

File No. 210959

Committee Item No. 1

Board Item No. 9

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date October 27, 2021

Board of Supervisors Meeting Date November 2, 2021

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
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER (Use back side if additional space is needed)

- Public Utilities Commission Resolution No. 21-0151
- Board of Supervisors Ordinance No. 8-18
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Linda Wong Date October 22, 2021

Completed by: Brent Jalipa Date October 29, 2021

1 [Agreement Amendment - Blythe Solar IV, LLC - CleanPowerSF Power Purchase - Energy
2 Storage Capability - Not to Exceed \$220,280,744]

3 **Resolution approving amendments to CleanPowerSF's power purchase agreement with**
4 **Blythe Solar IV, LLC, to add energy storage capability to the existing solar energy**
5 **facility and increase the contract amount by \$83,096,000 for a total not to exceed cost**
6 **of \$220,280,744 to commence in October 2022, with no change to the term.**

7
8 WHEREAS, In May 2016, the San Francisco Public Utilities Commission (PUC)
9 launched a program called CleanPowerSF to provide San Francisco residents and
10 businesses the option to receive cleaner, more sustainable electricity at rates comparable to
11 those offered by Pacific Gas & Electric Company; CleanPowerSF currently provides three
12 million megawatt hours of electricity annually to over 380,000 customer accounts; and

13 WHEREAS, In Ordinance 8-18, the Board of Supervisors delegated authority to the
14 General Manager of the PUC to enter into long-term renewable power purchase agreements
15 for contracts resulting from the PUC's 2018 request for offers for renewable energy supply,
16 including the Agreement, and authorized the use of the PUC's form power purchase
17 agreements; and

18 WHEREAS, Blythe Solar IV, LLC, a subsidiary of NextEra Energy Resources
19 Acquisitions, LLC, (Blythe Solar) was a respondent to that 2018 solicitation, and in July 2019,
20 CleanPowerSF entered into a long-term power purchase agreement with Blythe Solar to
21 purchase solar energy from a facility located in Blythe, California in the amount of
22 \$137,184,744 with a term through September 10, 2040 (Agreement); and

23 WHEREAS, CleanPowerSF and Blythe Solar have agreed to amend the Agreement to
24 include energy storage for the Blythe Solar facility for the term of the Agreement with
25 operation to commence in October 2022 and to increase the not to exceed amount of the

1 Agreement by \$83,096,000 for a total amount of \$220,280,744 (Amended and Restated
2 Agreement); and

3 WHEREAS, The Risk Manager of the PUC and the City Attorney have approved the
4 mutual indemnification and limitation of liability clauses in the amended Agreement; and

5 WHEREAS, Energy storage will allow CleanPowerSF to maximize the value of the
6 Agreement by storing electric energy from the renewable power facility during periods when
7 there is excess electricity supply in the California grid and discharging and delivering the
8 electricity during periods when supplies are low and by providing an electricity-related product
9 known as resource adequacy capacity; and

10 WHEREAS, State law requires load serving entities such as CleanPowerSF to procure
11 certain amounts of resource adequacy capacity under long-term agreements and the
12 Amended and Restated Agreement will enable CleanPowerSF to comply with the state
13 mandates; and

14 WHEREAS, The PUC approved the Amended and Restated Agreement at a public
15 meeting on September 28, 2021 in Resolution No. 21-0151; now, therefore, be it

16 RESOLVED, That the Board of Supervisors authorizes the General Manager of the
17 Public Utilities Commission to enter into the Amended and Restated Agreement for a total
18 amount not to exceed \$220,280,744; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
20 Manager to make amendments to the Amended and Restated Agreement, as needed to fulfill
21 the purposes of the Agreement, that do not materially increase the obligations or liabilities of
22 the City or reduce the benefits to the City; and, be it

23 FURTHER RESOLVED, That within thirty (30) days of the amendment being fully
24 executed by all parties, the San Francisco Public Utilities Commission shall provide the final
25 amendment to the Clerk of the Board for inclusion into the official file.

Item 1 File 21-0959 <i>(Continued from October 20, 2021)</i>	Department: Public Utilities Commission (PUC)
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the First Amendment to the power purchase agreement between San Francisco Public Utilities Commission's (SFPUC) CleanPowerSF and Blythe Solar IV, LLC (Blythe Solar), to add energy storage capacity to the existing solar energy facility and increase the not-to-exceed amount by \$83,096,000, for a total not to exceed \$220,280,744, with no change to the contract term.

Key Points

- State law requires all electric service providers, including CleanPowerSF, to maintain certain quantities of Resource Adequacy (RA) capacity to ensure sufficient electric generation resources are available on the grid to meet unusually high levels of customer demand.
- In January 2018, the Board of Supervisors approved an ordinance that authorized the SFPUC General Manager to enter into standardized power purchase agreements of \$10 million or more, up to \$175 million, and SFPUC issued a solicitation for offers of renewable energy supply under this authority. Blythe Solar responded to the solicitation and entered into a power purchase agreement with SFPUC for a term of 20 years, from September 11, 2020 through September 10, 2040, and an amount not to exceed \$137,184,744.
- Under the proposed First Amendment, Blythe Solar would add battery storage to the power purchase agreement. The addition of battery storage would provide for a more reliable supply of energy from the Blythe Solar facility because excess solar power produced by the facility could be stored at times when solar production volumes are high throughout the state and then released to the grid when solar is not available and power supplies are lower. According to the SFPUC, the battery storage added by the proposed amendment would increase the RA capacity value of the Blythe project and allow CleanPowerSF to meet approximately eight percent of its RA capacity obligations.

Fiscal Impact

- The proposed amendment would increase the not-to-exceed amount of the power purchase agreement by \$83,096,000, for a total not to exceed \$220,280,744. To date, actual contract expenditures total \$5,144,340. SFPUC anticipates annual expenditures of \$7,301,773 under the existing agreement scope and \$4,794,000 in additional expenditures under the proposed amendment.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

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

BACKGROUND

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

State law requires all electric service providers, including CleanPowerSF, to maintain certain quantities of Resource Adequacy (RA) capacity to ensure sufficient electric generation resources are available on the grid to meet unusually high levels of customer demand. RA requirements for each electric service provider are determined by state energy regulatory agencies and the California Independent System Operator using demand forecasts. Electric service providers must also procure different types of RA capacity products with different operating attributes and from different geographical areas.

