent if another participating member defaults. The monthly costs may be offset with project revenues.

CleanPowerSF's payments for the LDS Willow Rock Project are funded by ratepayer revenues.

RECOMMENDATION

Approve the proposed resolution.

**WILLOW ROCK ENERGY STORAGE CENTER
PROJECT PARTICIPATION SHARE AGREEMENT**

among

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

and

PENINSULA CLEAN ENERGY AUTHORITY

and

REDWOOD COAST ENERGY AUTHORITY

and

CITY OF SAN JOSÉ, ADMINISTRATOR OF SAN JOSÉ CLEAN ENERGY

and

SILICON VALLEY CLEAN ENERGY AUTHORITY

and

VALLEY CLEAN ENERGY

and

CALIFORNIA COMMUNITY POWER

TABLE OF CONTENTS

Page

ARTICLE 1 DEFINITIONS	2
1.1. Definitions.....	2
1.2. Rules of Interpretation	10
ARTICLE 2 EFFECTIVE DATE AND TERM	11
2.1. Term.....	11
ARTICLE 3 AGREEMENT	11
3.1. Transaction.....	11
ARTICLE 4 ENTITLEMENT SHARE	12
4.1. Initial Entitlement Share	12
4.2. Change of Entitlement Share	12
4.3. Reduction of Entitlement Share to Zero	12
ARTICLE 5 OBLIGATIONS OF CCP AND ROLE OF CCP BOARD	12
5.1. Obligations of CCP	12
5.2. Role of CCP Board.	16
ARTICLE 6 ROLE AND RESPONSIBILITIES OF CCP MANAGER	17
6.1. Role of CCP Manager.....	17
6.2. CCP Manager Recommendations to the CCP Board.....	18
6.3. CCP Manager Report to CCP Board on Actions relating to the Offtake Agreement or the Project	19
6.4. Subcommittees.....	20
6.5. Delegation	20
ARTICLE 7 COORDINATED OPERATIONS AGREEMENT	20
7.1. Coordinated Operations Agreement	20
ARTICLE 8 OPERATING ACCOUNT	20
8.1. Calculation of Estimated Monthly Project Cost	20
8.2. Operating Account.....	20
ARTICLE 9 BILLING	21
9.1. Monthly Costs.....	21
9.2. Billing Statements.....	21
9.3. Disputed Monthly Billing Statement	22
9.4. Payment Adjustments; Billing Errors	22
9.5. Payment of Invoice Amount	22
9.1. Deduction of Invoice Amount from Operating Account	22
9.7. Late Payments.....	22

ARTICLE 10 UNCONDITIONAL PAYMENT OBLIGATIONS; AUTHORIZATIONS; CONFLICTS; LITIGATION	23
10.1. Unconditional Payment Obligation	23
10.2. Authorizations	23
10.3. Conflicts	23
10.4. Litigation	23
10.5. San José Clean Energy	23
10.6. CleanPowerSF	24
ARTICLE 11 RIGHTS AND OBLIGATIONS UNDER THE OFFTAKE AGREEMENT	24
11.1. CCP Rights and Obligations under the Offtake Agreement	24
ARTICLE 12 NONPERFORMANCE AND PAYMENT DEFAULT	25
12.1. Nonperformance by Project Participants	25
12.2. Payment Default	25
12.3. Payment Default Notice	25
12.4. Cured Payment Default	26
12.5. Suspension of Project Participant’s Project Revenue Rights and Treatment of Capacity Attributes	26
12.6. Termination and Disposal of Project Participant’s Project Rights	26
12.7. Step-Up Invoices	27
12.8. Step-Up Allocation of Project Participant’s Project Rights	28
12.9. Elimination or Reduction of Payment Obligations	30
ARTICLE 13 LIABILITY	30
13.1. Project Participants’ Obligations Several	30
13.2. No Liability of CCP or Project Participants	30
13.3. Extent of Exculpation; Enforcement of Rights	31
13.4. No General Liability of CCP	31
13.5. Indemnification	31
ARTICLE 14 NOTICES	31
14.1. Addresses for the Delivery of Notices	31
14.2. Acceptable Means of Delivering Notice	31
ARTICLE 15 ASSIGNMENT	32
15.1. General Prohibition on Assignments	32
ARTICLE 16 GOVERNING LAW AND DISPUTE RESOLUTION	32
16.1. Governing Law	32
16.2. Dispute Resolution	32
ARTICLE 17 MISCELLANEOUS	32
17.1. Entire Agreement; Integration; Exhibits	33
17.2. Amendments	33

17.3. No Waiver	33
17.4. Severability	33
17.5. Counterparts.....	33
17.6. Electronic Delivery	33
17.7. Binding Effect.....	33
17.8. Forward Contract	33
17.9. City of San Francisco Standard Provisions.....	34
17.10. City of San José Standard Provisions.	35
17.11. Further Assurances.....	36
EXHIBIT A NOTICES.....	1
EXHIBIT B SCHEDULE OF PROJECT PARTICIPANT ENTITLEMENT SHARES AND STEP-UP ALLOCATION CAPS	1
EXHIBIT C PROCEDURE FOR VOLUNTARY REDUCTION OF PROJECT PARTICIPANT’S ENTITLEMENT SHARE	1
EXHIBIT D COORDINATED OPERATIONS AGREEMENT	1

**WILLOW ROCK ENERGY STORAGE CENTER
PROJECT PARTICIPATION SHARE AGREEMENT**

PREAMBLE

This Project Participation Share Agreement (“**Agreement**”) is entered into as of [**DATE**] (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 Authority, a California joint powers authority, Redwood Coast Energy Authority, a California joint powers authority, City of San José, a California municipal corporation administering San José Clean Energy, Silicon Valley Clean Energy, 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 wholesale energy market products of the Willow Rock Energy Storage Center (the “**Project**” as defined in Exhibit A of the Offtake Agreement), and CCP is to enter into a Resource Adequacy plus TB4 Agreement (“**Offtake Agreement**”), which is incorporated herein by this reference, with GEM A-CAES LLC, a Delaware limited liability company (“**Project Developer**”), providing for purchase of the wholesale energy market products, and associated rights, benefits, and credits from the Project on behalf of the Project Participants; and

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

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

ARTICLE 1

DEFINITIONS

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

“AC” means alternating current.

“Affiliate” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

“Alternate Normal Vote” has the meaning set forth in Exhibit D, Section 3.5.3.

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

“Annual Budget” means the budget recommended by the CCP Manager and adopted by the CCP Board pursuant to Section 5.1(c) of this Agreement for the operating costs associated with CCP’s administration 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 Offtake Agreement, as executed by such Project Participant, countersigned by CCP, and delivered to the Project Developer.

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

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

“CAISO 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.

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

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

“CCP Manager” means the General Manager of California Community Power or any person who is designated by the CCP Board to act in the capacity of the General Manager.

“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.

“Chair” has the meaning set forth in Exhibit D, Section 3.3.1.

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

“Charging Energy” has the meaning set forth in Section 1.1 of the Offtake Agreement.

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

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

“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 Offtake Agreement.

“Construction Delay Damages” has the meaning set forth in Section 1.1 of the Offtake Agreement.

“Construction Start Date” has the meaning set forth in Exhibit B of the Offtake Agreement.

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

“Contract Term” has the meaning set forth in Section 2.1 of the Offtake Agreement.

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

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

“Costs” means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant’s Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Project Participant in terminating any arrangement pursuant

to which it has hedged its obligations; and all reasonable attorneys' fees and expenses incurred by the Project Participant in connection with the Step-Up Allocation.

"CPUC" means the California Public Utilities Commission, or successor entity.

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

"Damage Payment" means the amount to be paid by the Offtake Agreement Defaulting Party to the Offtake Agreement 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 Offtake Agreement.

"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 Offtake Agreement beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of the Offtake Agreement.

"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 Offtake Agreement.

"Discharging Energy" has the meaning set forth in Section 1.1 of the Offtake Agreement.

"Effective Date" has the meaning set forth in the Preamble.

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

"Energy Settlement Revenues" has the meaning set forth in Section 1.1 of the Offtake Agreement.

"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.

"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 Offtake Agreement.

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

“Facility Meter” has the meaning set forth in Section 1.1 of the Offtake Agreement.

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

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

“Fiscal Year” means CCP’s fiscal year as determined by the CCP Board.

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

“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 Offtake Agreement, 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 Capacity Attributes.

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

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

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

“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 Offtake Agreement 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 Offtake Agreement.

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

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

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

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

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

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

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

“Lead Point Person” has the meaning set forth in Exhibit D, Section 2.1.

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

“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 Offtake Agreement, 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 Offtake Agreement and must include the value of Capacity Attributes.

“Month” means a calendar month.

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

“Monthly Energy Settlement Amount” has the meaning set forth in Exhibit C of the Offtake Agreement.

“Monthly Product Payment” means the Monthly Capacity 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 Offtake Agreement.

“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.

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

“Normal Vote” has the meaning set forth in Exhibit D, Section 3.5.

“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).

“Offtake Agreement” means the agreement between CCP and Project Developer for the purchase of wholesale energy market products of the Willow Rock Energy Storage Center, executed on **[Offtake Agreement Effective Date]**.

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

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

“Operating Account” means an internal accounting mechanism utilized by CCP to track the amounts paid by and owed to each individual Project Participant pursuant to the terms of this Agreement.

“Operations Advisory Subcommittee” has the meaning set forth in Exhibit D, Section 3.1.

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

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

“Permitted Transferee” has the meaning set forth in Section 1.1 of the Offtake Agreement.

“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” 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 Offtake Agreement.

“Project” shall be broadly construed to entail the aggregate of rights, liabilities, interests, and obligations of CCP pursuant to the Offtake Agreement, 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 Offtake Agreement and the rights, liabilities, interests and obligations associated therewith.

“Project Developer” means GEM A-CAES LLC, a Delaware limited liability company, or assignee as permitted under the Offtake Agreement.

“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 owed to CCP associated with the Facility, including the Monthly Energy Settlement Amount.

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

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

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

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

“RA Deficiency Amount” has the meaning set forth in Exhibit C of the Offtake Agreement.

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

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

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

“Resource Adequacy Benefits” has the meaning set forth in Section 1.1 of the Offtake Agreement.

“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 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, 21-06-029, 21-06-035, 21-07-014, 22-03-034, 22-06-050, 23-04-010, 23-06-029, 24-06-040, 24-12-003, 25-06-048 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.

“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 the Facility’s Energy to and from 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.

“Site” has the meaning set forth in Section 1.1 of the Offtake Agreement, as further described in Exhibit A of the Offtake Agreement.

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

“Step-Up Invoice” means an invoice sent to a Non-Defaulting Project Participant as a result of a Defaulting Project Participant’s Payment Default, which invoice shall separately identify any amount owed with respect to the monthly Billing Statement of the Defaulting Project Participant, as the case may be, pursuant to Section 12.7.

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

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

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

“Term” has the meaning set forth in Section 2.1(a).

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

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

“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.

“Uncontrollable Forces” means any Force Majeure event and any cause beyond the control of any Party, which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, epidemic or pandemic (excluding impacts of the disease designated COVID-19 or the related virus designated SARS-CoV-2 impacts actually known by the Party claiming the Force Majeure Event as of the

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

“Vice Chair” has the meaning set forth in Exhibit D, Section 3.3.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) in the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Offtake Agreement 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 Offtake Agreement, (ii) the termination of the Buyer Liability Pass Through Agreements 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 Capacity Attributes associated with the Facility and any Replacement RA and Energy Settlement Revenues provided pursuant to the Offtake Agreement (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 Capacity Attributes to such Project Participant. CCP shall cause Project Developer to deliver any amounts owed to CCP associated with the Offtake Agreement, including the Monthly Energy Settlement Amount, RA Deficiency Amount, Construction Delay Damages, Commercial Operation Delay Damages, Capacity Damages, or any amounts otherwise owed to CCP pursuant to the Offtake Agreement. CCP shall administer the Offtake Agreement and oversee the Project Developer's development and 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 Shares 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 Product Payments, Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts under the Offtake Agreement.

ARTICLE 5 **OBLIGATIONS OF CCP AND ROLE OF CCP BOARD**

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 CCP or the CCP Board deems to be in the Project Participants' best interests. To the extent not inconsistent with the Offtake Agreement or other applicable agreements, CCP may also be authorized by the Project Participants to assume any responsibilities in relation to the Project necessary 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 Offtake Agreement, CCP shall also provide such other services, as may be deemed necessary by CCP or the CCP Board to secure the benefits and/or satisfy the obligations associated with the Offtake Agreement.

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

(i) The CCP Manager will prepare a proposed Annual Budget at least ninety (90) days prior to the beginning of each Fiscal Year during the Term of this Agreement. The proposed Annual Budget shall be based on the prior Fiscal Year's actual costs, as applicable, and shall include reasonable estimates of the costs CCP expects to incur during the applicable Fiscal Year in association with the administration of the Offtake Agreement. 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 Fiscal Year and shall cause copies of such adopted Annual Budget to be delivered to each Project Participant.

(A) For operating costs not otherwise collected through Articles 8 and 9 incurred prior to the Commercial Operation Date and which are approved by the CCP Board, including costs related to administering the Offtake Agreement, overseeing the development and CAISO integration of the Project, and other costs that are determined to be attributable to the Project by action of the CCP Board, shall be invoiced to each Project Participant based on their Project Entitlement Share.

(ii) At any time after the adoption of the Annual Budget for a Fiscal Year, the CCP Manager may prepare a proposed Amended Annual Budget for and applicable to the remainder of such Fiscal 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. 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 Fiscal 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. If CCP incurred any material costs to provide services that were deemed necessary pursuant to Section 5.1(b), the variance report shall identify the costs and describe the services provided.

(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 Fiscal 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 administration, financing, refinancing, operation, scheduling, maintenance, attribute transfer, settlement, compliance reporting, and other 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) [Reserved].

(g) Deposit of Insurance Proceeds. CCP shall promptly attribute any insurance proceeds received by CCP from any insurance obtained pursuant to this Agreement or otherwise associated with the Project to 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 Offtake Agreement or each Project Participant's respective BLPTA, by the Project Developer shall be attributed on a pro rata share, based on each Project Participant's Entitlement Share, to each Project Participant's Operating Account. Liquidated Damages include, but are not limited to Construction Delay Damages, Commercial Operation Delay Damages, Capacity Damages, Damage Payment, and Termination Payment.

(i) [Reserved].

(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 or administration of the Project, and the Project Participant shall not make a representation to the third party that the resale conveys any rights or authority over the operation of the Project.

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

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

(l) Insurance. As 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) 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) 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 Two Million Dollars (\$2,000,000) per claim, and an annual aggregate of not less than Two Million Dollars (\$2,000,000) and CCP shall maintain such coverage for at least two (2) years from the termination of this Agreement.

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

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

5.2. Role of CCP Board.

(a) The rights and obligations of CCP under the Offtake Agreement 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 duties and responsibilities listed below, among others. The actions identified in Section 5.2(a)(ii) through (a)(ix) shall require CCP Board approval.

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

(iii) [Reserved].

(iv) [Reserved].

(v) Budgeting. Upon the submission of a proposed Annual Budget or proposed Amended Annual Budget, 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 Offtake Agreement. The CCP Board shall review, modify, and approve the recommendations of the CCP Manager, made pursuant to Section 6.2(b) of this Agreement, as to an early termination of the Offtake Agreement pursuant to Section 11.2 of the Offtake Agreement.

(vii) Assignment by Project Developer. The CCP Board shall review, modify, and approve the recommendations of the CCP Manager, made pursuant to Section 6.2(c) of this Agreement, as to any assignment by Project Developer pursuant to Section 14.1 of the Offtake Agreement other than any assignment pursuant to Sections 14.2 or 14.3 of the Offtake Agreement.

(viii) Buyer Financing Assignment. The CCP Board shall review, modify, and approve the recommendations of the CCP Manager, made pursuant to Section 6.2(d) of this Agreement, as to an assignment by CCP to a financing entity pursuant to Section 14.5 of the Offtake Agreement.

(ix) Change of Control. The CCP Board shall review, modify, and approve the recommendations of the CCP Manager, made pursuant to Section 6.2(e) of this Agreement, as to any Change of Control requiring CCP's consent, as specified in Section 14.1 of the Offtake Agreement.

(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 CCP Manager or which is specified as being within the authority of the CCP Manager 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 CCP Manager as may be provided for under this Agreement and under the Offtake Agreement, or as may otherwise be appropriate.

(xii) Periodic Audits. The CCP Board or the CCP Manager 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 and the Project Developer, to the extent authorized under the Offtake Agreement, and such audit shall be completed and submitted to the CCP Board as soon as reasonably practicable after the close of the Fiscal 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 Offtake Agreement.

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

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

(ii) Voting. Each CCP Board member that represents a Project Participant shall have one vote for any matter identified in this Agreement. Any CCP Board member representing a CCP member that is not a Project Participant shall abstain from voting on any matter identified in this Agreement. A vote of the majority of the CCP Board members representing Project Participants that are in attendance shall be sufficient to constitute action, provided a quorum is established and maintained.

ARTICLE 6

ROLE AND RESPONSIBILITIES OF CCP MANAGER

6.1. Role of CCP Manager. The CCP Manager shall take all actions necessary to ensure that CCP fulfills its obligations under this Agreement, including the obligations set forth in Section 5.1. The CCP Manager is authorized to take any action that CCP is authorized to take, except those actions that expressly require CCP Board approval. In addition to any duties or

responsibilities set forth elsewhere in this Agreement, the CCP Manager is directed to do the following:

(a) Consult with the Project Participants with respect to the ongoing administration of the Project, including through the formation of advisory subcommittees.

(b) Oversee, as appropriate, the completion of any Project-related contract negotiation, contract administration, CAISO integration, attribute and revenue transfers, settlements, preparation of compliance reporting, and dispute resolution.

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

(d) Review, validate, dispute, approve and timely pay, as appropriate, each invoice submitted by Project Developer.

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

(f) Review Progress Reports provided by Project Developer to CCP pursuant to Section 2.3 of the Offtake Agreement and participate in any associated meetings with Project Developer to discuss development and construction progress. If Project Developer provides a Progress Report to CCP, the CCP Manager shall promptly provide such Progress Report to each Project Participant. The CCP Manager shall promptly notify the Project Participants upon receiving a Progress Report from the Project Developer that identifies a delay to the Construction Start Date or Commercial Operation Date.

(g) Take any necessary actions or implement such measures as may be necessary to facilitate the transfer of Resource Adequacy Benefits from the Project Developer to the Project Participants.

(h) Perform such other functions and duties as may be provided for under this Agreement, the Offtake Agreement, or as may otherwise be appropriate or beneficial to the Project or the Project Participants, unless such action requires CCP Board approval pursuant to this Agreement.

6.2. CCP Manager Recommendations to the CCP Board.

(a) Budgeting. Recommend each proposed Annual Budget and proposed Amended Annual Budget for submission to the CCP Board for final approval.