In January 2018, the Board of Supervisors approved an ordinance that authorized the SFPUC General Manager to enter into standardized power purchase agreements of \$10 million or more and waived certain Administrative and Environment Code contracting provisions and delegated authority for up to \$175 million in power supply contracts (File 17-1172). In 2018, SFPUC issued a solicitation for offers of renewable energy supply under this authority. Blythe Solar IV, LLC, a subsidiary of NextEra Energy Resources Acquisitions, LLC (Blythe Solar), responded to the solicitation. In July 2019, SFPUC entered into a long-term power purchase agreement with Blythe Solar to purchase solar energy from a facility in Blythe, California for a term of 20 years, from September 11, 2020 through September 10, 2040, and an amount not to exceed \$137,184,744.

SFPUC and Blythe Solar have agreed to amend the agreement to include energy storage for the Blythe Solar facility. On September 28, 2021, the SFPUC Commission approved the amendment to the agreement.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the First Amendment to the power purchase agreement between SFPUC and Blythe Solar, increasing the not-to-exceed amount by \$83,096,000, for a total not to exceed \$220,280,744, with no change to the agreement term. The energy storage component is planned to commence operations in October 2022 and under the agreement CleanPowerSF would purchase product from the energy storage through the approximately 17 years and 11 months remaining in the agreement term. The proposed amendment requires

Board of Supervisors approval because the value of the amendment exceeds the delegated authority for energy supply purchases authorized by the 2018 ordinance.

According to the SFPUC, the addition of battery storage would provide for a more efficient and reliable supply of energy from the Blythe Solar facility. Solar power produced by the facility could be stored at times when solar production volumes are high throughout the state and then released to the grid when solar is not available and power supplies are lower. According to Erin Mulberg, SFPUC Origination and Power Supply, energy generated by solar facilities typically has a lower value in the energy market as well as reduced RA capacity value because it is generated in the middle of the day when electricity is now abundant on the grid. Adding battery storage increases this value because energy can be stored and discharged at times when energy is more scarce and costly to procure, such as in the early evening when demand on the grid begins to peak. By adding the dispatchability of a battery, CleanPowerSF can also help reduce the grid's reliance on fossil fuels to supply electricity demand when for example, energy from solar and wind may not be available.

While RA capacity was included in the existing contract for the solar project, according to the SFPUC, solar resources provide less RA capacity than battery storage resources as determined by state regulations. The battery storage added by the proposed amendment would increase the RA capacity value of the Blythe project and allow CleanPowerSF to meet approximately eight percent of its RA capacity obligations.

Community Benefits

Blythe Solar's power purchase agreement required a community benefits program. Blythe Solar is providing contributions to support programs that advance engineering and science education through providing mentorship, tutoring, and scholarship opportunities, as well as supporting programs that develop small, local businesses and provide economic assistance. Blythe Solar has provided financial contributions to the City of Blythe, Lift to Rise, the Riverside Latino Commission Counseling Center, Palo Verde College, and KidWind as part of this program. These contributions will last five years, until approximately September 2025. The proposed amendment would not change this community benefits program.

FISCAL IMPACT

The proposed amendment would increase the not-to-exceed amount of the power purchase agreement by \$83,096,000, for a total not to exceed \$220,280,744. The amount is based on the bid price per kilowatt (kW) per month and price per megawatt-hour (MWh) multiplied by the total MW of capacity or MWh of renewable energy. The actual bid price varies by the type of electricity-related product. SFPUC determined that the price of the amendment to add battery storage to the Blythe Solar project is competitive as compared to prices seen by the SFPUC in recent RA capacity solicitations. SFPUC staff stated that the addition of energy storage to this contract will help the program stabilize near and long-term energy supply costs for the CleanPowerSF program.

To date, actual contract expenditures total \$5,144,340. SFPUC anticipates annual expenditures of \$7,301,773 under the existing agreement scope and \$4,794,000 in additional expenditures under the proposed amendment.

SFPUC states that RA capacity contracts are contracts that commit power plants to be available to the state's grid operator, the California Independent System Operator (CAISO), when the demand for electricity in California is at its highest levels. Under these contracts, CleanPowerSF receives a commitment from the plant to make its power producing capability available to CAISO if the state needs to ensure electric system reliability.

RECOMMENDATION

Approve the proposed resolution.

Item 7 File 21-0959	Department: Public Utilities Commission (PUC)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve the First Amendment to the power purchase agreement between San Francisco Public Utilities Commission’s (SFPUC) CleanPowerSF and Blythe Solar IV, LLC (Blythe Solar), to add energy storage capacity to the existing solar energy facility and increase the not-to-exceed amount by \$83,096,000, for a total not to exceed \$220,280,744, with no change to the contract term. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • State law requires all electric service providers, including CleanPowerSF, to maintain certain quantities of Resource Adequacy (RA) capacity to ensure sufficient electric generation resources are available on the grid to meet unusually high levels of customer demand. • In January 2018, the Board of Supervisors approved an ordinance that authorized the SFPUC General Manager to enter into standardized power purchase agreements of \$10 million or more, up to \$175 million, and SFPUC issued a solicitation for offers of renewable energy supply under this authority. Blythe Solar responded to the solicitation and entered into a power purchase agreement with SFPUC for a term of 20 years, from September 11, 2020 through September 10, 2040, and an amount not to exceed \$137,184,744. • Under the proposed First Amendment, Blythe Solar would add battery storage to the power purchase agreement. The addition of battery storage would provide for a more reliable supply of energy from the Blythe Solar facility because excess solar power produced by the facility could be stored at times when solar production volumes are high throughout the state and then released to the grid when solar is not available and power supplies are lower. According to the SFPUC, the battery storage added by the proposed amendment would increase the RA capacity value of the Blythe project and allow CleanPowerSF to meet approximately eight percent of its RA capacity obligations. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed amendment would increase the not-to-exceed amount of the power purchase agreement by \$83,096,000, for a total not to exceed \$220,280,744. To date, actual contract expenditures total \$5,144,340. SFPUC anticipates annual expenditures of \$7,301,773 under the existing agreement scope and \$4,794,000 in additional expenditures under the proposed amendment. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

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RECOMMENDATION

Approve the proposed resolution.



**AMENDED AND RESTATED
RENEWABLE POWER PURCHASE AGREEMENT
BY AND BETWEEN**

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

AND

BLYTHE SOLAR IV, LLC

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EXHIBITS

The following Exhibits constitute a part of this Agreement and are incorporated into the Agreement by reference.

EXHIBIT A	SELLER DOCUMENTATION OF CONDITIONS PRECEDENT
EXHIBIT B	FACILITY DESCRIPTION AND SITE DRAWINGS
EXHIBIT C	CONTRACT QUANTITY AND PERFORMANCE ASSURANCE AMOUNTS
EXHIBIT D	INSURANCE COVERAGES
EXHIBIT E	CONSTRUCTION START CERTIFICATION
EXHIBIT F	QUARTERLY PROGRESS REPORT
EXHIBIT G-1	STORAGE COMMERCIAL OPERATION CERTIFICATION PROCEDURE
EXHIBIT G-2	STORAGE COMMERCIAL OPERATION CERTIFICATION
EXHIBIT H	STORAGE DELIVERY START DATE CONFIRMATION
EXHIBIT I	STORAGE CONTRACT CAPACITY CERTIFICATE
EXHIBIT J	FORM OF LETTER OF CREDIT
EXHIBIT K	FORM OF GUARANTY
EXHIBIT L	FORM OF CONSENT TO COLLATERAL ASSIGNMENT
EXHIBIT M	CAISO CHARGE CODES
EXHIBIT N	BUYER AS SCHEDULING COORDINATOR
EXHIBIT O	COMMUNITY BENEFITS
EXHIBIT P	STORAGE OPERATING PARAMETERS
EXHIBIT Q	STORAGE FACILITY AVAILABILITY
EXHIBIT R	STORAGE CAPACITY TESTS
EXHIBIT S	STORAGE FUNCTIONAL SPECIFICATIONS
EXHIBIT S-1	GUARANTEED ROUND TRIP EFFICIENCY
EXHIBIT T	STANDING INSTRUCTIONS

1.1 AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT COVER SHEET

This Amended and Restated Renewable Power Purchase Agreement (the “Agreement”) is entered into between the City and County of San Francisco, acting by and through its Public Utilities Commission, Power Enterprise, CleanPowerSF (“Buyer”) and Blythe Solar IV, LLC (“Seller”), as of [____], 2021 (the “Execution Date”). The Agreement shall include the exhibits, attachments, any written and fully executed supplements hereto, and any designated collateral, credit support, or similar arrangement between the Parties. Buyer and Seller are parties to that certain Renewable Power Purchase Agreement dated as of July 9, 2019 (the “Original Agreement”), which Original Agreement shall, subject to the terms thereof: (i) remain in effect until the Effective Date of this Agreement, upon which the Original Agreement shall be replaced by this Agreement in its entirety and no longer have any force or effect, or (ii) if the Effective Date of this Agreement never occurs, remain in effect (for the avoidance of doubt, in accordance with the terms of such Original Agreement). Buyer and Seller desire to amend and restate the Original Agreement to include provisions relating to the Storage Facility, effective only upon the occurrence of the Effective Date in the manner set forth in Section 2.1 and Section 2.2(a).

A. Transaction

Product: Solar Product and Storage Product

Facility: Blythe IV Solar Energy Center

Address: 4000 Dracker Drive, Blythe, California 92225

Solar Contract Capacity: 62.5 MW solar at the Delivery Point

Guaranteed Storage Contract Capacity: [REDACTED] MW x 4 hours storage at the Delivery Point

POI Limit: 62.5 MW (combined for Solar Contract Capacity and Guaranteed Storage Contract Capacity)

Solar Contract Price: [REDACTED]

Storage Contract Price: [REDACTED]

Delivery Point: Colorado River Substation 230kV bus

Delivery Period: The “Delivery Term,” as defined below.

Deliverability:

From the Solar Delivery Start Date until the Storage RA Start Date: Full Capacity Delivery Status for 62.5 MW Solar

From the Storage RA Start Date until the end of the Delivery Term: [REDACTED]

Maximum Annual Storage Facility Discharging Energy Limit: [REDACTED] MWh/Contract Year

B. [Storage Milestones]

Storage Permitting Milestone: May 1, 2022

Storage Construction Milestone: June 1, 2022

Storage Major Equipment Milestone: August 1, 2022

Storage Mechanical Completion Milestone: September 1, 2022

Storage Commercial Operation Milestone: October 1, 2022

Storage Target Commercial Operation Milestone: [August 31, 2022]

C. Seller Collateral

Development Assurance: [REDACTED]

[REDACTED]

Performance Assurance: [REDACTED]

[REDACTED]

D. Buyer Collateral

Development Assurance: [REDACTED]

[REDACTED]

Performance Assurance: [REDACTED]

[REDACTED]

E. Notices

Buyer: City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF	Seller: Blythe Solar IV, LLC
All Notices: 525 Golden Gate Ave, 7th Floor San Francisco, CA, 94102 Attn: Contract Administration Phone: 415-554-4603 Email: powercontracts@sfwater.org	All Notices: 700 Universe Blvd Juno Beach, FL 33408 Attn: Sr. Director, Business Mgmt Phone: [REDACTED] Email: [REDACTED]

	REGION@nexteraenergy.com
Federal Tax ID Number: [REDACTED]	Federal Tax ID Number: [REDACTED] DUNS Number:
Invoices: PowerInvoices@sfwater.org Attn: Angie Lee Phone: (415) 554-2451 Facsimile: (415) 554-3280 Email: Alec@sfwater.org	Invoices: Attn: Business Management Phone: [REDACTED] Facsimile: [REDACTED] Email: [REDACTED] [REDACTED]
Scheduling: Attn: Sunita Jones Phone: (415) 554-1575 Email: SKJones@sfwater.org PowerScheduler@sfwater.org	Scheduling: Attn: NextEra Energy Marketing, LLC Phone: [REDACTED] Facsimile: [REDACTED] Email: [REDACTED] [REDACTED]
Payments: PowerInvoices@sfwater.org Attn: Angie Lee Phone: (415) 554-2451 Facsimile: (415) 554-3280 Email: Alec@sfwater.org	Payments: Attn: Business Management Phone: [REDACTED] Facsimile: [REDACTED] Email: [REDACTED] [REDACTED]
Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]