(b) Early Termination of Offtake Agreement. Recommend to the CCP Board regarding an early termination of the Offtake Agreement pursuant to Section 11.2 of the Offtake Agreement.

(c) Assignment by Project Developer. Recommend to the CCP Board any proposed assignment by Project Developer pursuant to Section 14.1 of the Offtake Agreement other than any assignment pursuant to Sections 14.2 or 14.3 of the Offtake Agreement.

(d) Buyer Financing Assignment. Recommend to the CCP Board an assignment by CCP to a financing entity pursuant to Section 14.5 of the Offtake Agreement.

(e) Change of Control. Recommend to the CCP Board any Change of Control requiring CCP's consent, as specified in Section 14.1 of the Offtake Agreement.

6.3. CCP Manager Report to CCP Board on Actions relating to the Offtake Agreement or the Project. The CCP Manager shall report to the CCP Board on the occurrence of any of the following actions taken by the CCP Manager. Such report may be written or oral and shall be provided at the next CCP Board Meeting occurring within a reasonable amount of time after the action was taken. Any information included as part of such report may be provided by the CCP Manager in a manner that maintains the confidentiality of such information, as reasonably determined to be necessary by the CCP Manager.

(a) Confirmation by the CCP Manager that the requirements of Exhibit B of the Offtake Agreement have been satisfied, such that the Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date has been achieved or extended.

(b) Any exercise of CCP's rights under the Offtake Agreement if an Event of Default has occurred under Section 11.1 of the Offtake Agreement.

(c) The approval or modification of 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 Offtake Agreement, 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.

(d) The approval of any Remedial Action Plan submitted by Project Developer to CCP pursuant to Section 2.4 of the Offtake Agreement.

(e) The written acknowledgement by CCP of the occurrence of the Commercial Operation Date in accordance with Section 2.2 of the Offtake Agreement.

(f) The approval of the return of the Development Security to Project Developer in accordance with Section 8.7 of the Offtake Agreement.

(g) The approval of the return of any unused Performance Security to Project Developer in accordance with Section 8.8 of the Offtake Agreement.

(h) The collection of any liquidated damages owed by Project Developer to CCP under the Offtake Agreement, or any draw upon the Development Security or Performance Security.

6.4. Subcommittees. The CCP Manager may establish as needed subcommittees including, but not limited to, contract management, 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 Offtake Agreement or this Agreement.

(a) Project Participant Expenses. Any expenses incurred by any representative of any Project Participant or group of Project Participants serving on any subcommittee in connection with their duties on such subcommittee shall be the responsibility of the Project Participant which they represent and shall not be an expense payable under this Agreement.

6.5. 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 Offtake Agreement, in appropriate cases, duties and responsibilities of the CCP Board, 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

COORDINATED OPERATIONS AGREEMENT

7.1. Coordinated Operations Agreement. The Project Participants hereby establish and agree to a Coordinated Operations Agreement by and among CCP and all Project Participants for purposes of operating the Project as set forth in Exhibit D of this Agreement, which shall be construed in accordance with the terms of this Agreement.

ARTICLE 8

OPERATING ACCOUNT

8.1. Calculation of Estimated Monthly Project Cost. No later than ninety (90) days prior to the start of the Fiscal Year in which the Commercial Operation Date is expected to occur, the CCP Manager shall present to the Project Participants a proposed “**Estimated Monthly Project Cost**”, which shall be equal to a forecast of expected Monthly Product Payments over an entire Contract Year, divided by twelve (12). The Project Participants shall review, and, if appropriate, recommend approval of, or modification to the proposed Estimated Monthly Project Cost.

8.2. Operating Account. CCP shall establish an Operating Account for each Project Participant. Such Operating Accounts are for the purpose of internally tracking the amounts paid by each Project Participant, any amounts owed to a Project Participant, Project Participant's Monthly Costs, and any balances held within the Operating Account.

(a) Operating Account Amount. The Operating Account Amount for each Project Participant shall be an amount equal to the product of (i) the Estimated Monthly Project

Cost (\$/month), (ii) three (3) (months), and (iii) such Project Participant's Entitlement Share (%) ("**Operating Account Amount**").

(b) **Initial Funding of Operating Account.** By no later than ninety (90) days prior to the expected Commercial Operation Date, each Project Participant shall pay to CCP an amount equal to that Project Participant's Operating Account Amount.

(c) **Recalculation of Operating Account Amount.** Upon the occurrence of any change in Entitlement Share of any Project Participant pursuant to any provision of or amendment to this Agreement, the Operating Account Amounts of all Project Participants shall be recalculated consistent with this Section 8.2. By no later than thirty (30) days after the effective date of such change in Entitlement Share, any Project Participant that has an increase in the Operating Account Amount must pay to CCP an additional amount sufficient to comply with the recalculated Operating Account Amount. If a Project Participant's Operating Account Amount is reduced, CCP will issue a refund of the excess amount to the Project Participant within five (5) Business Days of the date on which all Project Participants with an increased Entitlement Share have paid to CCP the necessary amounts to meet their increased Operating Account Amounts.

(d) **Use of Operating Account.** CCP may utilize the funds attributed to each Project Participant's Operating Account each month in an amount equal to the Monthly Costs multiplied by such Project Participant's Entitlement Share.

(e) **Final Distribution of Operating Account.** Following the expiration or earlier termination of the Offtake Agreement, 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 Offtake Agreement, any amounts then remaining in any Project Participant's Operating Account shall be paid to the associated Project Participant.

ARTICLE 9

BILLING

9.1. **Monthly Costs.** The amount of a Project Participant's Monthly Costs for a particular Month shall be the product of (a) the Project Participant's Entitlement Share multiplied by (b) the sum of (i) the actual Monthly Product Payments for such Month plus (ii) the Operating Cost for such Month minus (iii) the positive revenue associated with the Monthly Energy Settlement Amount minus (iv) any RA Deficiency Amount, as shown in the following formula:

Project Participant's Monthly Cost = (Project Participant's Entitlement Share) × [(Monthly Product Payments) + (Operating Costs) – (Monthly Energy Settlement Amount) – (RA Deficiency Amount)]

9.2. **Billing Statements.** By no later than ten (10) calendar days after CCP receives an invoice from Project Developer for the prior Month during the Delivery Term pursuant to Section 8.1 of the Offtake Agreement, 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 attribute the difference between such correct amount and such full amount, if any, including interest at the rate received by CCP on any overpayment to such 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 pay the Invoice Amount for the applicable Month to CCP 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 pay the Invoice Amount for the applicable Month by no later than thirty (30) days after the date on which CCP issues the Billing Statement to the Project Participant.

9.6. Deduction of Invoice Amount from Operating Account. After CCP issues a Billing Statement to a Project Participant or a Step-Up Invoice to a Project Participant, CCP shall deduct 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 add such funds to the Operating Account of that Project Participant.

9.7. Late Payments.

(a) If any Project Participant fails to pay the Invoice Amount to CCP 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 pay the Invoice Amount to CCP 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 (i) the Invoice Amount minus any partial payment multiplied by (ii) the Interest Rate specified in Section 8.2 of the Offtake Agreement for the period from the deadline specified in Section 9.5 until the date on which the Project Participant pays the Invoice Amount plus the Late Payment Charge. Upon payment, CCP shall withdraw the full amount of such Late Payment Charge from the Project Participant's Operating Account and attribute any such Late Payment Charge to 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 Product Payment shall be limited to the amount of Monthly Product Payment charged by the Project Developer to CCP and paid by CCP to the Project Developer.

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

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

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

10.5. San José Clean Energy.

(a) The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing

in the Agreement shall constitute an obligation of future legislative bodies of the City of San José to appropriate funds for purposes of the Agreement; provided, however, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) (“**Designated Fund**”) for payment of its obligations under this Agreement.

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

10.6. **CleanPowerSF.** With regard to CleanPowerSF only, (1) obligations under this Agreement are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF, and shall not be a charge upon the revenues or general fund of the San Francisco Public Utilities Commission or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the San Francisco Public Utilities Commission or the City and County of San Francisco, (2) cannot exceed the amount certified by the San Francisco City Controller for the purpose and period stated in such certification, and (3) absent an authorized emergency per the San Francisco City Charter or Code, no San Francisco City representative is authorized to offer or promise, nor is San Francisco required to honor, any offered or promised payments under this Agreement for work beyond the agreed upon scope or in excess of the certified maximum amount without the San Francisco City Controller having first certified the additional promised amount.

ARTICLE 11

RIGHTS AND OBLIGATIONS UNDER THE OFFTAKE AGREEMENT

11.1. **CCP Rights and Obligations under the Offtake Agreement.** 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, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges for which CCP is responsible under the Offtake Agreement shall be considered purchase costs, operating costs, energy costs, capacity costs, Facility 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 Offtake Agreement in a commercially reasonable manner; (v) all remedies provided to CCP pursuant to the Offtake Agreement shall be provided to Project Participants in accordance with Section 5.1(h); and (vi) any Force Majeure under the Offtake Agreement or other event of force majeure affecting the delivery of Product pursuant to applicable provisions of the Offtake Agreement 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 Offtake Agreement 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 Offtake Agreement (“**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 pay the Invoice Amount by the deadline specified in Section 9.5, and if such Participant has not paid the Invoice Amount plus the Late Payment Charge 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 pay to CCP the full amount of any unpaid Invoice Amounts and any associated Late Payment Penalties.

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

(a) 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 Monthly Energy Settlement Amount shall be attributed by CCP to the Step-Up Reserve Account, as specified in Section 12.7.

(b) For any Month where there are funds remaining in a Defaulting Project Participant's Operating Account, CCP shall withdraw the Invoice Amount from such Defaulting Project Participant's Operating Account and shall cause the delivery of the Defaulting Project Participant's Entitlement Share of the Capacity Attributes associated with the Facility that have already been included on a RA Compliance Showing or otherwise provided for pursuant to the Offtake Agreement prior to the Payment Default and shall pass through any RA Deficiency Amounts associated with such RA Compliance Showing(s) to the Defaulting Project Participant. From the date of the Payment Default, the Defaulting Project Participant shall not be entitled to count any Capacity Attributes on any new RA Compliance Showing(s) until such Payment Default has been cured. From the date of the Payment Default until the completion of a Step-Up Allocation as set forth in Section 12.8, Defaulting Project Participant's Entitlement Share of the Capacity Attributes and any associated RA Deficiency Amounts 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 difference of the entire project minus the Entitlement Share of the Defaulting Project Participant for purposes of any RA Compliance Showing occurring during such period.

(c) During the period following the occurrence of a Payment Default and until such Payment Default has been cured or a Step-Up Allocation has taken place, Defaulting Project Participant shall be entitled to its pro-rata Entitlement Share of any Damage Payment or Termination Payment owed to Project Participants by Seller.

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 Offtake Agreement. 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 pay the Step-Up Invoice Amount 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 deduct the amount of the Step-Up Invoice from each Project Participant's Operating Account and attribute such funds to a separate tracking account ("**Step-Up Reserve Account**"), which shall be accessible only by CCP, and which CCP may in its sole discretion deduct from in order to ensure that CCP can meet the payment obligations of the Offtake Agreement. CCP first shall deduct all funds from a Defaulting Project Participant's Operating Account before deducting funds from the Step-Up Reserve Account.

(ii) Application of Moneys Received from a Defaulting Project Participant. If a Defaulting Project Participant cures a Payment Default on or before the Payment Default Termination Deadline, any funds remaining in the Step-Up Reserve Account shall be attributed to 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 or the Defaulting Project Participant's Operating Account shall be attributed to 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 for each Non-Defaulting Project Participant. If any Non-Defaulting Project Participant has not paid the full amount of its share of the Step-Up Invoice Amount to CCP 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 paid to CCP the full amount of its Step-Up Invoice Amount and the Late Payment Charge.

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

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

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

(c) Voluntary Allocation of Project Rights in Excess of the Step-Up Allocation Caps. If the allocation of a Defaulting Project Participant's Entitlement Share pursuant to Section 12.8(b) would cause any Non-Defaulting Project Participant's Entitlement Share to exceed its Step-Up Allocation Cap, then no allocation shall occur pursuant to Section 12.8(b). In such case, the CCP Manager shall oversee the offering of the total amount of the Defaulting Project Participant's Entitlement Share to the Non-Defaulting Project Participants on a voluntary basis. The initial offering shall be to each Non-Defaulting Project Participant on a pro rata share, based on such Non-Defaulting Project Participant's Entitlement Share. Each Project Participant may

accept or reject the portion of the Defaulting Project Participant's Entitlement Share. If any portion of the Defaulting Project Participant's Entitlement Share remains unclaimed after the initial offering, then the remaining portion shall be offered to any Non-Defaulting Project Participant that accepted its full share of the Defaulting Project Participant's Entitlement Share in the initial offering on a pro rata share, based on such Non-Defaulting Project Participant's Entitlement Share as a percentage of the total Entitlement Shares of all Project Participants that are participating in the subsequent round of offerings. The CCP Manager shall conduct subsequent offering rounds until either the total amount of the Defaulting Project Participant's Entitlement Share is accepted by one or more of the Non-Defaulting Project Participants or some portion of the Defaulting Project Participant's Entitlement Share remains, but all Non-Defaulting Project Participants have rejected such remaining amount.

(d) Step-Up Allocation Damage Payment. A Defaulting Project Participant shall owe to each Non-Defaulting Project Participant that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c) a **"Step-Up Allocation Damage Payment"** equal to the Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Project Participant's Costs and Losses exceed its Gains, then the Step-Up Allocation Damage Payment shall be an amount owing to such Non-Defaulting Project Participant. If the Non-Defaulting Project Participant's Gains exceed its Costs and Losses, then the Step-Up Allocation Damage Payment shall be zero dollars (\$0). A Defaulting Project Participant shall not be entitled to any Step-Up Allocation Damage Payment or any other damages otherwise authorized under this Agreement from any other Project Participant. The Step-Up Allocation Damage Payment does not include consequential, incidental, punitive, exemplary, or indirect or business interruption damages. Each Non-Defaulting Project Participant that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c) shall calculate, in a commercially reasonable manner, the Step-Up Allocation Damage Payment for the Defaulting Project Participant's Entitlement Share assumed by the Non-Defaulting Project Participant as of the effective date of such Step-Up Allocation. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Defaulting Project Participant disputes the Non-Defaulting Project Participant's calculation of the Step-Up Allocation Damage Payment, in whole or in part, the Defaulting Project Participant shall, within five (5) Business Days of receipt of the Non-Defaulting Project Participant's calculation of the Step-Up Allocation Damage Payment, provide to the Non-Defaulting Project Participant a detailed written explanation of the basis for such dispute. Disputes regarding the Step-Up Allocation Damage Payment shall be determined in accordance with Article 16. Each Party agrees and acknowledges that (i) the actual damages that the other Project Participant would incur in connection with a Step-Up Allocation would be difficult or impossible to predict with certainty, (ii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is a reasonable and appropriate approximation of such damages, and (iii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is the exclusive remedy of a Project Participant in connection with a Step-Up Allocation pursuant to the process set forth in Sections 12.8(b) or 12.8(c) against a Defaulting Project Participant but shall not otherwise act to limit any of the Non-Defaulting Project Participant's rights or remedies under this Agreement.

(e) Remarketing of Unclaimed Defaulting Project Participant's Entitlement Share. If after the process set forth in Section 12.8(c), some portion of the Defaulting Project Participant's Entitlement Share remains unclaimed, the CCP Manager, in their discretion or as directed by the Non-Defaulting Project Participants, may take any action to generate revenue from such unclaimed Entitlement Share in order to meet CCP's payment obligation under the Offtake Agreement. 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 based 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 full disposal of all 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 be eliminated, provided, however, such Defaulting Project Participant remains a party to this Agreement and subject to any remaining obligations and/or liabilities other than payment obligations until such time as the parties to this Agreement execute an amendment to this Agreement that removes such Defaulting Project Participant.

ARTICLE 13

LIABILITY

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

13.2. No Liability of CCP or Project Participants. 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 Offtake Agreement. 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 Offtake Agreement. 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 Offtake Agreement.

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

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

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

ARTICLE 14

NOTICES

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

14.2. Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows:

(a) if sent by United States mail with proper first class postage prepaid, five (5) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail;

(b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier;

(c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5:00 pm, on the next Business Day; or

(d) if delivered in person, upon receipt by the receiving Party.

Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 15

ASSIGNMENT

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

ARTICLE 16

GOVERNING LAW AND DISPUTE RESOLUTION

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

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

ARTICLE 17

MISCELLANEOUS

17.1. Entire Agreement; Integration; Exhibits. This Agreement, together with the Exhibits attached hereto constitutes the entire agreement and understanding by and among the Parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting or execution hereof.

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

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

17.4. Severability. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

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

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

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

17.8. Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and that the Parties are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein

such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

17.9. City of San Francisco Standard Provisions.

(a) False Claims. Pursuant to San Francisco Administrative Code § 21.35, any Party to this Agreement who submits a false claim shall be liable to the City and County of San Francisco for the statutory penalties set forth in that section. A Party will be deemed to have submitted a false claim to the City and County of San Francisco if the Party: (i) 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; (ii) 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; (iii) 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; (iv) 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 (v) is a beneficiary of an inadvertent submission of a false claim to the City and County of San Francisco, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City and County of San Francisco within a reasonable time after discovery of the false claim.

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

(c) Non-discrimination Requirements.

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

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

(d) Consideration of Criminal History in Hiring and Employment Decisions. CCP agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment

Decisions,” of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to CCP’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(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:

(i) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth.

(ii) 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.

(iii) Failure of CCP to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

17.10. City of San José Standard Provisions.

(a) Nondiscrimination/Non-Preference. The Parties shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. The Parties will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Parties from providing a reasonable accommodation to a person with a disability; (ii) the City of San José’s Compliance Officer may require the Parties to file, and cause any Party’s subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City’s Compliance Officer designates. They shall contain such information, data and/or records as the City’s Compliance Officer determines is needed to show

compliance with this provision.

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

(c) Environmentally Preferable Procurement Policy. Parties shall perform its obligations under this Agreement in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 17.10(c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle the City of San José to terminate this Agreement.

(d) Gifts Prohibited. The Parties represent that they are familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. The Parties shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. A Party's violation of this Section 17.10(d) is a material breach.