Credit and Collections:

Attn: Rich Morales
Phone: (415) 551-2973
Facsimile: (415) 487-5258
Email: Rmorales@sfgwater.org

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Michael Hyams
Phone: (415) 554-1590
Email: MHyams@sfgwater.org

Credit and Collections:

Attn: [REDACTED]
Phone: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: General Counsel
Email: [REDACTED]
[REDACTED]

RECITALS

1. Seller owns and operates a solar powered generating facility located in Riverside County near Blythe, California (referred to herein as the Solar Facility); and,
2. Seller intends to develop, finance, build, own and operate an energy storage facility (referred to herein as the Storage Facility) at or near the site of the Solar Facility; and,
3. Buyer operates CleanPowerSF, a community choice aggregator that serves retail customers in the City and County of San Francisco; and,
4. Buyer is willing to purchase, and Seller is willing to sell, the Product of the Solar Facility and Storage Facility, on the terms and conditions and at the prices set forth in this Agreement.

NOW THEREFORE, in consideration of the recitals above and the following covenants, terms and conditions, the Parties agree as follows:

ARTICLE 1: DEFINITIONS

AC: Alternating current.

Affiliate: With respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management, operations or policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

Agreement: Has the meaning set forth in the Cover Sheet.

Ancillary Services: Has the meaning set forth in the CAISO Tariff.

Annual Forecast: Has the meaning set forth in Section 5.6(i)(i).

Annual Storage Availability: Means the hours of availability of the Storage Facility during a Contract Year, as calculated pursuant to Exhibit Q.

Applicable Law: Any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including the CAISO, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties or the terms of the Agreement.

Automated Dispatch System: Has the meaning set forth in the CAISO Tariff.

Availability Standards: The resource adequacy availability incentive mechanism set forth in Section 40.9 of the CAISO Tariff, as it may be amended or supplemented (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible charges and incentive payments for performance thereunder, but excluding, for the

avoidance of doubt, any unforced capacity mechanism.

Bankrupt: With respect to any entity, such entity (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, or has any such petition filed or commenced against it and such case filed against it is not dismissed within sixty (60) calendar days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) 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 (e) is generally unable to pay its debts as they fall due.

Bid Cost Recovery: Has the meaning set forth in the CAISO Tariff.

Bid Curtailment: An event in which an Economic Bid or Self-Schedule for Energy or Ancillary Services submitted for a Settlement Interval in accordance with this Agreement results in a Real Time energy production schedule awarded or deployed by the CAISO that fails to provide for the delivery of the full quantity of Energy included in the Final Output Estimate.

Board of Supervisors: The Board of Supervisors for the City and County of San Francisco.

Business Day: Any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or a City and County of San Francisco holiday, between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

Buyer: The City and County of San Francisco, acting by and through its Public Utilities Commission.

Buyer DAM Bid Price: The Buyer-determined price component of a bid that is used for an Economic Bid into the Day-Ahead Market, subject to adjustment pursuant to Sections 5.6(b) and (d), and Exhibit T.

[REDACTED]

[REDACTED]

Buyer Indemnified Party: Has the meaning set forth in Section 10.1(a).

[REDACTED]

Buyer RTM Bid Price: The Buyer-determined price component of a bid that is used for an Economic Bid into the Real-Time Market, subject to adjustment pursuant to Sections 5.6(b) and (d), and Exhibit T.

CAISO: The California Independent System Operator Corporation, or its functional successor.

CAISO Tariff: The California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

Calendar Quarter: Has the meaning set forth in Exhibit F.

Capacity Attributes: Any current or future defined characteristic (including the ability to generate at a given capacity level, provide Ancillary Services, and ramp up or ramp down at a given rate), certificate, tag, credit, flexibility, or dispatchability attribute, whether general in nature or specific as to the location or any other attribute of the Facility, intended to value any aspect of the capacity of the Facility to produce energy, including any accounting construct, or any other measure by the CPUC,

the CAISO, the FERC, or any other Governmental Authority with jurisdiction, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other such attribute.

Capacity Deficit: Has the meaning set forth in Exhibit Q.

Capacity Deficit Period: Has the meaning set forth in Exhibit Q.

Capacity Procurement Mechanism (CPM) Soft Offer Cap: Has the meaning set forth in the CAISO Tariff.

CEC: The California Energy Commission or any successor agency.

CEC Certification: Means that the CEC has certified, or pre-certified, that the Facility is an ERR for purposes of the California Renewables Portfolio Standard and that all Product produced by the Facility qualifies as generation from an ERR for purposes of the RPS.

CEQA: The California Environmental Quality Act, California Public Resources Code Sections 21000, et. seq., as it may be amended from time to time.

Change in Law: Has the meaning set forth in Section 12.5(f).

Charge Code: Has the meaning set forth in the CAISO Tariff.

Charging Energy: The as-available Energy produced by the Solar Facility and delivered to the Storage Facility pursuant to CAISO's dispatch based on the Standing Instructions or Supplemental Instructions submitted by Buyer to Seller and implemented by Seller with CAISO. All Charging Energy shall be used solely to charge the Storage Facility and, except as set forth in Sections 3.13 and 3.14, all Charging Energy shall be generated solely by the Solar Facility. For avoidance of doubt, Charging Energy shall be measured at the Storage Facility Meter net of Electrical Losses.

City: The City and County of San Francisco.

CleanPowerSF: Buyer's Community Choice Aggregation Program.

Compliance Cost Cap: Has the meaning set forth in Section 3.7.

Compliance Costs: Has the meaning set forth in Section 3.7(a).

Confidential Information: Has the meaning set forth in Section 12.2(b).

Contract Quantity: The annual expected Energy production of the Solar Facility set forth in Exhibit C.

Contract Year: A period of twelve (12) consecutive months, commencing at 12:00 a.m. on the Solar Delivery Start Date, and each subsequent Contract Year commencing on the twelve (12) month anniversary of the Solar Delivery Start Date.