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

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

[Signatures on following page]

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

California Community Power By: Name: <u>Alexander Morris</u> Title: <u>General Manager</u> Approved as to form by Counsel By: Name: <u>Joshua Nelson</u> Title: <u>General Counsel</u>	CleanPowerSF By: Name: <u>Dennis J. Herrera</u> Title: <u>General Manager, San Francisco Public Utilities Commission</u> Approved as to form by Counsel By: Name: <u>Sushil Jacob</u> Title: <u>Deputy City Attorney</u>
Peninsula Clean Energy Authority By: Name: <u>Shawn Marshall</u> Title: <u>Chief Executive Officer</u>	Redwood Coast Energy Authority By: Name: <u>Elizabeth Burks</u> Title: <u>Executive Director</u>
San José Clean Energy By: Name: <u>Lori Mitchell</u> Title: <u>Director of San José Clean Energy</u> Approved as to form by Counsel By: Name: <u>William Charley</u> Title: <u>Senior Deputy City Attorney</u>	Silicon Valley Clean Energy By: Name: <u>Monica Padilla</u> Title: <u>Chief Executive Officer</u> Approved as to form by Counsel By: Name: <u>Michael Callahan</u> Title: <u>General Counsel</u>

Valley Clean Energy By: Name: <u>Mitch Sears</u> Title: <u>Chief Executive Officer</u>	

EXHIBIT A
NOTICES

Party	<i>All Notices</i>	<i>Invoices</i>
California Community Power	[REDACTED]	[REDACTED]
CleanPowerSF	[REDACTED]	[REDACTED]
Peninsula Clean Energy	[REDACTED]	[REDACTED]
Redwood Coast Energy Authority	[REDACTED]	[REDACTED]

EXHIBIT B

SCHEDULE OF PROJECT PARTICIPANT ENTITLEMENT SHARES AND STEP-UP ALLOCATION CAPS

Dated: _____

A	B	C	D	E
Project Participant	Entitlement Share <i>As of Effective Date</i>	Entitlement Share <i>As Modified Pursuant to Section 4.2</i>	Entitlement Share <i>As Modified Pursuant to Section 12.8(b) or 12.8(c)</i>	Step-Up Allocation Cap <i>125% multiplied by Column B or C as applicable</i>
CleanPowerSF	23.00%			28.75%
Peninsula Clean Energy	30.00%			37.50%
Redwood Coast Energy Authority	6.20%			7.75%
San José Clean Energy	24.00%			30.00%
Silicon Valley Clean Energy	11.40%			14.25%
Valley Clean Energy	5.40%			6.75%
Total	100%			

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

EXHIBIT C

PROCEDURE FOR VOLUNTARY REDUCTION OF PROJECT PARTICIPANT'S ENTITLEMENT SHARE

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

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

(A) Establish Entitlement Share Reduction Compensation Amount. The CCP Manager shall secure at least one (1), but no more than three (3), valuations of the net present value of the Entitlement Share Reduction Amount over the remaining term of the Offtake Agreement 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 present the Proposed Entitlement Share Reduction Compensation Amount to the Project Participants. The Project Participants 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 Participants shall be the "**Entitlement Share Reduction Compensation Amount**." The Project Participant proposing to reduce its Entitlement Share may modify the quantity of the Entitlement Share Reduction Amount associated with its proposal or withdraw its proposal at any time prior to the initiation of the process set forth in paragraph (a)(i)(B).

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

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

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

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

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

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

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

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

EXHIBIT D

COORDINATED OPERATIONS AGREEMENT

1. AGREEMENT; TERM

- 1.1. Agreement. This Coordinated Operations Agreement establishes the structure for CCP to oversee the operations of the Project and for the Project Participants to advise CCP on the operation of the Project through the Operations Advisory Subcommittee.

2. LEAD POINT PERSON

- 2.1. Lead Point Person. The CCP Manager shall appoint a “**Lead Point Person**,” who shall be an employee of CCP with the responsibilities set forth herein.
- 2.2. Lead Point Person Responsibilities. In consultation with the Operations Advisory Subcommittee, the Lead Point Person shall be responsible for fulfilling the operational requirements of the Project Participation Share Agreement, the Offtake Agreement, and CCP policies, and developing the procedures, protocols, and strategies relating to the operations of the Project. Examples include, but are not limited to, the following tasks, as applicable:
- settlements;
 - after-the-fact analysis;
 - Project inspections and performance testing;
 - meter testing, calibration, and certification;
 - compliance, Project performance, and market operations reporting;
 - records management;
 - facilitation of Capacity Attribute or other Product delivery, certification, and (subject to individual Project Participants’ authorization for their Entitlement Share) resale;
 - and any other relevant operational activities relating to the Project.
- 2.3. Reporting. Commencing no later than twelve (12) months prior to the expected COD, the Lead Point Person shall provide regular reports, no less frequently than monthly, to the Operations Advisory Subcommittee regarding the status and performance of the Project and any actions taken by the Lead Point Person on a regular cadence, as requested by the Operations Advisory Subcommittee.
- 2.4. Calling and Leading Meeting. The Lead Point Person shall call and lead meetings of the Operations Advisory Subcommittee, shall coordinate the Operations Advisory Subcommittee meetings with the Chair and Vice Chair, and shall follow the guidance of the Operations Advisory Subcommittee and any Normal Votes or Alternate Normal Votes by the Operations Advisory Subcommittee in his or her management of the Project.

3. OPERATIONS ADVISORY SUBCOMMITTEE

- 3.1. Operations Advisory Subcommittee. The Project Participants shall form an “**Operations Advisory Subcommittee**” with the responsibilities set forth below to advise the Lead Point Person upon all actions reasonably necessary to ensure that the Project Participants may obtain the benefits of the Offtake Agreement in a manner consistent with the terms and conditions of the Offtake Agreement.
- 3.2. Operations Advisory Subcommittee Membership. The Operations Advisory Subcommittee shall consist of one representative from each Project Participant and the Lead Point Person. An alternate representative may attend all meetings of the Operations Advisory Subcommittee but may vote only if the representative for whom they serve as alternate is absent. The Lead Point Person may bring in additional CCP staff as needed to support the operations of and reporting on the status of the Project.
- 3.3. Operations Advisory Subcommittee Leadership.
- 3.3.1. The Project Participants shall on an annual basis elect through a Normal Vote of the Operations Advisory Subcommittee a “**Chair**” and “**Vice Chair**” from among the Project Participants to coordinate the Operations Advisory Subcommittee meetings with the Lead Point Person and provide more regular feedback and guidance to the Lead Point Person on the operation of the Project and management of the Operations Advisory Subcommittee.
- 3.3.2. The Chair and Vice Chair shall review and curate materials to be presented to the Operations Advisory Subcommittee by the Lead Point Person, as appropriate.
- 3.3.3. The Chair and Vice Chair roles shall each be subject to a continuous term limit of two (2) years and shall be representatives from different Project Participants.
- 3.4. Operations Advisory Subcommittee Responsibilities.
- 3.4.1. Unless otherwise agreed to by the Operations Advisory Subcommittee and Lead Point Person, the Operations Advisory Subcommittee shall meet no less than monthly to review the activities of and advise the Lead Point Person upon the development and implementation of the CCP policies, procedures, protocols, and strategies relating to the operations of the Project. At least one representative from each Project Participant and the Lead Point Person shall be present at each meeting.
- 3.4.2. To the extent a Project Participant is unable to attend a meeting, such Project Participant shall delegate his or her advisory vote.
- 3.4.3. Any Project Participant may call for a meeting of the Operations Advisory Subcommittee during normal business hours
- 3.5. Operations Advisory Subcommittee Voting Procedures. All advisory votes by the Project Participants within the Operations Advisory Subcommittee for any policies, procedures, protocols, and strategies relating to the operations of the Project, shall proceed pursuant to the “**Normal Vote**” process:

- 3.5.1. Quorum. No Normal Vote of the Operations Advisory Subcommittee shall be taken unless a representative is present or a vote is delegated for at least fifty percent (50%) of the total number of Project Participants; provided, however, that the Lead Point Person, Chair, and Vice Chair may call for a Normal Vote to be conducted by email, in which case at least fifty percent (50%) of the total number of Project Participants shall participate in the Normal Vote for a quorum to be met. For avoidance of doubt, the Lead Point Person shall not be a voting party, unless delegated a vote(s) by a Project Participant(s), pursuant to Exhibit D, Section 3.7.
- 3.5.2. Initial Normal Vote. All advisory guidance shall be informed by 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; provided, however, any representative of the Operations Advisory Subcommittee may request an Alternate Normal Vote.
- 3.5.3. Alternate Normal Vote. Any representative of the Operations Advisory Subcommittee 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, such Alternate Normal Vote shall replace and take precedence over any Normal Vote that may have been taken on the applicable matter. The following vote requirements shall apply to an Alternate Normal Vote:
- 3.5.3.1. If any individual Project Participant has an Entitlement Share exceeding fifty percent (50%), then all advisory guidance 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.
- 3.5.3.2. If no individual Project Participant has an Entitlement Share exceeding fifty percent (50%), then all advisory guidance 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
- 3.6. Inaction. If the Operations Advisory Subcommittee is unable or fails to agree with respect to any matter or dispute which it is authorized to advise upon or otherwise act upon after a reasonable opportunity to do so, then the Lead Point Person or CCP Manager shall notify the CCP Board of such matter or dispute, provided, however, the CCP Manager may take such action as, in their discretion, they determine is necessary for the timely performance of any requirement pursuant to the Offtake Agreement.
- 3.7. Delegation. Duties and responsibilities of the Operations Advisory Subcommittee may be delegated to any individual in the Operations Advisory Subcommittee, including the Lead Point Person, upon agreement according to a Normal Vote among the Project Participants. Any Project Participant may delegate its vote to the Lead Point Person or another Project Participant prior to any meeting by giving Notice to all of the Project Participants.

3.8. Role of CCP Board. The rights and obligations of the Operations Advisory Subcommittee, CCP Manager, and Lead Point Person under this Coordinated Operations Agreement shall be subject to the ultimate control at all times of the CCP Board.

EXHIBIT L

BUYER LIABILITY PASS THROUGH AGREEMENT

This Buyer Liability Pass Through Agreement (this “**BLPTA**”) is entered into as of **[Effective Date]** (the “**BLPTA Effective Date**”) by and between the **[Member Name]**, a California **[joint powers authority]** (together with its successors and permitted assigns “**Project Participant**”), California Community Power, a California joint powers authority (“**CC Power**”), and GEM A-CAES LLC, a Delaware limited liability company (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 Resource Adequacy and TB4 Agreement (as amended, restated or otherwise modified from time to time, the “**Offtake Agreement**”) dated as of **[Offtake Agreement Effective Date]**;

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

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

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 Offtake Agreement.

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 **[Project Participation Entitlement Share]%** (the “**Liability Share**”), as the same may be adjusted pursuant to Section 4, of all obligations and liabilities for payment now or hereafter owing from CC Power to Seller under the Offtake Agreement, 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 Offtake Agreement, a “**Guaranteed Amount**”). Any payment made directly from CC Power to Seller under the Offtake Agreement 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 Offtake Agreement, and such failure is not remedied within ten (10) Business Days after Notice thereof pursuant to Sections 11.1 or 11.4 of the Offtake Agreement, as applicable, Project Participant shall promptly pay Project Participant's Liability Share of the Guaranteed Amount, as required herein.

2. **Seller Waiver.** In consideration of the foregoing, Seller unconditionally waives all right to recover directly from CC Power any Damage Payment or Termination Payment that is not paid by CC Power pursuant to Sections 11.3 and 11.4 of the Offtake Agreement, but the foregoing waiver does not apply to any other right or remedy of Seller under the Offtake Agreement, including the right to recover accrued Monthly Capacity Payments, other amounts payable or reimbursable under the Offtake Agreement or any other amounts incurred or accrued prior to termination of the Offtake Agreement and the right to terminate the Offtake Agreement 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 Offtake Agreement 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 of the Offtake Agreement, as applicable. If CC Power fails to pay any amount when due pursuant to the Offtake Agreement, 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 S to the Offtake Agreement 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 Offtake Agreement, and an action may be brought to enforce this BLPTA whether or not action is brought against CC Power under the Offtake Agreement. 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 Offtake Agreement has expired or terminated early, and (b) either (i) all payment obligations of CC Power due and payable under the Offtake Agreement 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 Offtake Agreement;
- 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 Offtake Agreement imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding; or
 - (e) Any reorganization of CC Power or Project Participant, or any merger or consolidation of CC Power or Project Participant into or with any other Person; or
 - (f) The receipt, release, modification or waiver of, or failure to pursue or seek relief under or with respect to, any other BLPTA, guaranty, collateral, pledge or security device whatsoever; or
 - (g) CC Power's inability to pay any Guaranteed Amount or perform its obligations under the Offtake Agreement; 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 CC Power under the Offtake Agreement 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 Offtake Agreement 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 Offtake Agreement 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 Offtake Agreement 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. Project Participant agrees that, solely to the extent it is acting in its capacity as a Community Choice Aggregator, it will not claim governmental immunity to avoid its contractual obligations under this BLPTA. Project Participant agrees that the courts identified in Section 11 have jurisdiction to enforce this BLPTA. Notwithstanding the foregoing, any claims against Project Participant shall be filed in accordance with the California Government Claims Act (Cal. Gov't Code § 810 et. seq.), as applicable. Except as provided in the first sentence, Project Participant retains all other immunities and defenses against claims alleging its breach of this BLPTA.

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 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, (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 Seller), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Seller, and (f) Seller agrees that the courts identified in Section 11 have jurisdiction to enforce this BLPTA.

9. CC Power Representations and Warranties. CC 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 CC Power's organizational documents, any applicable Law or any contractual provisions binding on or affecting CC Power, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the CC Power, threatened, against or affecting CC Power or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of CC 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 CC Power), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by CC 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 10.

If delivered to Seller:

Attn: Jordan Cole, Chief Commercial Officer
333 Bay Street, Suite 520
Toronto, ON M5H 2R2, Canada
Phone: +1 (416) 409-8549

Email: jordan.cole@hydrostor.ca

If delivered to Project Participant:

[Project Participant Notice Provisions]

If delivered to CC Power:

Attn: General Manager California Community Power
901 H Street, Suite 120
PMB 157
Sacramento, CA 95814
Phone: 310-617-3441
amorris@cacommunitypower.org
with cc to: joshua.nelson@bbklaw.com

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 **[Sacramento] [San Francisco]**.

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 13, 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 Offtake

Agreement, 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 (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 (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 Offtake Agreement 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 ("**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 San Francisco for this BLPTA from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco.

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

(g) Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Seller does not as of the date of this BLPTA, and will not during the term of this BLPTA, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for San Francisco 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 San Francisco for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to San Francisco if the contractor or subcontractor: (1) knowingly

presents or causes to be presented to an officer or employee of San Francisco 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 San Francisco; (3) conspires to defraud San Francisco by getting a false claim allowed or paid by San Francisco; (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 San Francisco; or (5) is a beneficiary of an inadvertent submission of a false claim to San Francisco, subsequently discovers the falsity of the claim, and fails to disclose the false claim to San Francisco 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 San Francisco or on San Francisco 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 San Francisco. 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 San Francisco’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 San Francisco 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 San Francisco’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of San Francisco 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 San Francisco 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 San Francisco's 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 San Francisco's Environment Code, Seller shall not provide any items to San Francisco in performance of this BLPTA which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products; and (c) failure of Seller to comply with any of the requirements of Chapter 8 of San Francisco's 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 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 its agreements

including 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 of San José'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 of San José's Compliance Officer designates. They shall contain such information, data and/or records as the City of San José'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 (d) 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 17(e) 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.

[Signatures on following page]

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],
a California [joint powers authority]**

By: _____

Printed Name: _____

Title: _____

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

By: _____

Printed Name: _____

Title: _____

**GEM A-CAES LLC,
a Delaware limited liability company**

By: _____

Printed Name: _____

Title: _____

File# 26-0212 CleanPowerSF's Participation in the Willow Rock Long-Duration Energy Storage Project

April 8, 2026



15 MW Paulsell Storage Project



Summary

- In June 2021, the California Public Utilities Commission (CPUC) mandated that CPUC-jurisdictional power providers, including CleanPowerSF, procure long-duration energy storage (LDS) resources.
- In 2024, CleanPowerSF participated in a Request for Offers as a member of California Community Power (CC Power).
- The Willow Rock Energy Storage Center was selected by CC Power for a contract due to its high project viability and technology diversification benefits.
- The CC Power Board approved the Willow Rock Energy Storage Agreement (ESA) at its January 28th public meeting, and the Agreement was executed on February 4th.
- CC Power members now have 120 days after the ESA execution date to approve and execute the participation agreements.

147.5 MW Gonzaga Ridge Wind Farm

California Community Power or “CC Power”

- Established in February 2021 to leverage the combined buying power of Community Choice Aggregators (CCAs) for energy supply, programs and services.
- CleanPowerSF became a member in April 2021.
- Commission approved in Resolution No. 21-0023
- Board approved in Ordinance No. 25-21
- Currently 9 member CCAs
- CC Power conducts its business in open meetings – for more info visit:

<https://cacomunitypower.org/meetings/>



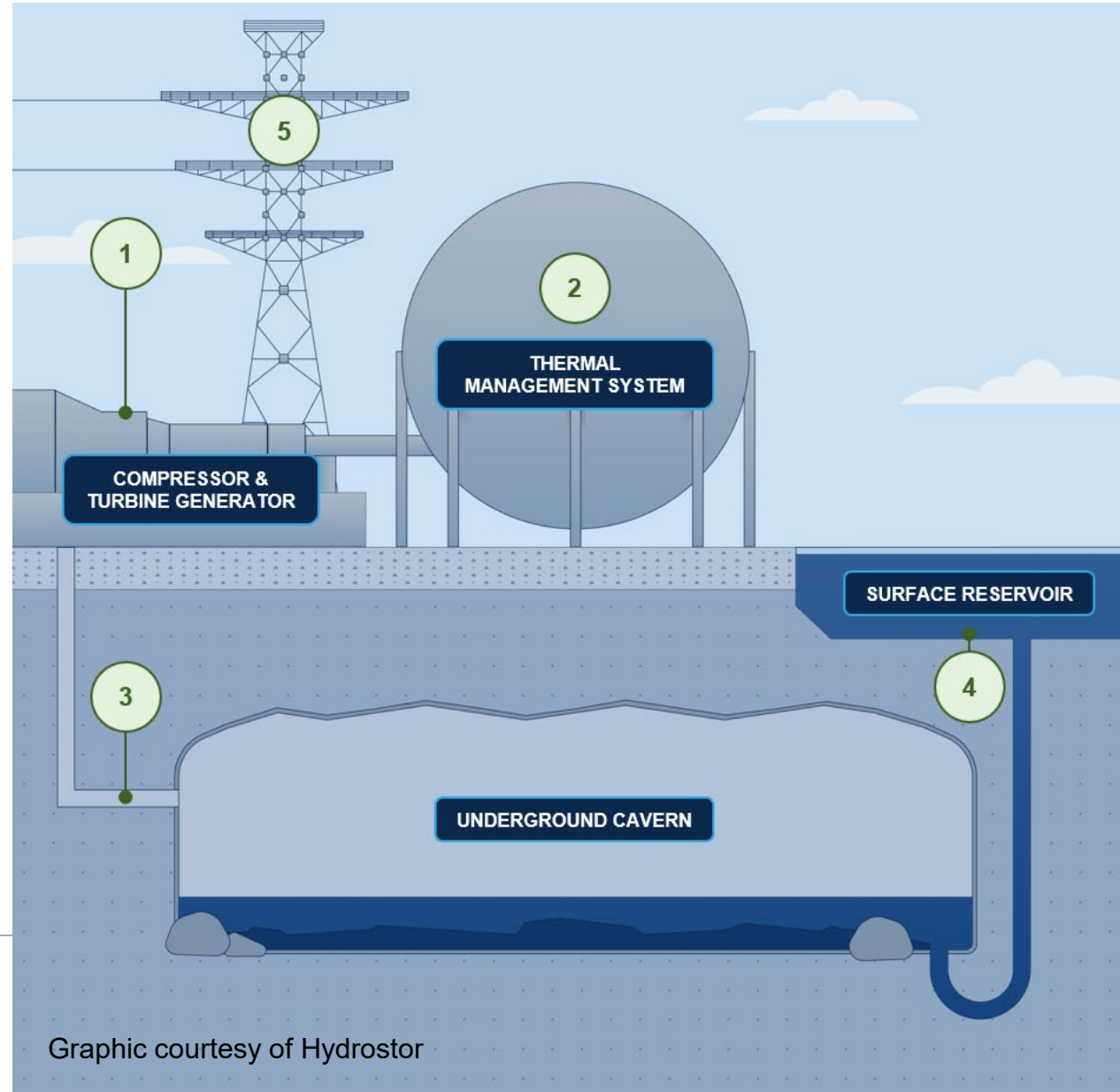


Illustration of Willow Rock Storage Center
Courtesy of Hydrostor

Willow Rock Energy Storage Center

- **Developer:** Hydrostor
- **Technology:** Advanced Compressed Air Energy Storage
- **Location:** Rosamond, CA
- **Product:** Resource Adequacy capacity and 8-hour energy storage services
- **Project size:** CC Power is contracting a 50 megawatt (MW) portion of 500 MW facility (CleanPowerSF share is 11.5 MW)
- **Contract term:** 20 years
- **Contract cost:** \$75,900,000
- **Commercial operation date:** July 2030 (expected)
- **Labor:** Project Labor Agreement
- **Community benefits:** \$2.1 million/year over 5 years to local causes

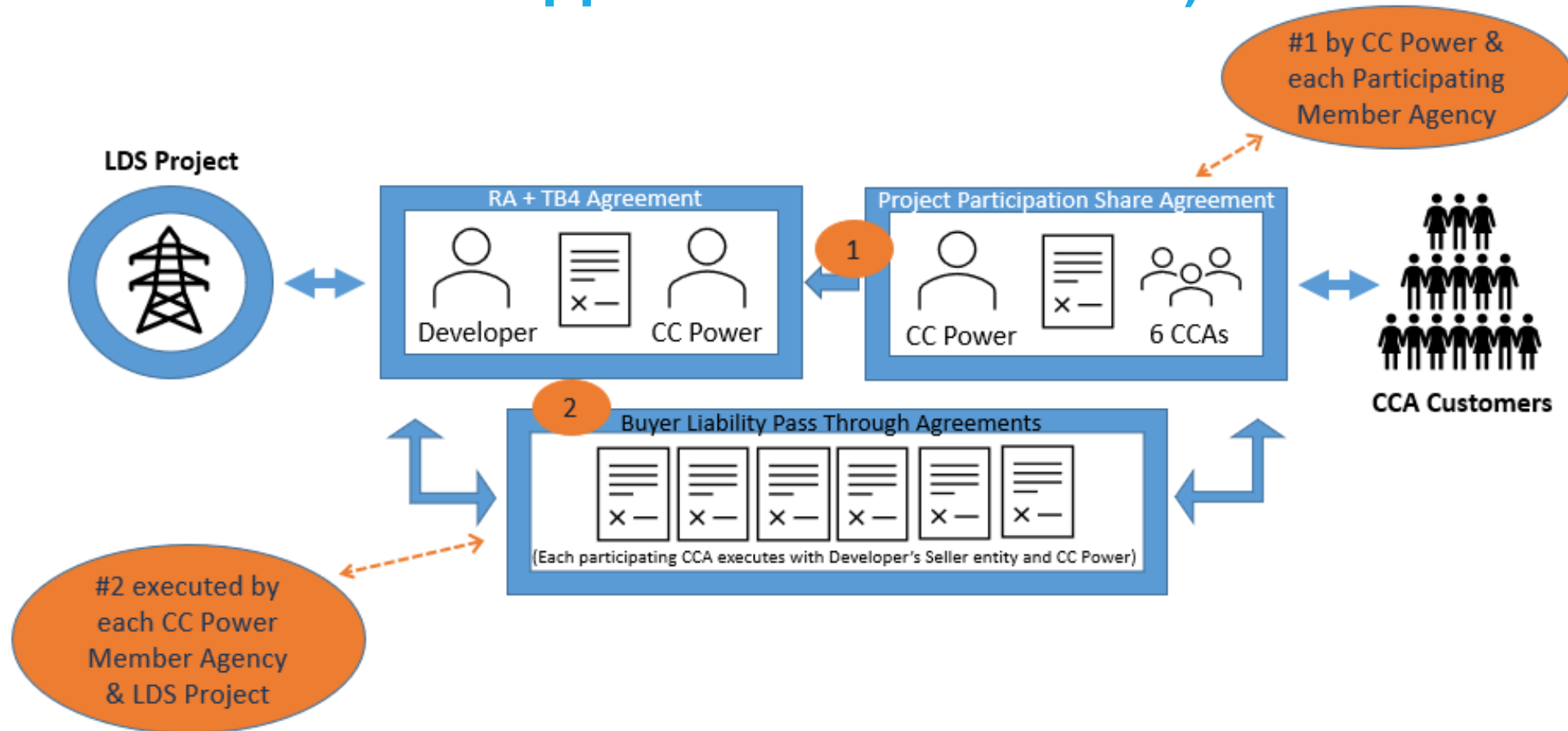
Advanced Compressed Air Energy Storage (A-CAES)



Graphic courtesy of Hydrostor

Project Agreement Structure

(2 documents to be approved for execution)





San Francisco
Water
Power
Sewer
Services of the San Francisco
Public Utilities Commission

CleanPowerSF

Thank you!

RESOURCE ADEQUACY AND TB4 AGREEMENT

COVER SHEET

Seller: GEM A-CAES LLC, a Delaware limited liability company ("**Seller**")

Buyer: California Community Power, a California joint powers authority ("**Buyer**")

Description of Facility: A 500 MW / 4,000 MWh compressed air energy storage facility, located in Kern County, in the State of California, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	Phase I: 1/25/2021 - Complete Phase II: 11/22/2021 - Complete
Full Capacity Deliverability Status obtained	3/18/2022 - Complete
Executed Interconnection Agreement	12/29/2023 - Complete
Evidence of Site Control	2/29/2024 - Complete
Documentation of Conditional Use Permit if required: [x] CEQA, [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [] EIR	12/31/2025 - Complete
Material Permits obtained	██████████
Financial Close	██████████
Guaranteed Construction Start Date	██████████
Major Equipment procured	██████████
Delivery Network Upgrades completed	██████████
Initial Synchronization	██████████
Expected Commercial Operation Date	██████████
Guaranteed Commercial Operation Date	12/31/2030

Delivery Term: Twenty (20) Contract Years

Guaranteed Contract Capacity: 50 MW-AC at eight (8) hours of continuous discharge (the “**Resource Duration**”)

Dedicated Interconnection Capacity: 500 MW

Guaranteed Efficiency Rate: [REDACTED]

Minimum Efficiency Rate: [REDACTED]

Contract Price:

Contract Year	Contract Price
1 – 20	[REDACTED] [REDACTED]

Product:

- ☒ Energy Settlement Revenue
- ☒ Capacity Attributes including Resource Adequacy Benefits

Scheduling Coordinator: Seller/Seller Third Party

Security Amount:

Development Security: [REDACTED]

Performance Security: [REDACTED]

TABLE OF CONTENTS

Page

ARTICLE 1 DEFINITIONS	1
1.1 CONTRACT DEFINITIONS	1
1.2 RULES OF INTERPRETATION	20
ARTICLE 2 TERM; CONDITIONS PRECEDENT	21
2.1 CONTRACT TERM.	21
2.2 COMMERCIAL OPERATION; CONDITIONS PRECEDENT	21
2.3 DEVELOPMENT; CONSTRUCTION; PROGRESS REPORTS	23
2.4 REMEDIAL ACTION PLAN	23
ARTICLE 3 PURCHASE AND SALE	24
3.1 PURCHASE AND SALE OF PRODUCT	24
3.2 SALES PRIOR TO EXPECTED COMMERCIAL OPERATION DATE.....	24
3.3 CAPACITY ATTRIBUTES	24
3.5 RESOURCE ADEQUACY FAILURE	25
3.6 BUYER'S RE-SALE OF PRODUCT	25
3.7 COMPLIANCE EXPENDITURE CAP.....	25
3.8 CHANGE IN LONG DURATION STORAGE REQUIREMENTS	26
3.9 NO ELECTRICAL OUTPUT	27
ARTICLE 4 OBLIGATIONS AND DELIVERIES	27
4.1 DELIVERY	27
4.2 INTERCONNECTION	28
4.3 EFFICIENCY RATE.....	29
4.4 CAPACITY TEST.	29
4.5 RESOURCE DURATION AUGMENTATION.	29
4.6 OUTAGES.....	29
4.7 REDUCTION IN DELIVERY OBLIGATION	30
ARTICLE 5 TAXES AND ENVIRONMENTAL COSTS	31
5.1 ALLOCATION OF TAXES AND CHARGES	31
5.2 COOPERATION	31
5.3 ENVIRONMENTAL COSTS	31
ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY.....	32
6.1 MAINTENANCE OF THE FACILITY.....	32
6.2 MAINTENANCE OF HEALTH AND SAFETY.....	32
6.3 SHARED FACILITIES	32
ARTICLE 7 METERING	33
7.1 METERING	33
7.2 METER DATA	33
ARTICLE 8 INVOICING AND PAYMENT; CREDIT	33
8.1 INVOICING	33
8.2 PAYMENT	33
8.3 BOOKS AND RECORDS.....	34
8.4 INVOICE ADJUSTMENTS.....	34
8.5 BILLING DISPUTES	34
8.6 NETTING OF PAYMENTS	34

8.7	SELLER'S DEVELOPMENT SECURITY	34
8.8	SELLER'S PERFORMANCE SECURITY	35
8.9	FIRST PRIORITY SECURITY INTEREST IN CASH OR CASH EQUIVALENT COLLATERAL	35
8.10	BUYER CREDIT ARRANGEMENTS	36
ARTICLE 9 NOTICES		37
9.1	ADDRESSES FOR THE DELIVERY OF NOTICES	37
9.2	ACCEPTABLE MEANS OF DELIVERING NOTICE	37
ARTICLE 10 FORCE MAJEURE		38
10.1	DEFINITION	38
10.2	NO LIABILITY IF A FORCE MAJEURE EVENT OCCURS	39
10.3	NOTICE OF FORCE MAJEURE EVENT	39
10.4	TERMINATION FOLLOWING FORCE MAJEURE EVENT	40
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION		40
11.1	EVENTS OF DEFAULT	40
11.2	REMEDIES; DECLARATION OF EARLY TERMINATION DATE	42
11.3	DAMAGE PAYMENT; TERMINATION PAYMENT	43
11.4	NOTICE OF PAYMENT OF TERMINATION PAYMENT OR DAMAGE PAYMENT	44
11.5	DISPUTES WITH RESPECT TO TERMINATION PAYMENT OR DAMAGE PAYMENT	44
11.6		44
11.7	RIGHTS AND REMEDIES ARE CUMULATIVE	45
11.8	MITIGATION	45
11.9	PASS THROUGH OF BUYER LIABILITY	45
ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES		45
12.1	NO CONSEQUENTIAL DAMAGES	45
12.2	WAIVER AND EXCLUSION OF OTHER DAMAGES	46
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; COVENANTS		47
13.1	SELLER'S REPRESENTATIONS AND WARRANTIES	47
13.2	BUYER'S REPRESENTATIONS AND WARRANTIES	48
13.3	GENERAL COVENANTS	49
13.4	SELLER'S COVENANTS	49
ARTICLE 14 ASSIGNMENT		50
14.1	GENERAL PROHIBITION ON ASSIGNMENTS	50
14.2	COLLATERAL ASSIGNMENT	50
14.3	PERMITTED ASSIGNMENT	52
14.4	PORTFOLIO FINANCING	53
14.5	BUYER FINANCING ASSIGNMENT	53
ARTICLE 15 DISPUTE RESOLUTION		53
15.1	GOVERNING LAW; VENUE	53
15.2	DISPUTE RESOLUTION	53
15.3	ATTORNEYS' FEES	54
ARTICLE 16 INDEMNIFICATION		54
16.1	INDEMNIFICATION	54
16.2	CLAIMS	54

ARTICLE 17 INSURANCE	55
17.1 INSURANCE	55
ARTICLE 18 CONFIDENTIAL INFORMATION	56
18.1 DEFINITION OF CONFIDENTIAL INFORMATION	57
18.2 DUTY TO MAINTAIN CONFIDENTIALITY	57
18.3 IRREPARABLE INJURY; REMEDIES	58
18.4 FURTHER PERMITTED DISCLOSURE	58
18.5 PRESS RELEASES.....	58
ARTICLE 19 MISCELLANEOUS.....	58
19.1 ENTIRE AGREEMENT; INTEGRATION; EXHIBITS.....	58
19.2 AMENDMENTS.....	58
19.3 NO WAIVER.....	59
19.4 NO AGENCY, PARTNERSHIP, JOINT VENTURE OR LEASE	59
19.5 SEVERABILITY	59
19.6 MOBILE-SIERRA.....	59
19.7 COUNTERPARTS	59
19.8 ELECTRONIC DELIVERY	59
19.9 BINDING EFFECT	59
19.10 NO RECOURSE TO MEMBERS OF BUYER	60
19.11 FORWARD CONTRACT	60
19.12 DODD-FRANK ACT.....	60
19.13 FURTHER ASSURANCES.....	61
19.14 CHANGE IN ELECTRIC MARKET DESIGN.....	61

Exhibits:

Exhibit A	Facility Description
Exhibit B	Major Project Development Milestones and Commercial Operation
Exhibit C	Compensation
Exhibit D	[Reserved]
Exhibit E	Progress Reporting Form
Exhibit F	[Reserved]
Exhibit G	[Reserved]
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Installed Capacity and Efficiency Rate Test Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Form of Buyer Liability Pass Through Agreement
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Capacity Tests
Exhibit P	Major Equipment
Exhibit Q	Operating Restrictions
Exhibit R	[Reserved]
Exhibit S	Project Participants and Liability Shares
Exhibit T	Material Permits

RESOURCE ADEQUACY AND TB4 AGREEMENT

This Resource Adequacy and TB4 Agreement (“**Agreement**”) is entered into as of [REDACTED], 2026 (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;

WHEREAS, Buyer is entering into the Agreement with the intention that the Facility will be counted toward the Project Participants’ Long Duration Storage obligations set forth in CPUC D.21-06-035 (as may be revised by further decisions), the Mid-Term Reliability Obligations and other potential future CPUC decisions mandating procurement, and/or another existing or future compliance program administered by any regulatory agency to which Buyer is accountable; 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

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.7(d).

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

“**Administrative NQC Reduction**” has the meaning set forth in Exhibit C.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control”, “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. 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 all ancillary services, products and other attributes, if any, associated with the Installed Capacity of the Facility, including spinning reserve, non-spinning reserve, regulation up, regulation down, and voltage support as each is defined in the CAISO Tariff.

“Arbitrage Component” has the meaning set forth in Exhibit C.

“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.

“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 and such appointment is not removed within ninety (90) days.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. Pacific Prevailing Time (PPT).

“Buyer” means California Community Power, a California joint powers authority.

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

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

“Buyer’s Designees” means the Project Participants or a Subsequent Purchaser.

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

“Buyer’s Share” means the Guaranteed Contract Capacity as adjusted in accordance with Section 5 of Exhibit B divided by the Installed Capacity.

“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 applicable Ancillary Services, PMAX, and PMIN.

“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.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the ability of Buyer’s Share of the Installed Capacity to provide reliability or 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 or used for any current or future compliance or reporting purpose including the Compliance Obligations and the Mid-Term Reliability Obligations. Capacity Attributes include Resource Adequacy Benefits, Imbalance Reserves, Reliability Capacity Up, and Reliability Capacity Down.

“Capacity Commitments” means written contracts that obligate Seller to deliver Capacity Attributes from the Facility to Persons other than Seller’s Affiliates over a period of time that includes the Delivery Term.

“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 any other test conducted pursuant to Exhibit Q.

“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, at least 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 from the CAISO Grid as measured at the Facility Meter Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable electrical losses and station use.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

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

“Collateral Assignment Agreement” has the meaning set forth in Section 14.2.

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

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

“Commercial Operation Delay Damages” means [REDACTED]

“Compliance Actions” has the meaning set forth in Section 3.7(b).

“Compliance Deadline” has the meaning set forth in Section 6 of Exhibit B.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.7(a).

“Compliance Obligation” means the RAR, Local RAR, Flexible RAR, Mid Term Reliability Obligations and any other resource adequacy or capacity procurement requirements imposed on load serving entities by the CPUC, CAISO, WECC, or any other Governmental Authority having jurisdiction.

“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 Delay Damages” means [REDACTED]

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

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

“Contract Capacity” means the Effective Capacity multiplied by Buyer’s Share.

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

“Contract Term” has the meaning set forth in Section 2.1(a).

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

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

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

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

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

“**CPUC Master Resource Database**” means the CPUC database of generation, energy storage and other resources qualified to provide Resource Adequacy Benefits capacity to load serving entities.

“**CPUC System RA Penalty**” means the system RAR penalties assessed against load-serving entities by the CPUC for Resource Adequacy Requirement deficiencies that are not replaced or cured, as established 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, which is expected to be updated annually, or any replacement or successor documentation established by the CPUC Energy Division to reflect Resource Adequacy Requirement penalties that are established by the CPUC and assessed against load-serving entities for Resource Adequacy Requirement deficiencies.

“**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.

“**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.

“**Dedicated Interconnection Capacity**” means an 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).

“Delivered Storage RA” has the meaning set forth in Exhibit C.

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

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

“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 all Energy delivered from the Facility to the Delivery Point, as measured at the Facility Meter Point by the Facility Meter, as such meter readings are adjusted by the CAISO for station use and electrical losses to the Delivery Point.

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

“Early Commercial Operation Date” has the meaning set forth in Section 3.2.

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

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

“Effective Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for the number of hours of continuous discharge corresponding to the Resource Duration, 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 to the extent such electrical losses are not already reflected in the Facility Meter measurements) 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).

“Efficiency Rate” means the measured round-trip efficiency rate of the Facility, expressed as a percentage, calculated pursuant to a Capacity Test, and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

“Emergency” means an event or condition in which continued operation of the Facility is reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property.

“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 alternating current electrical energy measured in MWh.

“Energy Settlement Revenues” means the sum of all Monthly Energy Settlement Amounts, calculated in accordance with Exhibit C.

“Entitlement Share” means a Project Participant’s share of the Contract Capacity as set forth in the Project Participant Share Agreement.