Controller: The Controller for the City and County of San Francisco.

Costs: With respect to a Non-Defaulting Party, (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement entered into pursuant to this Agreement or entering into new arrangements which replace this Agreement and (b) all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

CPUC: The California Public Utilities Commission or any successor entity.

Credit Rating: 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 unsecured senior long-term debt, then the rating assigned to such entity as an issuer rating by S&P and/or Moody's. For the avoidance of doubt, Seller's Parent's blanket guaranty of NextEra Energy Capital Holdings Inc. is not considered a third party credit enhancement.

Curtailed Order: An order of the PTO, distribution provider, Reliability Coordinator, and/or CAISO (whether directly or through a Scheduling Coordinator or the PTO), for any reason, including, but not limited to, any System Emergency, any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO's or PTO's electric system integrity or the integrity of other systems to which the CAISO or the PTO is connected, including curtailment in accordance with Seller's obligations under its Interconnection Agreement with the PTO or distribution operator.

Customer Market Results Interface: Has the meaning set forth in the CAISO Business Practice Manual for Definitions and Acronyms.

DA Percentage: An amount determined by Buyer and expressed as a percentage of the Day-Ahead Forecast, subject to adjustment pursuant to Sections 5.6(b) and (d), and Exhibit T.

Daily Liquidated Damages or Daily LD Amount: For each day or portion of a day for which delay liquidated damages are payable under Section 5.4(d), an amount equal to the total amount of Development Assurance required hereunder divided by [REDACTED].

Damage Payment: The dollar amount to be posted as Seller Development Assurance pursuant to Section 6.2(a)(i) minus all Daily Liquidated Damages paid by Seller to Buyer under Section 5.4(d).

Day-Ahead Forecast: Pursuant to CAISO Tariff Section 4.8.2, the forecast of the Facility's output for each Day-Ahead Market interval provided by the CAISO's independent forecast provider or by Seller if Seller is certified by CAISO to submit its own forecast.

Day-Ahead Market or DAM: Has the meaning set forth in the CAISO Tariff.

Deemed Delivered Energy: Has the meaning set forth in Section 5.6(l)(ii)(A).

Defaulting Party: The Party that has caused an Event of Default.

Delivered Energy: Has the meaning set forth in Section 4.1(a)(i)(A).

Delivery Point: Colorado River Substation 230kV bus.

Delivery Term: with respect to the Solar Facility and Products, the Solar Delivery Term, and with respect to the Storage Facility and Storage Product, the Storage Delivery Term.

Discharging Energy: All Energy delivered from the Storage Facility to the Delivery Point pursuant to CAISO's dispatch based on the Standing Instructions or Supplemental Instructions submitted by Buyer to Seller and implemented by Seller with CAISO, net of the Electrical Losses, as measured at the Storage Facility Metering Points by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

Discharging Energy Annual Limit: The limit of [REDACTED] MWh of Discharging Energy that can be discharged from the Storage Facility during any Contract Year, subject to Section 3.15.

Economic Bid: Has the meaning set forth in the CAISO tariff.

Early Termination Date: Has the meaning set forth in Section 9.2(a)(i).

Effective Date: Has the meaning set forth in Section 2.1(a).

Efficiency Measurement Period: Has the meaning set forth in Exhibit S.

Electric System Upgrades: Any Network Upgrades, Distribution Upgrades, or Interconnection

Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Facility to the Participating Transmission Owner's electric system for receipt of Energy at the Point of Interconnection.

Electrical Losses: All transmission or transformation losses between the Storage Facility Metering Points and the Delivery Point.

Eligible LC Bank: [REDACTED]

Eligible Renewable Energy Resource or ERR: Has the meaning set forth in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.

Energy: Three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses.

Environmental Attributes: Any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the sale of generation from the Facility to Buyer under this Agreement, and its avoided emission of pollutants. Environmental Attributes include, without limitation, Renewable Energy Credits as well as:

- (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants;
- (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and
- (c) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tag are accumulated on a MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of Energy.

Environmental Attributes do not include:

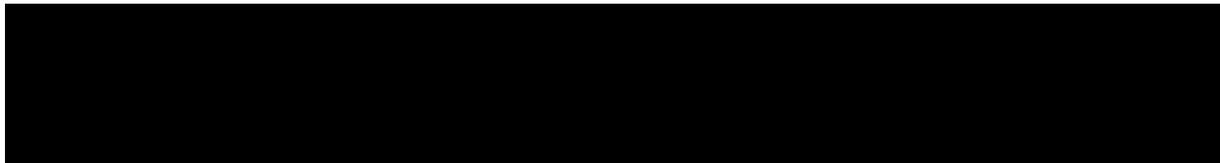
- (i) any Energy, capacity, reliability or other power attributes from the Facility,
- (ii) production or investment tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation,
- (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) emission reduction credits encumbered or used by a Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or biogas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

Environmental Costs: Means all costs, taxes, charges, and fees pertaining to, or incurred in connection

with: acquiring and maintaining all environmental permits and licenses for the Facility and the Product; the Product's and Facility's compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility; all operating and maintenance costs for operation of pollution mitigation or control equipment; all costs of permit maintenance fees and emission fees as applicable; the costs of all emission reduction credits or marketable emission trading credits; any costs related to greenhouse gas emissions, required by any applicable environmental laws, rules, regulations, and Permits to operate; costs associated with the storage, use, disposal, transportation, and clean-up of Hazardous Substances introduced to the Site, and; the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

EPC Contract: The Seller's engineering, procurement and construction contract with the EPC Contractor for the Storage Facility.

EPC Contractor: An engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement, and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of utility-scale renewable generating projects.



Event of Default: Has the meaning set forth in Section 9.1.

Excess Quantity: Has the meaning set forth in Section 3.2(b).

Execution Date: Has the meaning set forth in the Cover Sheet.

Extended Delivery Term: Has the meaning set forth in Section 2.2(c).

Excused Event: Has the meaning set forth in Exhibit Q.

Facility: The Solar Facility and the Storage Facility to be constructed, owned and operated by Seller located on the Site for the generation, storage and delivery of electricity as described in Exhibit B.