“Environmental Cost” means (i) 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, (ii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iii) costs of permit maintenance fees and emission fees as applicable, (iv) 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, (v) the costs associated with the use, disposal, and clean-up of Hazardous Substances introduced to the Site, and (vi) the costs associated with decontamination or remediation, on or off the Site, necessitated by the maintenance, use, or release of such Hazardous Substances on the Site.

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

“Expected Facility Capacity” means 500 MW.

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

“Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including the 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 this Agreement.

“Facility Meter” means a CAISO-approved meter, along with a 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 Meter Point and the amount of Discharging Energy discharged

from the Facility at the Facility Meter Point 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 Meter Point” means the location or locations of the Facility Meter.

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

“Financial Close” means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller’s owner(s).

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

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

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

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

“Gains” means, with respect to any Non-Defaulting 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, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by, (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement, and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement and the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement. Factors used in determining the economic benefit to a Non-Defaulting 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, however*, “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 Amount” has the meaning set forth in Exhibit L.

“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 Contract Capacity” has the meaning set forth on the Cover Sheet as it may be adjusted pursuant to Section 5 of Exhibit B.

“Guaranteed Efficiency Rate” has the meaning set forth on the Cover Sheet.

“Guaranteed Storage RA Amount” has the meaning set forth in Exhibit C.

“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.

“Imbalance Reserves” has the meaning set forth in the pending CAISO Tariff language available at <https://www.caiso.com/documents/pendingtariff-language-dame-edam-tariff-amendment-er23-2686.pdf> and approved by FERC in Cal. Indep. Sys. Operator Corp., 185 FERC ¶ 61,210 (2023) (December 2023 Order).

“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 S 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 the number of hours of continuous discharge corresponding to the Resource Duration, as measured in MW AC at the Facility Meter Point by the Delivery Point (i.e., measured at 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 Expected Facility Capacity.

“Interconnection Agreement” means the interconnection agreement entered into by Seller or Seller’s Affiliate pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility at the Interconnection Point that is no less than the Dedicated Interconnection Capacity, 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” means the point at which Seller’s Interconnection Facilities interconnect with the Transmission System pursuant to the Interconnection Agreement, which point is identified in Exhibit A.

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

“Investment Grade Credit Rating” means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody’s.

“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 (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.

“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 with such bank 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, 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 S.

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

“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.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in the CAISO Tariff.

“Long Duration Storage” means a resource that meets the requirements of CPUC Decision 21-06-035 as of the Effective Date, including that such resource (a) is able to deliver the Guaranteed Contract Capacity for at least eight (8) hours, (b) is incremental to the CPUC’s baseline list, and (iii) is a Resource Adequacy Resource that is eligible to provide Resource Adequacy Benefits as set forth in the Resource Adequacy Rulings.

“Losses” means, with respect to Non-Defaulting 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, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement, and the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement. 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.

“Major Equipment” means the items of equipment and machinery with purchase value higher than [REDACTED] and/or have a delivery lead time exceeding twelve (12) months as set forth in Exhibit P.

“Marketable Emission Trading Credits” means emissions trading credits or units issued 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)).

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

“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.

“Maximum State of Charge” means the maximum State of Charge to which the Facility may be charged, as set forth in Exhibit Q.

“Maximum Stored Energy Level” means the maximum Stored Energy Level the Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.

“Mid-Term Reliability Obligations” means the mandatory procurement obligations for incremental zero-emissions capacity pursuant to CPUC Decision 21-06-035 and CPUC Decision 23-02-040 as such decisions may be amended, supplemented, or revised.

“Meter Service Agreement” means “Meter Service Agreement for CAISO Metered Entities” or “Meter Service Agreement for Scheduling Coordinators”, as applicable, as each are defined in the CAISO Tariff.

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

“Minimum Efficiency Rate” means the percentage specified on the Cover Sheet.

“Minimum State of Charge” means the minimum State of Charge to which the Facility may be discharged, as set forth in Exhibit Q.

“Minimum Stored Energy Level” means the minimum Stored Energy Level the Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.

“Monthly Capacity Payment” means the payment required to be made by Buyer to Seller each month commencing on the Commercial Operation Date and throughout the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.

“Monthly Energy Settlement Amount” has the meaning set forth in Exhibit C.

“Moody’s” means Moody’s Investors Service, Inc.

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

“MWh” means megawatt-hours 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” has the meaning set forth in the CAISO Tariff.

“Network Upgrade” means collectively Delivery Network Upgrades and Reliability Network Upgrades.

“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) in accordance with Exhibit N.

“Notification Deadline” means twenty (20) Business Days before the relevant deadlines for the corresponding RA Compliance Showings applicable to the relevant 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” means a Planned Outage or Unplanned Outage.

“Outage Event” has the meaning set forth in Exhibit C, Section (f).

“Outage Schedule” has the meaning set forth in Section 4.6(a)(i).

“Participating Generator Agreement” has the meaning set forth in the CAISO Tariff.

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

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

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

“Permitted Transferee” means [REDACTED]

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

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

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

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

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

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

“Project Participant” means each Person identified in Exhibit S 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 the Buyer Liability Pass Through Agreements and the Project Participation Share Agreement executed by each Project Participant and countersigned by Buyer.

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

“Project Participation Share Agreement” means that certain Willow Rock Project Participation Share Agreement executed by and among Buyer and all of the Project Participants relating to their allocation among themselves of Buyer’s responsibilities and liabilities under this Agreement, and any successor agreement.

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

applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

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

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

“RA Component” has the meaning set forth in Exhibit C.

“RA Deficiency Amount” has the meaning set forth in Exhibit C.

“RA Guarantee Date” means the Commercial Operation Date.

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

“Ramp Rate” means the ability of the Facility to change between power output levels, expressed in MW_{AC}/min.

“Receiving Party” has the meaning set forth in Section 18.2(a).

“Reliability Capacity Down” has the meaning set forth in the pending CAISO Tariff language available at <https://www.caiso.com/documents/pendingtariff/language-dame-edam-tariff-amendment-er23-2686.pdf> and approved by FERC in Cal. Indep. Sys. Operator Corp., 185 FERC ¶ 61,210 (2023) (December 2023 Order).

“Reliability Capacity Up” has the meaning set forth in the pending CAISO Tariff language available at <https://www.caiso.com/documents/pendingtariff/language-dame-edam-tariff-amendment-er23-2686.pdf> and approved by FERC in Cal. Indep. Sys. Operator Corp., 185 FERC ¶ 61,210 (2023) (December 2023 Order).

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

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

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

“Requested Confidential Information” has the meaning set forth in Section 18.2(c).

“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, or the

CAISO Tariff, and shall include RAR, Flexible RAR, and Local RAR, and any successor criteria applicable to the Facility, including any Resource Duration attributes.

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

“Resource Adequacy Rulings” means any applicable CPUC ruling or decision relating to resource adequacy, or any other resource adequacy Law, 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.

“Resource Duration” means the number of continuous hours of discharge as set forth on the Cover Sheet.

“Revised Liability Share” means the sum of a Project Participant’s Initial Liability Share plus its Pro Rata portion of all Defaulted Liability Shares, [REDACTED]

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

“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).

“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, unless such damages are part of a Party’s Gains, Losses or Costs as those terms are explicitly defined herein.

“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 Charging Energy and Discharging Energy to and from the Delivery Point to the Facility (which is excluded from Shared Facilities), including the Interconnection Agreement itself, 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 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.

“Shown Unit” means the Facility or any unit providing Replacement RA specified by Seller in a Supply Plan.

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

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

“Slice-of-Day” or **“SOD”** has the meaning set forth in the Resource Adequacy Rulings.

“Slice-of-Day Capacity” has the meaning set forth in Exhibit C.

“State of Charge” or **“SOC”** means the ratio of (a) the Stored Energy Level of the Facility to (b) the Effective Capacity multiplied by the Resource Duration, expressed as a percentage.

“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 RA Shortfall” has the meaning set forth in Exhibit C.

“Stored Energy 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.

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

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

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

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

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

“Throughput” means, at any point in time during any day or Contract Year, as applicable, the total cumulative amount of Discharging Energy from the Facility at such point in time during such day or Contract Year, as applicable (expressed in MWh).

“Transmission Provider” means any entity or entities transmitting or transporting the Charging Energy and Discharging Energy, as applicable, on behalf of Seller or Buyer to or from the Delivery Point but excluding Seller or any Seller’s Affiliate responsible for operating any gen-tie line to any point of interconnection to a Transmission Provider’s transmission system or distribution system. For purposes of this Agreement, the Transmission Provider is set forth in Exhibit A.

“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.

“Ultimate Parent” means Hydrostor Inc., an Ontario business corporation registered in Ontario, Canada.

“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 or pursuant to Section 4.7, which period is not a Planned Outage.

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 one hundred twenty (120) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party provided that such Notice is issued before Project Participant Approval occurs. 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. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Commercial Operation; Conditions Precedent. Seller shall provide Notice to Buyer of the expected Commercial Operation Date, which shall occur on the first day of the applicable calendar month for RA Compliance Showing purposes, 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 (or deemed approval) of Seller's achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date. If Buyer fails to respond within such five (5) Business Day period, Buyer shall be deemed to have approved Commercial Operation.

(a) Seller has 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 and demonstrating that the Installed Capacity is sufficient to provide no less Contract Capacity than [REDACTED] of the Guaranteed Contract Capacity (without giving effect to any adjustment pursuant to Section 5 of Exhibit B) to Buyer;

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

(c) 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 has been delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained and shall be in full force and effect, and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(e) Seller has Site Control;

(f) Seller has obtained CAISO Certification for the Facility, and a copy of the CAISO Certification has been delivered to Buyer;

(g) Seller has obtained Full Capacity Deliverability Status and all Delivery Network Upgrades are complete such that Seller can deliver the Guaranteed Storage RA Amount;

(h) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;

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

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

(k) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Construction Delay Damages and Commercial Operation Delay Damages;

(l) Seller has taken all actions and executed all documents and instruments required to authorize Seller (or its designated agent) to act as Scheduling Coordinator under this Agreement, and Seller (or its designated agent) is authorized to act as Scheduling Coordinator and has full capability to schedule and dispatch the Facility; and

(m) The Facility is shown on the CAISO and CPUC NQC lists and is able to be shown on Buyer's Designees' RA Compliance Showings as of the Commercial Operation Date.

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 from Buyer. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

Remedial Action Plan. If Seller misses a Milestone by more than [REDACTED] 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 [REDACTED] period following the missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in reasonable 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 to achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended pursuant to Exhibit B, *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B and except as provided in Section 11.1(b)(i), 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 it may be extended pursuant to Exhibit B, then, unless such failure is the result of a Buyer Default, Buyer shall have the right to terminate this Agreement and retain the Development Security as liquidated damages. Such termination right must be exercised or reserved by Buyer in writing for due cause, if at all, within thirty (30) 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). Failure of Buyer to exercise or reserve its termination right

within such deadline shall result in Buyer waiving its termination right until and unless Buyer has a termination right under this Agreement arising subsequent to such deadline.

ARTICLE 3 PURCHASE AND SALE

Purchase and Sale of Product. Subject to the terms and conditions of this Agreement, during each day of the Delivery Term, Buyer shall have the exclusive right to the Product associated with the Guaranteed Contract Capacity and the Contract Capacity. 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 or Capacity Attributes from any other resource or the market for delivery hereunder except as provided in Exhibit C, nor shall Seller sell, assign or otherwise transfer any Capacity Attributes associated with the Contract Capacity, or any portion thereof, to any third party other than to Buyer or Buyer's Designees or the CAISO pursuant to this Agreement or as otherwise required by Law.

Sales Prior to Expected Commercial Operation Date. If Seller is able to achieve Commercial Operation and commence producing Product prior to the Expected Commercial Operation Date, Seller shall provide Notice to Buyer at least ninety (90) days prior to the date that Seller anticipates commencement of production of Product ("**Early Commercial Operation Date**") and shall offer to sell Product to Buyer under the terms and conditions of this Agreement as of the Early Commercial Operation Date. If Buyer rejects or fails to respond to such offer within ten (10) Business Days of Seller's Notice under this Section 3.2, Seller may sell all Product and otherwise participate in any available markets without liability to Buyer until the Expected Commercial Operation Date. If Buyer accepts such offer, the Delivery Term shall commence as of the Early Commercial Operation Date.

Capacity Attributes. Seller has received Full Capacity Deliverability Status for the Facility for the Expected Facility Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Reliability Network Upgrades and/or Delivery Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

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

(b) Throughout the Delivery Term, Seller shall maintain Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer or Buyer's Designees in the amount of the Guaranteed Contract Capacity. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits relating to the Contract Capacity from the Facility to Buyer or Buyer's Designees unless otherwise directed by Buyer.

(c) For the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable Laws, including registration and

reporting requirements, and execute all documents or instruments necessary to enable Buyer or Buyer's Designees, to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement to allow (i) Buyer's or Buyer's Designees' rights to the Guaranteed Storage RA Amount of Product for the sole benefit of Buyer or Buyer's Designees and (ii) that Buyer or Buyer's Designees may use the Product to meet their Compliance Obligations. Such commercially reasonable actions shall include, without limitation, (1) cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested and supporting documentation to the CAISO or the CPUC, including such documentation to demonstrate that the Guaranteed Storage RA Amount can be delivered to the CAISO controlled grid for the Resource Duration, pursuant to the "deliverability" standards established by the CAISO or the CPUC, and (2) upon reasonable request of Buyer, providing additional information and documentation to Buyer to assist Buyer or Buyer's Designees to meet compliance with regulatory agency requests and requirements to document that the Facility and the Capacity Attributes meet the requirements of all existing or future compliance programs administered by any regulatory agency to which Buyer is accountable. If necessary, the Parties further agree to negotiate in good faith to amend this Agreement to conform to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Authority to maintain the benefits of the Agreement.

[Reserved].

Resource Adequacy Failure. For each month in which there is a Storage RA Shortfall, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages as calculated pursuant to Exhibit C, in each case. Except as set forth in Sections 11.1(b)(ii), (iii), (v) and (vi), payment of the RA Deficiency Amount shall be the sole remedy for the Resource Adequacy Benefits Seller failed to convey to Buyer.

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.

Compliance Expenditure Cap.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide Resource Adequacy Benefits associated with Buyer's Share of the Installed Capacity to Buyer and the Project Participants that comply with the Resource Adequacy Rulings. The Parties acknowledge that Governmental Authorities, including the CPUC and CAISO, may undertake actions to implement changes in Law. Seller agrees, subject to the provisions of this Section 3.7,

to use commercially reasonable efforts to take all Compliance Actions and to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law to maximize benefits to Buyer, including: (i) the modification of the description of Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; or (ii) submission of any reports, data, or other information required by Governmental Authorities; *provided*, Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement. If a change in Law occurring after the Effective Date has increased Seller's known or reasonably expected costs to obtain, maintain, convey or effectuate Buyer's use of any Resource Adequacy Benefits, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped at [REDACTED] ("**Compliance Expenditure Cap**").

(b) Any actions required for Seller to comply with its obligations set forth in Section 3.7(a), the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

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

(d) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (i) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (ii) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.7 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.

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

Change in Long Duration Storage Requirements. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

No Electrical Output. Neither the purchase of the Product nor receipt of the Energy Settlement Revenue confers to Buyer any right to the electrical output or Energy from the Facility. Rather, the Product includes Buyer's Share of the Capacity Attributes and Resource Adequacy Benefits from the Installed Capacity and the Energy Settlement Revenue which confers the right for Buyer to receive payments regardless of whether the Facility is charged or discharged. Specifically, no Energy or Ancillary Services associated with the Facility are required to be made available to Buyer, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Agreement. Seller retains the right to sell any Capacity Attributes from the Facility other than those Capacity Attributes related to the Contract Capacity.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

Delivery. Subject to the provisions of this Agreement, during the Delivery Term, Seller shall supply and deliver the Product to Buyer, and Buyer shall take delivery of the Product in accordance with the terms of this Agreement. Delivery to and receipt by Buyer's Designees of Buyer's Share of the Resource Adequacy Benefits shall fulfill Seller's delivery obligations under this Section 4.1 of this Agreement. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the delivery of Product, any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations, transmission line losses, and Imbalance Energy charges. Seller shall provide Buyer or Buyer's Designees with the Guaranteed Storage RA Amount of Product for each Showing Month consistent with the following:

(a) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall deliver the Guaranteed Storage RA Amount by submitting, or causing each Shown Unit's Scheduling Coordinator to submit, Supply Plans to identify the characteristics of the Shown Unit and confirm the Capacity Attributes provided to the Buyer or Buyer's Designees for each Showing Month, with each Project Participant being allocated its Entitlement Share of the Guaranteed Storage RA Amount, unless specifically requested not to do so by Buyer.

(b) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the CAISO Tariff. Seller shall submit, or cause each Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the CAISO Tariff and CPUC requirements to identify and confirm the Capacity Attributes delivered to the Project Participants for each Showing Month of the Delivery Period.

(c) Seller shall identify the Shown Unit(s) and Guaranteed Storage RA Amount for a Showing Month by providing Buyer with the specific Shown Unit information set forth in Exhibit M no later than the Notification Deadline for such Showing Month.

(d) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Guaranteed Storage RA Amount for the Shown Unit(s) in any Showing Month, Seller and Buyer shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

(e) The Resource Adequacy Benefits are delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the Guaranteed Storage RA Amount from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Resource Adequacy Benefits from the Shown Unit(s) by CAISO. Seller has failed to deliver the Resource Adequacy Benefits if (i) Buyer has elected to submit the Resource Adequacy Benefits from the Shown Unit(s) in the applicable Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 4.1(d) or (ii) Seller fails to submit the volume of Guaranteed Storage RA Amount for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month. Buyer and the Project Participants will have received the Guaranteed Storage RA Amount if Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month.

(f) Buyer is to receive and retain all revenues associated with the Guaranteed Storage RA Amount of Capacity Attributes during the Delivery Period, including any capacity and availability revenues from Imbalance Reserves, Reliability Capacity Up, and Reliability Capacity Down, or their successors. Seller shall promptly report receipt of any such revenues to Buyer. Seller shall pay to Buyer within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Buyer may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the Agreement.

(g) CAISO Requirements. During the Delivery Period, Seller shall comply with the CAISO Tariff and any Business Practice Manuals and shall perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the CAISO Tariff that are associated with the sale of the Product hereunder. Seller shall be solely responsible for any CAISO penalties, fines or costs related to this Agreement including those penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance with the CAISO Tariff or any Business Practice Manuals.

Interconnection. Seller shall be responsible for all costs and charges associated with Interconnection Facilities and Network Upgrades necessitated by the interconnection of the Facility. Throughout the Delivery Term, Seller shall provide under the Interconnection Agreement interconnection capacity and rights to the Facility of not less than the Dedicated Interconnection Capacity.

Efficiency Rate. During the Delivery Term, Seller shall use reasonable commercial efforts consistent with Prudent Operating Practices to cause the Facility to maintain an Efficiency Rate, calculated pursuant to a Capacity Test, of no less than the Guaranteed Efficiency Rate. [REDACTED]

Capacity Test. 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.

(a) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests. Alternatively, to the extent that any Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Seller shall notify Buyer no later than five (5) Business Days prior to any Capacity Test (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(b) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate of the Facility 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, as applicable, determined pursuant to such Capacity Test (not to exceed the Installed Capacity) shall become the new Effective Capacity and/or Efficiency Rate, as applicable, at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C, until a revised Effective Capacity and/or Efficiency Rate, as applicable, is determined pursuant to a subsequent Capacity Test.

Resource Duration Augmentation. At any time during the Term of this Agreement, Buyer may request augmentation of the Facility to increase the Resource Duration of the Guaranteed Contract Capacity to up to twelve (12) hours. Buyer shall provide Notice to Seller requesting such augmentation and Seller shall provide a good faith estimate of the cost and timing for such augmentation and the impacts on Facility operation during construction within forty-five (45) days after receipt of such Notice. Buyer shall provide Notice to Seller within thirty (30) days after receipt of Seller's estimate to (i) commence negotiations based on Seller's good faith estimate or (ii) decline to move forward with the augmentation. If Buyer wishes to commence negotiations, the Parties shall negotiate in good faith on necessary amendments to this Agreement. If the Parties fail to reach agreement on such amendments, neither Party shall have any further obligation under this Section 4.5; provided however, that Buyer may make one request for augmentation per Contract Year during the Term.

4.6 **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, use reasonable commercial efforts to 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.

(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 4.6(a)(i) and 4.6(b); *provided*, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff. 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 or Buyer's Designees and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

No Planned Outages During Summer Months. Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each May 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event Seller has a previously Planned Outage that becomes coincident with a System Emergency that requires resources to be available for dispatch, 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) RA Substitute Capacity. Seller shall provide RA Substitute Capacity as required by CAISO in connection with Facility outages. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling Seller's request for CAISO to approve such Facility outage. If Seller fails to provide RA Substitute Capacity, then Buyer may elect to not include the Facility (or, if applicable, the portion of the Facility) in its Supply Plan and such failure shall be deemed an "RA Shortfall" for the purpose of Section 3.5 and Exhibit C.

Pro Rata Reductions. If an Outage of the Facility is only for a portion of the Effective Capacity of the Facility, Seller shall assign the reduction in deliveries of Product on no less than a pro rata basis to Buyer based on Buyer's Share of the Effective Capacity.

Reduction in Delivery Obligation.

Unplanned Outage. When Unplanned Outages of the Facility occur, Seller shall orally notify Buyer of the existence, nature, cause and expected duration of the Unplanned Outage as soon as

practical by contacting Buyer by telephone and shall use reasonable commercial efforts to provide such notice within twenty-four (24) hours after the Unplanned Outage commences. Seller shall, in accordance with Prudent Operating Practice, inform Buyer of material changes in the expected duration of the Unplanned Outage. Seller shall be permitted to reduce deliveries of Product during any Unplanned Outage. Seller shall provide Buyer with Notice and expected duration of (if known) and plans to remediate any Unplanned Outage within five (5) Business Days of the occurrence of the Unplanned Outage.

Force Majeure Event. Seller shall be permitted to reduce deliveries of RA Product during any Force Majeure Event.

Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety in the event of an Emergency or System Emergency ordered by the CAISO or Transmission Provider that requires the Facility to ramp down or shut off, with evidence thereof provided to Buyer, provided, however, that Seller's failure to deliver Product shall not be excused due to any Outage of the Facility due to an Emergency caused by Seller's negligence or willful misconduct.

ARTICLE 5 TAXES AND ENVIRONMENTAL COSTS

Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes.

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

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 Energy used to charge the Facility or Energy discharged from the Facility;

(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 current or future federal, state or local legislation, regulations, decisions or other action to address, 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 comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, the delivery and sale of Product, and the disposal and recycling of any equipment associated with the Facility.

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

(c) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices.

(d) Seller shall use reasonable commercial efforts consistent with Prudent Operating Practices (i) to promptly make all necessary repairs to the Facility, and any portion thereof, and (ii) to 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 Guaranteed Contract Capacity and the Guaranteed Efficiency Rate).

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

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 shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, including providing interconnection capacity for the Facility's sole use in an amount not less than the Dedicated Interconnection Capacity. Seller shall not, and shall not permit any Affiliate to, allocate to other Persons a share of the total

interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement minus the Dedicated Interconnection Capacity.

ARTICLE 7 METERING

Metering. The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is to be tested, adjusted, modified or relocated.

Meter Data. Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer or Buyer's SC obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

Invoicing. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of Day-Ahead Market LMP data, Capacity Attributes transaction data, and Replacement RA delivered to Buyer (if any) sufficient to document and verify the amount of Product delivered by the Facility for the preceding month; and (b) be in a format reasonably specified by Buyer, covering the Product delivered in the preceding month as determined in accordance with the applicable provisions of this Agreement. Seller shall, and shall cause its Scheduling Coordinator to, provide Buyer 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 and other information, all as may be necessary from time to time for Buyer to verify the accuracy of all invoices. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

Payment. Buyer shall make payments to Seller 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 thirty (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%) not to exceed the maximum rate permitted by Law (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.

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 following their creation 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 Ten Thousand Dollars (\$10,000).

Invoice Adjustments. Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5 or (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO. 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 at the Interest Rate, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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.

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 C, 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.

Seller's Development Security. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall

maintain the Development Security in full force and effect and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment; provided, however, that the aggregate amounts of such replenishments shall not exceed the full amount of the Development Security. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security; *provided, however*, if Seller has failed to provide Beneficiary with a substitute Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date, Buyer shall have the right to draw on the full amount of the Letter of Credit.

Seller's Performance Security. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security; *provided, however*, if Seller has failed to provide Beneficiary with a substitute Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date, Buyer shall have the right to draw on the full amount of the Letter of Credit.

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 one hundred twenty (120) days after the Effective Date, Buyer Liability Pass Through Agreements from the Project Participants with Liability Shares as set forth on Exhibit S. 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: (i) the Delivery Term has expired or terminated early; and (ii) 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).

(b) Buyer may propose amendments to Exhibit S, 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 S in its sole but good faith discretion. If Seller approves such proposed amendments to Exhibit S, Buyer shall have sixty (60) 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 S. 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.

(c)

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

ARTICLE 9 NOTICES

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.

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 p.m. PPT, on the next Business Day provided that in each case the sender does not receive a delivery failure notification; 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

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; 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; (iv) a Curtailment Order; (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 a Development Cure Period 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 Reliability Network Upgrades, except to the extent expressly permitted as a Development Cure Period under this Agreement.

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. If a Force Majeure Event causes a partial Outage to the Facility, Seller shall assign the reduction in deliveries of Product on a pro rata basis to Buyer based on Buyer's Share of the Installed Capacity. Buyer shall not be obligated to make payments under this Agreement for any Product that is not delivered during 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 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 (b) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(i) 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.

Notice of Force Majeure Event. Within two (2) Business Days of the commencement of Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely written notice constitutes a waiver of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall 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. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

(d) **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, 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 11.6, as applicable, 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

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 failure to provide Resource Adequacy Benefits, the exclusive remedies for which are set forth in Exhibit C and Sections 11.1(b)(ii), (iii), (v) and (vi), 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 best efforts);

(iv) such Party becomes Bankrupt;

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

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

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(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 monetary remedy for any Terminated Transaction and the Event of Default related thereto.

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 Event of Default would be difficult or impossible to determine, that the damages set forth in this Section 11.3(a)(i) are liquidated damages and not a penalty, and are a reasonable approximation of Buyer's harm or loss.

(ii)

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 liquidated damages and not a penalty and 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. 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.

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.

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

[REDACTED]

[REDACTED]

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

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.

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 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 Agreement as the result of an Event of Default by Buyer.

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

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 GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN

CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

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. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF TAX CREDITS, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES. 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 AND EXHIBIT C. THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY

WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; COVENANTS

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. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

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

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

(e) The Facility will be located in the State of California.

(f) Seller shall maintain Site Control throughout the Contract Term.

(g) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents, if applicable.

(h) As of the Effective Date, the Facility as designed is eligible to qualify as a Long Duration Storage resource.

(i) The Product is an incremental resource and includes the exclusive right of Buyer and Buyer's Designees, including the Project Participants, to claim the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-03, as such

Decision may be revised, updated or amended from time to time.

(j) Seller will provide additional information and documentation to Buyer if necessary to enable Project Participants to demonstrate that the Product meets the procurement mandates set forth in CPUC Decision 21-06-035.

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

(a) Buyer is a joint powers authority validly existing and in good standing under the laws of the State of California and is qualified to conduct business pursuant to its duly authorized Joint Powers Agreement. All Persons making up the governing body of Buyer are appointed 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, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in Law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; *provided, however*, that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (California Government Code Section 810 *et seq.*).

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 California and 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.

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**").

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

Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

ARTICLE 14 ASSIGNMENT

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 to the same extent that Buyer's consent to an assignment is required, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. 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 this Agreement, or to modify the Agreement, except as set forth below. 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.

Collateral Assignment. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, upon request of 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**"). The Collateral Assignment Agreement shall include the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and the cure period of Lender shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, which shall not exceed a maximum of sixty (60) days (or one hundred twenty (120) days in the event of a Bankruptcy of Seller, or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default capable of being cured existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith, Lender shall have the right to elect within thirty (30) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession

by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

Permitted Assignment. Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act (California Government Code Section 81000 *et seq.*) or the regulations thereto, California Government Code Section 1090, or any other conflict of interest Law:

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:

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

(ii) Seller has provided Buyer with a written agreement signed by the Affiliate to which Seller wishes to assign its interests that provides that such Affiliate will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment.

(b) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to any Person succeeding to all, or substantially all, of the assets of Seller (whether voluntary or by operation of law), if, and only if:

(i) The assignee is a Permitted Transferee;

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

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

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

(d) Buyer may, without the prior written consent of Seller, transfer or assign this Agreement to any member of Buyer that (i) has a Credit Rating of at least BBB- from S&P and Baa3 from Moody's, and (ii) 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(d) shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

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 (a) utilizing tax equity investment, and/or (b) 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.

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

Governing Law; Venue. 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 Sacramento.

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 hold a meeting of executives (Vice President-level or above) to 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 the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to them at Law in or equity. The Parties shall cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees

and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

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 and failure to comply with the CAISO Tariff, 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 (iii) negligent or willful misconduct of Buyer .

(c) Notwithstanding any other provision of this Agreement, Seller shall indemnify, defend, and hold harmless Buyer's Indemnified Parties, from any claim, liability, loss, injury (including personal injury) or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the use, storage, release, disposal and transportation of Hazardous Substances, or the contamination of land, water, or air, including but not limited to the Site, with any Hazardous Substances resulting from or related to Seller's performance of this 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.

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

Insurance.

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

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

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

(d) Business Auto Insurance. Seller shall maintain, or cause to be maintained, at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. Such insurance shall

cover liability arising out of Seller's or Seller's contractors and subcontractors, as applicable, 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 Legal Liability Insurance in the amount of [REDACTED] per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

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

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

(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 [REDACTED] of expected revenue from this Agreement.

(i) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage 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 any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and workers' 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

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.

Duty to Maintain Confidentiality.

(a) 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 or investors, 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, to support RA Compliance Showings or to otherwise show it has met its Compliance Obligations, 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.

(b) 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 (California Government Code Section 7920 *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.

(c) 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.

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.

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.

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 press release.

ARTICLE 19 MISCELLANEOUS

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.

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

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

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, Indemnified Party and/or Project Participant.

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.

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.

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.

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.

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

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 (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 employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

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.

Dodd-Frank Act. The Parties intend this Agreement to be a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013). Notwithstanding the prior sentence, if and to the extent that this Agreement and the performance of the Parties' obligations requires any reporting to the Commodity Futures Exchange Commission (together with any successor body, the "**CFTC**") pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Seller shall be responsible for all such reporting (and Seller shall bear all costs and expenses associated therewith) and shall be the reporting counterparty for purposes of any applicable parts of the regulations of the CFTC promulgated under the Commodity Exchange Act. Buyer shall promptly provide information reasonably required by Seller for any such reporting and Seller shall be entitled to report and disclose information concerning all swaps transacted under this Agreement (including information regarding the economic terms and valuations of this Agreement) to any applicable Governmental Authority (or a third party swap data repository as required by a Governmental Authority), from time to time, to the extent required by any applicable Laws. Additionally, to the extent either Party needs additional information or details from the other Party in order to comply with any such applicable Laws (including information concerning such other Party's organization, corporate status, status under the CFTC's regulations and/or unique entity identifier), such other Party shall promptly provide such additional information or details to the first Party upon request. Buyer shall promptly reimburse Seller for any costs, fines or penalties Seller incurs as a result of Buyer's failure to comply with this Section 19.12. Seller shall promptly reimburse Buyer for any costs Buyer incurs as a result of Seller's failure to comply with this Section 19.12 and the Commodity Exchange Act, except to the extent such costs are a result of any action or omission of Buyer. Notwithstanding any provision of this Agreement to the contrary, no Event of Default, termination event, or other similar event shall be deemed to occur under this Agreement solely on the basis of a breach of any covenant or agreement in this Section 19.12 other

than the obligation to make reimbursement payments.

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.

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.

[Signatures on following page]

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

GEM A-CAES LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

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

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Willow Rock Energy Storage Center

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

County: Kern County, California

Zip Code: 93501

Latitude and Longitude: [REDACTED]

Facility Description: The Facility will be a net 500 MW / 4,000 MWh compressed air energy storage facility located in Kern County, California. The Facility will be connected to the grid through the SCE Whirlwind Substation via an approximately nineteen (19)-mile long 220 kV generation tie (gen-tie) line.

Lead Permitting Agency: California Energy Commission

CEQA Lead Agency: California Energy Commission

Interconnection Point: Whirlwind Substation

Delivery Point: PNode

PNode: [REDACTED]

Transmission Provider: Southern California Edison Company

Additional Information: Site Plan and Single Line Diagram current as of the Effective Date follow. These are subject to adjustment.

[illegible]

Single Line Diagram

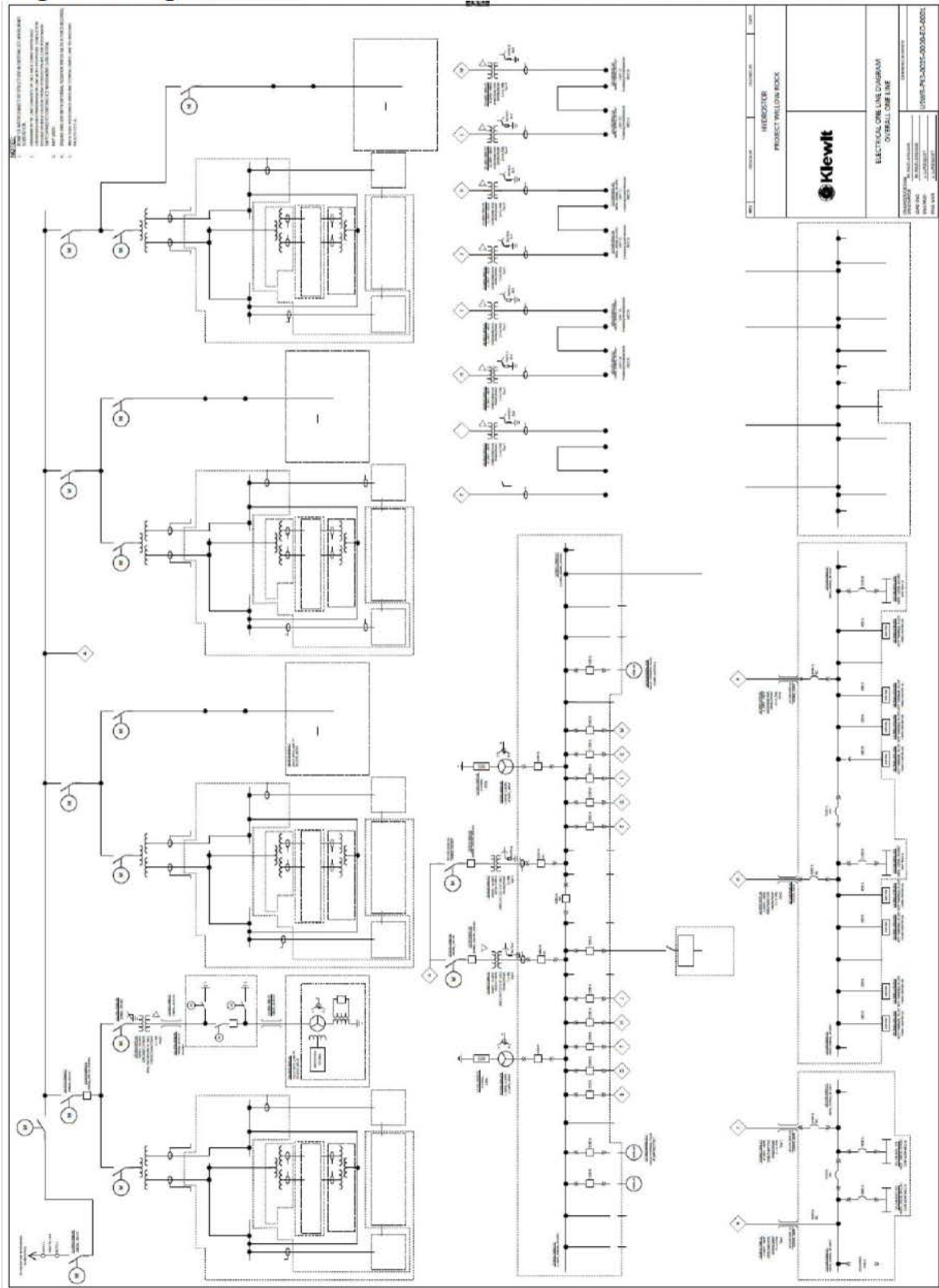


EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES 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 regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) 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, as may be extended by Seller’s payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B.
- b. In addition to extensions pursuant to a Development Cure Period, Seller shall extend the Guaranteed Construction Start Date by paying Construction Delay Damages in advance to Buyer for each day Seller extends the Guaranteed Construction Start Date, not to exceed a total of [REDACTED] of extensions by such payment of Construction Delay Damages. If Seller extends the Guaranteed Construction Start Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Construction 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 Construction Delay Damages, Buyer shall refund to Seller the Construction Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Construction Delay Damages, not to exceed the total amount of Construction Delay Damages paid by Seller pursuant to this Section 1(b) of Exhibit B. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of Exhibit B.