FERC: The Federal Energy Regulatory Commission and any successor organization.

Fifteen Minute Market or FMM: Has the meaning set forth in the definition of CAISO Real Time Market.

Final Output Estimate: The final estimate of the quantity of Energy the Facility reasonably could have generated based on Facility availability, insolation, and other relevant meteorological conditions. The Final Output Estimate shall be equal to the RTM Forecast initially and may be replaced pursuant to Section 5.6(1)(ii)(B).

Fiscal Year: The period commencing on July 1 and ending on June 30 in the following calendar year.

FMM Price: The LMP for the CAISO Settlement Point for the relevant Settlement Interval in the FMM.

Force Majeure: An event or circumstance, including without limitation, a natural disaster, war, riot, act of terrorism, sabotage, destruction by a third party, or civil disturbance, which prevents one Party ("Claiming Party") from performing its material obligations under this Agreement, which event or circumstance was not anticipated as of the Original Agreement Execution Date with respect to the Solar Facility and the Execution Date with respect to Storage Facility, which is not within the reasonable control of, or the result of the action or inaction of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Neither Party may raise a claim of Force Majeure based in whole or in part on:

- (a) failures or delays by the PTO and/or the CAISO in entering into, or performing under, any agreements with Seller contemplated by this Agreement, including a failure to complete, or a delay in completing, interconnection or Electric System Upgrades with respect to the Storage Facility by the Storage Commercial Operation Milestone except to the extent that such delay is solely caused by a Force Majeure;
- (b) a strike, work stoppage or labor dispute limited only to one or more of Seller, Seller's Affiliates, Seller's subcontractors or any other third party employed by Seller to work on the Facility;
- (c) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;
- (d) Seller's inability to obtain Permits of any type, except where such failure is solely caused by a Force Majeure Event;
- (e) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure;
- (f) a Curtailment Order; or
- (g) economic conditions that render a Party's performance of this Agreement at the Solar Contract Price or Storage Contract Price, as applicable, unprofitable or otherwise uneconomic, including buyer's ability to buy Energy or energy storage capacity at a lower price, or Seller's ability to sell Energy generated by the Solar Facility or the energy storage capacity of the Storage Facility at a higher price.

Forced Outage: Any unplanned reduction or suspension of the Energy from the Facility or unavailability of the Product in whole or in part from a unit in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of a unit for operation, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

Forecast Fee: Has the meaning set forth in the CAISO Tariff.

Full Capacity Deliverability Status or FCDS: Has the meaning set forth in the CAISO Tariff.

Full Capacity Deliverability Status or FCDS Finding: A written or electronic confirmation from the CAISO that the Facility is eligible for FCDS.

GAAP: The standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant Securities Exchange Commission rule.

Gains: With respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Agreement for the remainder of the Term, determined in a commercially reasonable manner, subject to Section 9.3. Factors used in determining economic benefit may include information either available to the Non-Defaulting Party internally or supplied by one or more third parties, including quotations (either firm or indicative) for a like amount of a like Product at the same or reasonably equivalent pNode of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Product, including the value of Environmental Attributes and Capacity Attributes.

GEP Period: Successive periods consisting of two (2) consecutive Contract Years with the first GEP Period commencing on the Solar Delivery Start Date, and with each subsequent GEP Period commencing on the twelve (12) month anniversary of the commencement of the prior GEP Period.

GEP Shortfall: Has the meaning set forth in Section 3.4(c).

Good Utility Practice: Has the meaning set forth in the CAISO Tariff.

Governmental Authority: Any federal or state government, or political subdivision thereof, including, without limitation, any municipality, township or county, or any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, WREGIS and the CAISO or any corporation or other entity owned or controlled by any of the foregoing.

Grid Charging Date: Has the meaning set forth in Section 3.14.

Guaranteed Energy Production, or GEP: Has the meaning set forth in Section 3.4(a).

Guaranteed Round Trip Efficiency: Has the meaning set forth in Exhibit S.

Guaranteed Storage Availability: Has the meaning set forth in Section 3.11.

Guaranteed Storage Availability Liquidated Damages: Has the meaning set forth in Exhibit Q.

Guaranteed Storage Contract Capacity: Means the total capacity (in MW) of the Storage Facility set forth on the Cover Sheet.

Guarantor: With respect to a Party, any Person that (a) has an Investment Grade Credit Rating, (b) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (c) executes and delivers a Guaranty for the benefit of the other Party.

Guaranty: A guaranty from a Guarantor provided by a Party for the benefit of the other Party substantially in the form attached as Exhibit K.

Hazardous Substance: (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 for which exposure to or release of such substance is prohibited, limited, or regulated by Applicable Laws.

Indemnified Party: Has the meaning set forth in Section 10.1(b).

Indemnifying Party: Has the meaning set forth in Section 10.1(b).

Interconnection Agreement: The agreement and associated documents (or any successor agreement and associated documentation) by and among Seller, the PTO, and the CAISO governing the terms and conditions of the Facility’s interconnection with the CAISO grid, including any description of the plan for interconnection of the Facility to the PTO’s system, as may be amended for the Storage Facility and otherwise from time to time.

Interconnection Facilities: Has the meaning set forth in the Interconnection Agreement.

Investment Grade: Means a Credit Rating of “Baa3” or better from Moody’s or “BBB-” or better from S&P.

Late Payment Penalty: Has the meaning set forth in Section 4.1(b).

Lender(s): Any Person(s) providing money or extending credit (including any capital lease) to Seller, including in the form of debt or tax equity, for (a) the construction of the Facility, (b) the term or permanent financing of the Facility, or (c) working capital or other ordinary business requirements for the Facility. “Lender(s)” shall not include any trade creditor(s) of Seller.

Letter of Credit: An irrevocable, non-transferable standby letter of credit issued by an Eligible LC Bank in a form that is substantially similar to the form contained in Exhibit J. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

Licensed Professional Engineer: A Person acceptable to Buyer in its reasonable judgment who (a) is

licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Facility, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

Locational Marginal Price, or LMP: Has the meaning set forth in the CAISO Tariff.