2. **Commercial Operation of the Facility.** **“Commercial Operation”** means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved in accordance with Section 2.2. The **“Commercial Operation Date”** shall be the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation to occur no later than 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. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date, as may be extended by a Development Cure Period but not by the payment of Commercial Operation Delay Damages, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.
 - b. In addition to extensions pursuant to a Development Cure Period, Seller shall extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages in advance to Buyer for each day Seller extends the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] of extensions by such payment of Commercial Operation Delay Damages. If Seller extends the Guaranteed Commercial Operation Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall 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) of Exhibit B.
3. **Termination for Failure to Timely Achieve Construction Start and/or Commercial Operation.** If the Facility has not achieved Construction Start on or before the Guaranteed Construction Start Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(i) and 11.2. 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)(i) 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 extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:
 - a. a Force Majeure Event occurs; or

- b. 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
- 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 Product 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 [REDACTED], for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4.d above) shall not exceed [REDACTED] nor allow the Guaranteed Commercial Operation Date to extend beyond the Compliance Deadline. Notwithstanding anything to the contrary, no Development Cure Period extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, or (ii) Seller failed to provide requested documentation as provided below. Except as set forth in Section 10.3 regarding Force Majeure Event notice requirements, Seller shall provide prompt written notice to Buyer of a Development Cure Period delay, but in no case more than ten (10) Business Days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Contract Capacity.** If, at Commercial Operation, the Installed Capacity of the Facility is such that Seller is unable to satisfy the total aggregate quantity of Capacity Commitments for the Facility, Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity such that the Installed Capacity is sufficient to satisfy the Facility's Capacity Commitments, including satisfying the Guaranteed Contract 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 increase the Installed Capacity by such date, Seller may elect to reduce the Guaranteed Contract Capacity [REDACTED] and identifying, in writing, the new adjusted Guaranteed Contract Capacity (the "**Adjusted Guaranteed Capacity**"). If Seller makes this election, then Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED]

[REDACTED] Thereafter, the Guaranteed Contract Capacity

shall equal the Adjusted Guaranteed Capacity and applicable portions of the Agreement, including Exhibit Q, shall be adjusted accordingly.

6. **Compliance Deadline.** The Parties acknowledge and agree that the CPUC has currently established a deadline of June 1, 2031, for Buyer to procure and commence operations of a contracted new long-duration energy storage (as such date may be extended by the CPUC, the “**Compliance Deadline**”). Notwithstanding Seller’s right to extend the Development Cure Period and the Guaranteed Commercial Operation Date, in the event that the Commercial Operation Date has not occurred by the Compliance Deadline, Buyer may terminate this Agreement and collect the Damage Payment on written notice to Seller issued prior to the Commercial Operation Date; provided, however, Buyer shall not be permitted to exercise this termination right if, prior to the Compliance Deadline, the CPUC has adopted mitigation or alternate compliance options that do not require the Project Participants to be deemed in non-compliance for satisfying Buyer’s obligation to procure long-duration energy storage, and Seller agrees in writing to reimburse Buyer for the costs or penalties associated with such mitigation or alternate compliance options. Any new Compliance Deadline determined by the CPUC shall be the Compliance Deadline for purposes of this Paragraph 6.

EXHIBIT C
COMPENSATION

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

(a) Monthly Capacity Payment. Each month of the Delivery Term, Buyer shall pay Seller a Monthly Capacity Payment minus the Monthly Energy Settlement Amount for such month. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If the Contract 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 Contract Capacity and/or Efficiency Rate are applicable. The Monthly Capacity Payment shall be calculated as follows:

$$\text{Monthly Capacity Payment} = \text{Arbitrage Component} + \text{RA Component}$$

Where:

$$\text{Arbitrage Component} = (A \times \text{Contract Capacity} \times B \times 1000)$$

$$\text{RA Component} = (A \times \text{Guaranteed Contract Capacity} \times C \times 1000)$$

A = Contract Price

B = Contract Capacity

C = Guaranteed Contract Capacity

(b) Monthly Settlement Amount. The “Monthly Energy Settlement Amount” is calculated as follows to account, on a daily basis, for the Day-Ahead Market LMPs associated with the top four (4) hours of prices associated with discharging and the bottom number of hours equal to four (4) divided by the Guaranteed Efficiency Rate; provided, that if there would be no or negative value associated with energy arbitrage tied to an incremental hour of discharging and the commensurate incremental hours of charging, that such hours be omitted from the energy arbitrage calculation for such day:

$$\text{Monthly Energy Settlement Amount} = \text{ES} = \sum_{i=1}^D S_i$$

where,

D = the number of days in month

S_i = Daily Energy Settlement of i^{th} day in a month (\$)

$$\text{Daily Energy Settlement} = S_i = B \times \left\{ \sum_{n=1}^N \max \left[\left(P_n^H - \int_j^J P_j^L dj \right), 0 \right] \right\}$$

where,

B = Contract Capacity (MW)

n = n^{th} hour of N

N = financial settlement discharging duration (4 hours)

$j = (n - 1) / RTE$

$J = n / RTE$

dj = the fraction of the hour j for which price P_j^L applies

P_n^H = The n^{th} highest Day-Ahead Market LMPs (\$/MWh) within day i

P_j^L = The j^{th} lowest Day-Ahead Market LMP (\$/MWh) within day i required to charge the Facility for discharge during P_n^H

RTE = Guaranteed Efficiency Rate

Day-Ahead Market LMP = the LMP reported by the CAISO at the PNode associated with the Project for each Settlement Period in a day during the Day-Ahead Market.

(c) RA Shortfall Damages Calculation.

The following definitions shall apply to this Exhibit C:

“Administrative NQC Reduction” means a reduction in the maximum achievable Net Qualifying Capacity of the Facility that cannot be avoided by and is beyond the reasonable control of and without the fault or negligence of Seller for each hour of the Resource Duration due to a reduction that has been generally applied to resources materially similar to the Facility in terms of technology type, market and operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including any methodology that incorporates fleet averages or other average outage rates. If an Administrative NQC Reduction occurs, Seller shall assign the reduction in NQC on a pro rata basis to the Facility based on Buyer’s Share of the Installed Capacity. Notwithstanding anything herein to the contrary, Seller shall not be required to modify the Facility in order to mitigate the effects of an event that otherwise qualifies as an Administrative NQC Reduction.

“Delivered Storage RA” means an amount, expressed in MW, calculated for the applicable Showing Month as the lesser of (i) the amount of the Net Qualifying Capacity of the Facility and any Replacement RA for such Showing Month made available by Seller to be shown for each hour of the Resource Duration on Buyer or Buyer’s Designees’ monthly Resource Adequacy Plans to the CAISO, and (ii) the Slice-of-Day Capacity that Seller makes available to be shown from the Facility and any Replacement RA for each hour of the Resource Duration in such Showing

Month to the CPUC and is able to be counted as Resource Adequacy Benefits by both the CAISO and CPUC.

“Guaranteed Storage RA Amount” means, for any Showing Month, an amount of Qualifying Capacity that may be shown for each hour of the Resource Duration, expressed in MW, equal to the Guaranteed Contract Capacity minus the Administrative NQC Reduction, if any, in the applicable Showing Month.

“Replacement RA” means Resource Adequacy Benefits from a Resource Adequacy Resource that are equivalent in all material respects to that which would have been provided by the Facility with respect to the applicable Showing Month in which an RA Deficiency Amount would be due to Buyer, including, as applicable, Flexible RAR, the same Slice-of-Day generation profile and related characteristics, any successor criteria applicable to the Facility, and any Local RAR, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits. In addition, if the CPUC requires Replacement RA to be provided by an incremental resource for purposes of CPUC Decision 21-06-035 in order for Buyer’s purchase of the Product to comply with the requirements of CPUC Decision 21-06-035, then the Replacement RA must also be provided by an incremental resource, including any sub-category attributes of D.21-06-035, to the extent required, if such sub-categories are contracted for under the Agreement.

“Slice-of-Day Capacity” means the maximum amount of Resource Adequacy capacity that can be shown on the Slice-of-Day Resource Adequacy Plan filing to the CPUC, assuming that the Resource Duration is constant, but subject to the Efficiency Rate. The Slice-of-Day Capacity shall be calculated as follows:

$SODC = NQC \times (ER/GE)$, where:

SODC = Slice-of-Day Capacity

NQC = Net Qualifying Capacity

ER = Efficiency Rate

GE = Guaranteed Efficiency Rate

“Storage RA Shortfall” means, for a given Showing Month, the difference, expressed in MW, of (a) the Guaranteed Storage RA Amount minus (b) Delivered Storage RA. If the result of the calculation is a negative number, the Storage RA Shortfall shall be deemed to be zero (0) MW for such Showing Month.

Commencing on the RA Guarantee Date, for any Showing Month during the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, during which there is a Storage RA Shortfall, Seller shall pay to Buyer an amount (the **“RA Deficiency Amount”**) equal to

[REDACTED]

If Seller anticipates it will have an RA Deficiency Amount in any month of the Delivery Term due to an Outage of the Facility, Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA up to the anticipated Storage RA Shortfall; provided, any Replacement RA capacity shall be communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least [REDACTED] before the applicable Showing Month, and further provided, that the aggregate Replacement RA capacity shall not exceed [REDACTED]

[REDACTED]

(d) Tax Credits.

[REDACTED]

(e) Effect of Force Majeure.

[REDACTED]

(f) Effect of Health and Safety Outage.

[REDACTED]

EXHIBIT D
[RESERVED]

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. A detailed description of all actions taken by Seller to comply with Prevailing Wage Requirement and Project Labor Agreement requirements of this Agreement.
12. 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.
13. 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.
14. Workforce Development reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

EXHIBIT F
[RESERVED]

EXHIBIT G
[RESERVED]

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [REDACTED] ("**Engineer**") to California Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Resource Adequacy and TB4 Agreement dated [REDACTED] ("**Agreement**") by and between [REDACTED] 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 [REDACTED], 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. Seller has installed equipment for the Facility with an Installed Capacity sufficient to permit Seller to provide no less than [REDACTED] of the Guaranteed Contract Capacity (without giving effect to any adjustments pursuant to Section 5 of Exhibit B).
3. Seller has demonstrated that the actual Efficiency Rate is equal to or greater than [REDACTED]
4. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.
5. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on [REDACTED].
6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation on [REDACTED].
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [REDACTED].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]
By: _____

Its: _____

Date: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

This certification ("Certification") of Installed Capacity and Efficiency Rate is delivered by [REDACTED] ("Engineer") to California Community Power, a California joint powers authority ("Buyer") in accordance with the terms of that certain Resource Adequacy and TB4 Agreement dated [REDACTED] ("Agreement") by and between [REDACTED] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Capacity Test conducted on [REDACTED] demonstrated a maximum dependable operating capability that can be sustained for [REDACTED] consecutive hours to discharge electric energy of __ MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Exhibit O (the "Installed Storage Capacity"); and

(b) The Capacity Test conducted on [REDACTED] demonstrated an Efficiency Rate of __%, all in accordance with the testing procedures, requirements and protocols set forth in Exhibit O.

EXECUTED by [REDACTED]

this [REDACTED] day of [REDACTED], 20[REDACTED].

[REDACTED]

By: _____

Printed Name: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [REDACTED] ("**Seller**") to California Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Resource Adequacy and TB4 Agreement dated [REDACTED] ("**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:

_____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as this [REDACTED] day of [REDACTED], 20[REDACTED].

[REDACTED]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXX]

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. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Resource Adequacy and TB4 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 Sacramento, 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, Attn: General Manager, 901 H Street, Suite 120, PMB 157, Sacramento, CA 95814. 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 Resource Adequacy and TB4 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 other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

or

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

3. The undersigned is a duly authorized representative of [] 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

BUYER LIABILITY PASS THROUGH AGREEMENT

This Buyer Liability Pass Through Agreement (this “**BLPTA**”) is entered into as of [Effective Date] (the “**BLPTA Effective Date**”) by and between the [Member Name], a California [joint powers authority] (together with its successors and permitted assigns “**Project Participant**”), California Community Power, a California joint powers authority (“**CC Power**”), and GEM A-CAES LLC, a Delaware limited liability company (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 Resource Adequacy and TB4 Agreement (as amended, restated or otherwise modified from time to time, the “**Offtake Agreement**”) dated as of [Offtake Agreement Effective Date];

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

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

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 Offtake Agreement.

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 [Project Participation Entitlement Share]% (the “**Liability Share**”), as the same may be adjusted pursuant to Section 4, of all obligations and liabilities for payment now or hereafter owing from CC Power to Seller under the Offtake Agreement, 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 Offtake Agreement, a “**Guaranteed Amount**”). Any payment made directly from CC Power to Seller under the Offtake Agreement 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 Offtake Agreement, and such failure is not remedied within ten (10) Business Days after Notice thereof pursuant to Sections 11.1 or 11.4 of the Offtake Agreement, as applicable, Project Participant shall promptly pay Project Participant's Liability Share of the Guaranteed Amount, as required herein.

2. **Seller Waiver.** In consideration of the foregoing, Seller unconditionally waives all right to recover directly from CC Power any Damage Payment or Termination Payment that is not paid by CC Power pursuant to Sections 11.3 and 11.4 of the Offtake Agreement, but the foregoing waiver does not apply to any other right or remedy of Seller under the Offtake Agreement, including the right to recover accrued Monthly Capacity Payments, other amounts payable or reimbursable under the Offtake Agreement or any other amounts incurred or accrued prior to termination of the Offtake Agreement and the right to terminate the Offtake Agreement 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 Offtake Agreement 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 of the Offtake Agreement, as applicable. If CC Power fails to pay any amount when due pursuant to the Offtake Agreement, 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 S to the Offtake Agreement 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 Offtake Agreement, and an action may be brought to enforce this BLPTA whether or not action is brought against CC Power under the Offtake Agreement. 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 Offtake Agreement has expired or terminated early, and (b) either (i) all payment obligations of CC Power due and payable under the Offtake Agreement 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 Offtake Agreement;
- 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 Offtake Agreement imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding; or
 - (e) Any reorganization of CC Power or Project Participant, or any merger or consolidation of CC Power or Project Participant into or with any other Person; or
 - (f) The receipt, release, modification or waiver of, or failure to pursue or seek relief under or with respect to, any other BLPTA, guaranty, collateral, pledge or security device whatsoever; or
 - (g) CC Power's inability to pay any Guaranteed Amount or perform its obligations under the Offtake Agreement; 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 CC Power under the Offtake Agreement 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 Offtake Agreement 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 Offtake Agreement 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 Offtake Agreement 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. Project Participant agrees that, solely to the extent it is acting in its capacity as a Community Choice Aggregator, it will not claim governmental immunity to avoid its contractual obligations under this BLPTA. Project Participant agrees that the courts identified in Section 11 have jurisdiction to enforce this BLPTA. Notwithstanding the foregoing, any claims against Project Participant shall be filed in accordance with the California Government Claims Act (Cal. Gov't Code § 810 et. seq.), as applicable. Except as provided in the first sentence, Project Participant retains all other immunities and defenses against claims alleging its breach of this BLPTA.

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 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, (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 Seller), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Seller, and (f) Seller agrees that the courts identified in Section 11 have jurisdiction to enforce this BLPTA.

9. CC Power Representations and Warranties. CC 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 CC Power's organizational documents, any applicable Law or any contractual provisions binding on or affecting CC Power, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the CC Power, threatened, against or affecting CC Power or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of CC 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 CC Power), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by CC 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 10.

If delivered to Seller:

Attn: Jordan Cole, Chief Commercial Officer
333 Bay Street, Suite 520
Toronto, ON M5H 2R2, Canada
Phone: +1 (416) 409-8549

Email: jordan.cole@hydrostor.ca

If delivered to Project Participant:

[Project Participant Notice Provisions]

If delivered to CC Power:

Attn: General Manager California Community Power
901 H Street, Suite 120
PMB 157
Sacramento, CA 95814
Phone: 310-617-3441
amorris@cacommunitypower.org
with cc to: joshua.nelson@bbklaw.com

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 **[Sacramento] [San Francisco]**.

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 13, 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 Offtake

Agreement, 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 (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 (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 Offtake Agreement 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 ("**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 San Francisco for this BLPTA from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco.

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

(g) Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Seller does not as of the date of this BLPTA, and will not during the term of this BLPTA, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for San Francisco 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 San Francisco for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to San Francisco if the contractor or subcontractor: (1) knowingly

presents or causes to be presented to an officer or employee of San Francisco 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 San Francisco; (3) conspires to defraud San Francisco by getting a false claim allowed or paid by San Francisco; (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 San Francisco; or (5) is a beneficiary of an inadvertent submission of a false claim to San Francisco, subsequently discovers the falsity of the claim, and fails to disclose the false claim to San Francisco 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 San Francisco or on San Francisco 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 San Francisco. 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 San Francisco’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 San Francisco 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 San Francisco’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of San Francisco 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 San Francisco 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 San Francisco's 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 San Francisco's Environment Code, Seller shall not provide any items to San Francisco in performance of this BLPTA which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products; and (c) failure of Seller to comply with any of the requirements of Chapter 8 of San Francisco's 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 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 its agreements

including 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 of San José'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 of San José's Compliance Officer designates. They shall contain such information, data and/or records as the City of San José'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 (d) 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 17(e) 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.

[Signatures on following page]

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],
a California [joint powers authority]**

By: _____

Printed Name: _____

Title: _____

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

By: _____

Printed Name: _____

Title: _____

**GEM A-CAES LLC,
a Delaware limited liability company**

By: _____

Printed Name: _____

Title: _____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [REDACTED] (“**Seller**”) to California Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Resource Adequacy and TB4 Agreement dated [REDACTED] (“**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 Exhibit C of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

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

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

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

[REDACTED]

By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

GEM A-CAES LLC, a Delaware limited liability company (“Seller”)	California Community Power, a California joint powers authority (“Buyer”)
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

EXHIBIT O

CAPACITY TESTS

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 initial Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and efficiency rate of the Facility determined by such Commercial Operation Capacity Test(s).

B. Subsequent Capacity Tests. Following the Commercial Operation Date, Buyer may request an additional Capacity Test once in each Contract Year. Upon no less than ten (10) Business Days after receipt of Notice from Buyer, Seller shall schedule and complete a Capacity Test. In addition, Buyer shall have the right to require a retest of the 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 upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice). The Parties shall use reasonable commercial efforts to perform no more Capacity Tests than are reasonably necessary and to coordinate Capacity Tests with Capacity Tests being performed in connection with other contracts to which the Facility is subject.

C. Test Results and Re-Setting of Effective Capacity and Efficiency Rate. No later than ten (10) Business 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 of the Agreement, the actual Efficiency Rate and Effective Capacity determined pursuant to a Capacity Test (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 Storage Management System (SMS), 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 CAISO'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 CAISO'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 Expected Facility Capacity; provided, for all purposes of this Agreement, the amount of Buyer's Share of the Installed Capacity shall never be deemed to exceed the Guaranteed Contract Capacity, and all SOC measurements associated with a Capacity Test shall be based on the Buyer's Share of the Installed Capacity without taking into account any capacity that exceeds the Guaranteed Contract 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 CT will still be deemed "complete," and any adjustments necessary to the Effective Capacity or to the Efficiency Rate resulting from such CT, if applicable, will be made in accordance with this Exhibit O.
 - (1) The measurement of Charging Energy, as measured by the Facility Meter, that is required to charge the Facility from the Minimum Stored Energy Level up to the Maximum Stored Energy Level.
 - (2) The measurement of Discharging Energy, as measured by the Facility Meter, that is required to discharge the Facility from the Maximum Stored Energy Level down to the Minimum Stored Energy Level.
 - (3) Amount of time between the Facility's electrical output going from 0 to Maximum Discharging Capacity.
 - (4) Amount of time between the Facility's electrical input going from 0 to Maximum Charging Capacity.