Losses: With respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remainder of the Term, determined in a commercially reasonable manner, subject to Section 9.3. Factors used in determining the loss of economic benefit may include reference to information either available to the Non-Defaulting Party internally or supplied by one or more third parties, including quotations (either firm or indicative) for a like amount of a like Product at the same or reasonably equivalent pNode of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Product, including Environmental Attributes and Capacity Attributes. "Losses" shall exclude any (1) associated loss of investment tax credits and other lost tax benefits and (2) any costs, penalties, fees, or charges associated with the termination of related financing agreements or similar obligations.

Market Results Interface-Settlements: Has the meaning set forth in the CAISO BPM for Definitions and Acronyms.

Monthly Forecast: Has the meaning set forth in Section 5.6(i)(ii).

Monthly Payment: Has the meaning set forth in Section 4.1(a)(i).

Moody's: Moody's Investors Service, Inc.

MW: Megawatt.

MWh: Mega-watt hour.

NERC: Means the North American Electric Reliability Corporation or a successor organization.

Net Buyer CAISO Settlements: Has the meaning set forth in Section 5.6(e)(ii).

Net Buyer CAISO Settlements Protocol: Has the meaning set forth in Section 5.6(e)(iii).

Net Qualifying Capacity or NQC: Has the meaning set forth in the CAISO Tariff.

Network Upgrades: Has the meaning set forth in the CAISO Tariff.

Non-Defaulting Party: Has the meaning set forth in Section 9.2(a).

Notice to Proceed: The full notice to proceed provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EPC Contractor to begin construction of the Storage Facility without any delay or waiting periods.

On Peak Hours: Means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

Operating Parameters: The operating parameters for the Storage Facility set forth in Exhibit P.

Operational Limitations: Those limitations set forth in Exhibit B of this Agreement.

Original Agreement: Has the meaning set forth in Section 1.1.

Original Agreement Effective Date: the “Effective Date” as such term is defined in the Original Agreement.

Original Agreement Execution Date: July 9, 2019.

Overgeneration: Has the meaning set forth in the CAISO Tariff.

Partial Capacity Deliverability Status or PCDS: Has the meaning set forth in the CAISO Tariff.

Partial Capacity Deliverability Status or PCDS Finding: A written or electronic confirmation from the CAISO that the Facility is eligible for PCDS.

Participating Transmission Owner or PTO: Has the meaning set forth in the CAISO Tariff. The PTO is Southern California Edison.

Parties: Buyer and Seller, and their respective successors and permitted assignees.

Party: Buyer or Seller, and each such Party’s respective successors and permitted assignees.

Performance Liquidated Damages or Performance LDs: Has the meaning set forth in Section 3.4(c) and Section 3.4(e).

Permits: All material federal, state or local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Facility, including any such permits or approvals required under CEQA or the National Environmental Policy Act, 42 U.S.C. Sections 4321 et. seq.

Permitted Extensions: Has the meaning set forth in Section 5.4(a).

Person: An individual, partnership, corporation, business trust, limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

Planned Outage: The removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups, conducted in accordance with all CAISO requirements. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Facility, (b) cannot be reasonably conducted during Facility operations, and (c) causes the generation level of the Solar Facility to be reduced by at least ten percent (10%) of the Solar Contract Capacity or the energy storage capacity of the Storage Facility to be reduced by at least ten percent (10%) of the Guaranteed Storage Contract Capacity, as applicable.

PNode: Has the meaning set forth in the CAISO Tariff.

Point of Interconnection, or POI: The point on the electrical system where the Facility is physically interconnected with the PTO System as further described in the Interconnection Agreement.

POI Limit: Has the meaning set forth in the Cover Sheet.

Positive Uninstructed Deviation Credit: Has the meaning set forth in Section 5.6(f).

Posting Party: Means the Party providing Development Assurance or Performance Assurance for the benefit of the other Party.

Product: The Energy, Environmental Attributes, Capacity Attributes, Ancillary Services, and any and all other reliability, power, or environmental attributes which are or can be produced by or associated with the Facility.

Product Content Category 1, or PCC 1 Energy: Means any Renewable Energy Credit and associated generation of electricity from an Eligible Renewable Energy Resource that meets the criteria set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Applicable Law.

PTO System: The transmission system owned by the Participating Transmission Owner.

Public Records Laws: The California Public Records Act, California Government Code Sections 6250 et seq., and the San Francisco Sunshine Ordinance, San Francisco Administrative Code, Chapter 67, the Ralph M. Brown Act, California Government Code Sections 54950, et seq., and any other applicable law regarding public records as may be amended from time to time.

Qualifying Capacity, or QC: Has the meaning set forth in the CAISO Tariff.

Quarterly Progress Report: The report set forth in Exhibit F.

RA Capacity: Has the meaning set forth in the CAISO Tariff.

Real-Time Market or RTM: Has the meaning set forth in the CAISO Tariff.

Reliability Coordinator: Has the meaning set forth in the CAISO Tariff.

Renewable Energy Credit or REC: Has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by applicable law.

Replacement Price: In dollars per MWh (\$/MWh), Buyer's actual, reasonable and reasonably documented cost of Replacement Product, plus five percent (5%) of such cost for Replacement Product purchased by Buyer covering the period of Minimum Deliveries pursuant to Section 3.4(e); provided, however, that if Buyer did not purchase Replacement Product during such period, then the Replacement Price shall be calculated as the sum of (1) the price of Energy based on the hourly Day-Ahead Market price at the NP 15 EZ Gen Hub, plus five percent (5%) of such cost, for hours ending 7 through 22 during the applicable period, and (2) the price of Environmental Attributes and Capacity Attributes, if applicable, based on information either available to Buyer internally or supplied by one or more third parties, including quotations (either firm or indicative) for a like amount of a like Product.

Replacement Product: Energy produced from a facility other than the Facility that at the time of delivery to Buyer qualifies as an ERR and which (1) has the same or similar Environmental Attributes, including PCC 1 Renewable Energy Credits, that would have been generated by the Facility during the Contract Year for which the Replacement Product is provided, and (2) equivalent Capacity Attributes that would have been provided by the Facility during the Contract Year for which the Replacement Product is provided.