- 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 measured by the Facility Meters (MWh) (i.e., to each measurement device making up the Facility Meter);
 - (3) The amount of Charging Energy measured by the Facility Meters (MWh) (i.e., from each measurement device making up the Facility Meter); and
 - (4) Stored Energy 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 Discharging Capacity sustained for the number of consecutive hours corresponding to the Resource Duration;
 - (3) The Maximum Charging Capacity sustained for the number of consecutive hours equal to the Resource Duration divided by the Minimum Efficiency Rate (or such lesser time as is required to reach 100% SOC);
 - (4) Amount of time between the Facility's electrical output going from 0 to the Maximum Discharging Capacity 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 Charging Capacity 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; and
 - (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 prevent the testing or recordation of any required parameter 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 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 ten (10) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
 - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
 - (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefore.

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) therefore. 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 Construction Start, 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 the Discharging Energy delivered to the Delivery Point (expressed in MWh AC) at the Maximum Discharging Capacity during the first Resource Duration number of hours of discharge (up to, but not in excess of, the product of (i) the Expected Facility Capacity as of the Effective Date, multiplied by (ii) the Resource Duration) shall be divided by the Resource Duration number of 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(b) 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.

J. Partial Capacity Tests. To the extent that a Capacity Test is being performed solely for Buyer that is not part of a Capacity Test applicable to the full Facility, the Parties will cooperate, acting reasonably and in good faith, to adjust the requirements and calculations to reflect testing of at least Buyer’s share of the Installed Capacity.

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 Capacity and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) the number of hours equal to the Resource Duration divided by the Minimum Efficiency 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) number of hours equal to the Resource Duration divided by the Minimum Efficiency of continuous charging.
- (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, command a real power discharge that results in an AC power output of the Facility's Maximum Discharging Capacity and maintain the discharging state until the earlier of (a) the Facility has discharged at the Maximum Discharging Capacity for the number of consecutive hours corresponding to the Resource Duration, or (b) the Facility has reached 0% SOC.
- (7) Record and store the SOC and Discharging Energy after the number of hours corresponding to the Resource Duration of continuous discharging.
- (8) If the Facility has not reached 0% SOC pursuant to Section III.A(6), continue discharging the Facility at Maximum Discharging Capacity until it reaches a 0% SOC.
- (9) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Section III.A(6) until the Facility has reached a 0% SOC pursuant to either Section III.A(7) or Section III.A(8), as applicable.

- Test Results:

- (1) The resulting Effective Capacity measurement is the sum of the total of Discharging Energy as reported under Section III.A(7) above at the Facility Meter divided by the Resource Duration, not to exceed the Expected Facility Capacity.
- (2) The total amount of Discharging Energy (as reported under Section III.A(9) 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.

EXHIBIT P
MAJOR EQUIPMENT

Owner-Furnished Equipment

- o Turbomachinery
- o Shell and Tube Heat Exchangers

Electrical and I&C

- o Electrical Enclosures
- o GSU Transformers
- o Main Auxiliary Transformers
- o Generator Circuit Breaker
- o Compressor Transformers
- o Emergency Diesel Generator
- o Iso Phase Bus Duct
- o Battery/UPS System
- o Distributed Control System

Mechanical

- o Air Cooled Heat Exchangers
- o Compressed Air System
- o Oil Water Separators
- o HP Air Trim Cooler
- o Fire Pumps
- o General Service Pumps
- o Fire Protection
- o Cold Thermal Fluid Pumps
- o Shop Fabricated Tanks

- o Field Erected Tanks (Cylindrical and Spherical)
- o Nitrogen Generation
- o Piping
- o Expansion Joints
- o Silencers
- o Generation Conduit Gate Valve
- o Butterfly Valves
- o Sanitary Waste Tank

Structural

- o Building
- o Structural Steel

Substation

- o HV Breakers
- o Structures/Equipment
- o Relay Panels

Bulks

Transmission

- o Steel Structures
- o Conductors

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, and (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q.

File Update Date:	[TBD]
Technology:	Advanced Compressed Air Energy Storage ("A-CAES") Technology
Storage Unit Name:	Willow Rock Energy Storage Center
A. Contract Capacity	
Expected Facility Capacity (MW):	500
Guaranteed Contract Capacity (MW):	50
Contract Capacity (MW)	[TBD]
B. Total Unit Dispatchable Range Information	
Interconnect Voltage (kV):	220 kV
Maximum State of Charge (SOC) during Charging:	100%
Minimum State of Charge (SOC) during Discharging:	0%
Maximum Stored Energy Level (MWh):	4,000 MWh
Minimum Stored Energy Level (MWh):	0 MWh
Maximum Charging Capacity (MW):	500 MW
Maximum Discharging Capacity (MW):	500 MW
C. Maximum Throughput	
Maximum Daily Throughput:	4,000 MWh
Maximum Annual Throughput:	1,460,000 MWh
D. Charge and Discharge Rates	
	Ramp Rate (MW/minute) Description
Energy:	
E. Ancillary Services	
Spinning reserve is included:	No
Non-spinning reserve is included:	No
Regulation up is included:	No
Regulation down is included:	No
Black start is included:	No
F. Other Services	
Voltage support is included:	No

EXHIBIT R
[RESERVED]

EXHIBIT S

PROJECT PARTICIPANTS AND LIABILITY SHARES

Project Participant	Liability Share
CleanPowerSF (CPSF)	23.00%
Peninsula Clean Energy (PCE)	30.00%
Redwood Coast Energy Authority (RCEA)	6.20%
San Jose Clean Energy (SJCE)	24.00%
Silicon Valley Clean Energy Authority (SVCE)	11.40%
Valley Clean Energy Authority (VCE)	5.40%
Total	100.00%

EXHIBIT T
MATERIAL PERMITS

<i>No.</i>	<i>Permits</i>
1	Application for Certification for the Facility by the California Energy Commission.
2	Underground Injection Control Permit for the shafts by the U.S. Environmental Protection Agency

Decision 21-06-035 June 24, 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)**

TABLE OF CONTENTS

Title	Page
PROCUREMENT TO ADDRESS MID-TERM RELIABILITY (2023-2026)	2
Summary	2
1. Background	4
2. Planning Standards	6
2.1. Comments of Parties	7
2.2. Discussion	11
3. Need Determination	12
3.1. Comments of Parties	15
3.2. Discussion	18
4. Timing of Procurement	21
4.1. Comments of Parties	22
4.2. Discussion	23
5. Eligible Resources	25
5.1. Comments of Parties	27
5.1.1. Long-lead-time resources	27
5.1.2. Fossil-fueled resources	31
5.1.3. Diablo Canyon replacement	32
5.1.4. Imports	32
5.2. Discussion	35
5.2.1. Long-lead-time resources	35
5.2.2. Fossil-fueled resources	38
5.2.3. Diablo Canyon replacement	44
5.2.4. Imports	45
5.2.5. Conclusion	46
6. Need Allocation to LSEs	48
6.1. Comments of Parties	49
6.2. Discussion	52
7. Backstop Procurement and Associated Cost Allocation	58
7.1. Comments of Parties	59
7.2. Discussion	61
8. Approval Process	63
8.1. Comments of Parties	64
8.2. Discussion	65
9. Compliance	66
9.1. Comments of Parties	67
9.2. Discussion	68

10. Penalties for Noncompliance.....	72
10.1. Comments of Parties	73
10.2. Discussion.....	74
11. Relationship to Central Procurement Entity	76
11.1. Comments of Parties	76
11.2. Discussion.....	77
12. Alternative Compliance Regimes to Address Longer-Term System Reliability Requirements.....	77
12.1. Comments of Parties	78
12.2. Discussion.....	79
13. Comments on Proposed Decision.....	80
14. Assignment of Proceeding	86
Findings of Fact.....	86
Conclusions of Law	89
ORDER	94

**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 SERVIM), 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 1-in-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

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

2021² 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

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 (<i>recommendation</i>)	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 (<i>adopted amounts</i>)	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 Section⁴ 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 addition 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 unprecedented 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.19-04-040⁵ 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 <i>by</i> 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 June 24, 2021, at San Francisco, California.

MARYBEL BATJER

President

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

DARCIE HOUCK

Commissioners

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 26-0031

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, and 232-09); and

WHEREAS, In Ordinance No 25-21, the Board authorized CleanPowerSF to enter into a joint powers agreement with nine other CCAs that provide electricity and related customer programs to customers in Northern and Central California, called California Community Power (CC Power); and

WHEREAS, In April 2021, CleanPowerSF became a member of CC Power; and

WHEREAS, On June 24, 2021, the California Public Utilities Commission (CPUC) ordered jurisdictional retail sellers of electricity, including CleanPowerSF, to procure 11,500 megawatts (MW) of new resources between 2023 and 2026, including 1,000 MW of Long-Duration Storage (LDS). CleanPowerSF's share of the CPUC's requirement is 15.5 MW. In February 2024, the CPUC extended the compliance deadline for Long-Duration Storage to 2031; and

WHEREAS, In 2022, CleanPowerSF participated in the Tumbleweed and Goal Line LDS Projects through CC Power to satisfy the CPUC procurement requirement; and

WHEREAS, The Goal Line agreements were terminated in 2025 due to a Seller Event of Default; and

WHEREAS, On August 19, 2024, CC Power issued a Request for Offers seeking bids from utility-scale renewable and storage assets, including those from LDS that could meet the CPUC's procurement order; and

WHEREAS, CC Power received and evaluated proposals from thirty LDS projects according to project economics, location, maturity and viability, and portfolio fit; and

WHEREAS, The Willow Rock LDS Project proposed by the developer Hydrostor was determined to provide significant benefits to participating CCAs, including portfolio diversity, Resource Adequacy capacity and regulatory compliance benefits; and

WHEREAS, On January 28, 2026, the CC Power Board of Directors approved the Willow Rock LDS Project and authorized the CC Power General Manager to execute the Willow Rock LDS Project agreements on behalf of CC Power; and

WHEREAS, CleanPowerSF seeks to purchase 11.5 MW of the Willow Rock LDS Project; and

WHEREAS, Along with the existing Tumbleweed Project, CleanPowerSF's share of the Willow Rock LDS Project will enable CleanPowerSF to meet its LDS procurement obligation as ordered by the CPUC; and

WHEREAS, The Willow Rock LDS Project requires three separate agreements, and CleanPowerSF is a party to two of those agreements; and

WHEREAS, The first of those agreements is the Energy Storage Agreement, which is an agreement between CC Power and GEM A-CAES, LLC (Willow Rock ESA); under the Willow Rock ESA, CC Power will purchase 50 MW of LDS on behalf of CleanPowerSF and the other participating members; the other participants are Peninsula Clean Energy, Redwood Coast Energy Authority, San José Clean Energy, Silicon Valley Clean Energy and Valley Clean Energy; and

WHEREAS, The second of those agreements is a Buyer Liability Pass-Through Agreement (BLPTA), which is an exhibit to the Willow Rock ESA; under the BLPTA, CleanPowerSF and the other participating CCAs must guarantee the prompt payment of their share of CC Power's obligations under the Willow Rock ESA should CC Power fail to make any required payments; and

WHEREAS, The third of those agreements is the Willow Rock LDS Project Participation Share Agreement (PPSA); the PPSA is an agreement between CC Power and the participating CCAs that defines the rights, duties, and obligations of CC Power and the Project participant; and

WHEREAS, Under the Willow Rock Long-Duration Storage ESA, CC Power has 120 days from CC Power Board approval to secure approval from each participating CCA's Governing Board; and

WHEREAS, On December 19, 2025, the California Energy Commission, acting as the California Environmental Quality Act (CEQA) lead agency, adopted a Final Decision for the Willow Rock Energy Storage Center (Project), and the Final Decision includes an environmental assessment, Findings of Fact, and a Compliance Monitoring Plan that are functionally equivalent to an Environmental Impact Report, CEQA findings, and a Mitigation Monitoring and Reporting Program, respectively, under the CEQA, per California Code of Regulations, Title 20, and Public Resources Code Section 21000, and the Final Decision also includes a Statement of Overriding Considerations; and

WHEREAS, The California Energy Commission has adopted the mitigation measures in the Compliance Monitoring Plan, which is included in the Final Decision to avoid or substantially lessen the significant environmental effects identified in the Final Decision and has assumed responsibility for their implementation; and

WHEREAS, The SFPUC is a Responsible Agency acting under the CEQA Guidelines Sections 15096 and 15381 because approval and execution of the Project Participation and Share Agreement and the Buyer Liability Pass-Through Agreement so that CleanPowerSF may participate in California Community Power's Long-Duration Storage procurement with the Willow Rock Energy Storage Center is a discretionary action subject to compliance with the CEQA; and

WHEREAS, The SFPUC has reviewed and considered the Final Decision and determined that approval of the Agreements is within the scope of the Final Decision, and that the Final Decision is adequate for these actions; and

WHEREAS, Staff has made the Final Decision, including the Findings of Fact, and Compliance Monitoring Plan, and Statement of Overriding Considerations adopted by the California Energy Commission that are part of the record of this approval available for review by this Commission and the public at the SFPUC offices, Environmental Management, 525 Golden Gate Avenue, 11th Floor, San Francisco, California, and those documents are part of the record before this Commission; and

WHEREAS, This Commission has reviewed and considered the information in the Final Decision, including the Findings of Fact, Compliance Monitoring Plan, and Statement of Overriding Considerations adopted by the California Energy Commission; and

WHEREAS, Since the California Energy Commission adopted the Final Decision, there have been no substantial changes in the Project or changes in Project circumstances that would result in new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final Decision; and

WHEREAS, The SFPUC has no direct authority or responsibility with respect to the proposed Project or any Project mitigation measures other than through approval and execution of the Project Participation and Share Agreement and Buyer Liability Pass-Through Agreement to allow participation in the California Community Power's Willow Rock Long-Duration Storage Project procurement with the Willow Rock Energy Storage Center; now, therefore, be it,

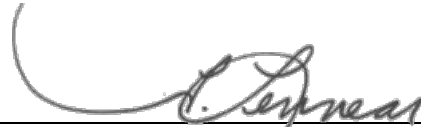
RESOLVED, This Commission, acting as a Responsible Agency under the CEQA Guidelines Sections 15096 and 15381, has reviewed and considered the Final Decision and the record as a whole, finds that the Final Decision is adequate for its use as Responsible Agency for the Project and adopts the California Energy Commission's Findings of Fact and incorporates them by this reference as though set forth in this Resolution; and, be it,

FURTHER RESOLVED, This Commission affirms the determination that since the Final Decision was finalized, there have been no substantive Project changes and no substantial changes in Project circumstances that would require revisions to the Final Decision due to the potential involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final Decision; and, be it,

FURTHER RESOLVED, That the Commission hereby approves and authorizes the General Manager to execute and seek Board of Supervisors approval for the Willow Rock Long-Duration PPSA and BLPTA for a not-to-exceed amount of \$75,900,000 over a twenty (20) year term on behalf of CleanPowerSF; and, be it,

FURTHER RESOLVED, That the Commission authorizes the General Manager to approve any modifications to the agreements that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City, do not materially increase the obligations or diminish the benefits to the City, are necessary or advisable to effectuate the purposes and intent of this resolution, and are in compliance with all applicable laws, including the City Charter.

I hereby certify that the foregoing resolution was adopted by the San Francisco Public Utilities Commission at its meeting of February 24, 2026.

A handwritten signature in dark ink, appearing to read "C. Deane", is written over a horizontal line.

Director of Commission Affairs
San Francisco Public Utilities Commission



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 · Fax: 415.252.3112

Filing Information

Record Number

SFEC126F0001122

Status

BOS Legislative Clerk Acceptance

SFEC126f Form Type

126f4 BOS

File Number (BOS)

260212

Type of Filing

Original

Contractor Information

Contractor Name

California Community Power

Contractor Email

info@cacommunitypower.org

Contractor Phone #

(310) 617-3441

International Address?

No

Contractor Address (US)

901 H Street, Suite 120, PMB 57

Contractor City and State

Sacramento - CA

Contractor Zip Code

95814

Country

United States of America

Contract Information

Contract Amount

\$75,900,000.00

Contract Description

The Project Participation Share Agreement (PPSA) and Buyer Liability Pass-Through Agreement (BLPTA) enable CleanPowerSF's participation in the CC Power Willow Rock Long-Duration storage project. The PPSA specifies the products and benefits that will be provided, payment timelines and procedures in the event a participating CCA doesn't make payments when due. The BLPTA is a guaranty by CleanPowerSF of its share of CC Power's payment obligations under the Willow Rock Long-Duration storage project's Energy Storage Agreement.

City Agency - Departmental Contact Information

Departmental Contact

Kiara Hermann

Departmental Contact Phone

(415) 554-1638

Full Department Name

HHP - Hetch Hetchy *(PUC)

Agency Contact Email

khermann@sfgwater.org

Contract Approval

Mayoral Approval Not Required

false

Affiliates and subcontractors

Entity Type	First Name	Last Name	Entity or Sub/Contractor Name
Board of Directors	Lori	Mitchell	California Community Power
Board of Directors	Geof	Syphers	California Community Power
CEO	Robert	Shaw	California Community Power
CEO	Shawn	Marshall	California Community Power



San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

FROM: Jeremy Spitz, Policy and Government Affairs

DATE: February 27, 2026

SUBJECT: [Agreements – Long Duration Storage - California
Community Power – CleanPowerSF - Not to Exceed
\$75,900,000]

Please see attached a proposed Resolution approving and authorizing the General Manager of the San Francisco Public Utilities Commission, on behalf of CleanPowerSF, to participate in California Community Power's procurement of the Willow Rock Long Duration Storage Project by 1) entering into the Buyer Liability Pass Through Agreement and 2) entering into the Willow Rock Long Duration Storage Project Participation Share Agreement, with a contract duration of 20 years, estimated to begin July 1, 2030, through June 30, 2050, pursuant to Section 9.118 of the San Francisco Charter.

The following is a list of accompanying documents:

- Proposed Resolution (Word Doc Version)
- SFPUC Resolution No.260-031
- CPUC and CEQA Final Decision
- Buyer Liability Pass Through Agreement
- Project Participation Share Agreement
- Resource Adequacy and TB4 Agreement Cover Sheet
- Form 126

Please contact Jeremy Spitz at jspitz@sfgwater.org if you need any additional information on these items.

Daniel Lurie
Mayor

Joshua Arce
President

Stephen E. Leveroni
Vice President

Avni Jamdar
Commissioner

Meghan Thurlow
Commissioner

Kate H. Stacy
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.