Resource Adequacy: The resource adequacy capacity requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions D.04-01-050, 04-10-035 and 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, and 17-06-027 and any other existing or subsequent decisions, resolutions or rulings addressing Resource Adequacy issues, as those obligations may be altered from time to time, the flexible capacity standards under the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

Resource Adequacy Deficiency Amount or RA Deficiency Amount: Has the meaning set forth in Section 3.6(e).

Resource Adequacy Maintenance Shortfall Annual Cap or RA Maintenance Shortfall Annual Cap: Has the meaning set forth in Section 3.6(e).

Round Trip Efficiency or RTE: Has the meaning set forth in Exhibit S.

Round Trip Efficiency Adjustment: Has the meaning set forth in Exhibit S.

RPS: The California Renewable Portfolio Standard as set forth in California Public Utilities Code Sections 399.11 et. seq. and California Public Resources Code Sections 25740, et. seq., as such provisions are amended or supplemented from time to time.

RTD: Has the meaning set forth in the definition of CAISO Real Time Market in the CAISO Tariff.

RTD Price: The relevant LMP for the CAISO Settlement Point during the applicable RTD Settlement Interval.

RTM Forecast: The final forecast of the Energy to be produced by the Facility prepared by the CAISO or its designee in accordance with the Eligible Intermittent Resources Protocol (as defined in the CAISO Tariff) and communicated to the Scheduling Coordinator for the Facility for use in submitting bids in the Real-Time Market.

S&P: Standard & Poor's Financial Services, LLC (a subsidiary of S&P Global, limited liability company).

Scheduled Energy: The Energy economically bid by Seller that clears the applicable CAISO market.

Scheduling Coordinator or SC: Has the meaning set forth in the CAISO Tariff.

Scheduling Coordinator ID Charge: Has the meaning set forth in the CAISO Tariff and designated as CAISO Charge Code 4575.

Scheduling Infrastructure Business Rules: Has the meaning set forth in the CAISO Business Practice Manual for Definitions and Acronyms.

Secured Party: Means the Party who is the beneficiary of the Development Assurance or Performance Assurance.

Self-Schedule: Has the meaning set forth in the CAISO Tariff.

Seller: Has the meaning in the Preamble, and any successor or permitted assignee.

Seller Day-Ahead Forecast: Has the meaning set forth in Section 5.6(i)(iv).

Seller Development Assurance: The collateral provided by Seller to Buyer to secure Seller's obligations hereunder in accordance with Section 6.2(a)(i) of this Agreement.

Seller Excused Product: For any period of time, an amount of Energy expressed in MWh, equal to the Final Output Estimate, but which was not produced as a result of Curtailment Orders, Bid Curtailment, Force Majeure events, Buyer's breach or default hereunder or failure to accept delivered Product, or Forced Outages to the local transmission or distribution system.

Seller Performance Assurance: The collateral provided by Seller to Buyer to secure Seller's obligations hereunder in accordance with Section 6.2(a)(ii) of this Agreement.

Seller SC Fee: Has the meaning set forth in Section 5.6(a)(i).

Seller's Parent: Means NextEra Energy, Inc.

Settlement Interval: Has the meaning set forth in the CAISO Tariff.

Settlement Point: Means the CAISO designated pNode for the Facility.

SFPUC: The San Francisco Public Utilities Commission.

Shared Facilities: Means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real and personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the Point of Interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

Site: The location of the Facility as described on Exhibit B.

Site Drawings: Has the meaning set forth on Exhibit B.

Solar Contract Capacity: Means the total capacity (in MW) of the Solar Facility as set forth on the Cover Sheet.

Solar Contract Price: Has the meaning set forth in Section 3.2.

Solar Delivery Start Date: [DATE], as set forth in that certain Delivery Start Date Confirmation, dated

as of [DATE], provided by Seller to Buyer under the Original Agreement.

Solar Delivery Term: The period commencing on the Solar Delivery Start Date and continuing until twenty (20) years from such Solar Delivery Start Date, unless terminated earlier as provided by the terms of this Agreement.

Solar Facility: Means Seller's solar photovoltaic generating facility as described in Exhibit B.

Solar Product: The Energy, Environmental Attributes, Capacity Attributes (subject to deliverability limitations on Resource Adequacy attributes as set forth on the Cover Sheet), Ancillary Services, and any and all other reliability, power, or environmental attributes which are or can be produced by or associated with the Solar Facility.

Standing Instructions: Has the meaning set forth in Section 5.6(b).

Storage Availability Shortfall Amount: Has the meaning set forth in Section 3.11(b).

Storage Capacity: Means (a) the maximum dependable operating capability of the Storage Facility to discharge electric energy that can be sustained for four (4) consecutive hours and (b) any other products that may be developed or evolve from time to time during the Term that the Storage Facility is able to provide as the Facility is configured on the Storage Commercial Operation Date and that relate to the maximum dependable operating capability of the Storage Facility to discharge electric energy.

Storage Capacity Test or SCT: Means any test or retest of the capacity of the Storage Facility conducted in accordance with the testing procedures, requirements and protocols set forth in Section 3.13 and Exhibit R.

Storage COD Certification: Seller's certification of Storage Commercial Operation in the form set forth as Exhibit G-2, duly executed by Seller and its Licensed Professional Engineer.

Storage Commercial Operation: The condition of the Storage Facility, whereupon it is certified by Seller to be operating and able to produce and deliver the Storage Product to Buyer pursuant to the terms of this Agreement.

Storage Commercial Operation Date or Storage COD: The date upon which Seller notifies Buyer that Storage Commercial Operation has commenced by delivering to Buyer the Storage COD Certification in accordance with Section 5.3(f).

Storage Commercial Operation Milestone: Has the meaning set forth in Section 5.3(b)(v).

Storage Construction Milestone: Has the meaning set forth in Section 5.3(b)(ii).

Storage Construction Start Date: The date on which Seller delivers to Buyer a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Storage Facility.

Storage Contract Capacity: Means the total capacity (in MW) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 3.13 and Exhibit R to reflect the results of the most recently performed Storage Capacity Test.

Storage Contract Price: Has the meaning set forth in Section 3.2.

Storage Delivery Start Date: Has the meaning set forth in Section 2.2(b)(i).

Storage Delivery Term: Has the meaning set forth in Section 2.2(b)(i).

Storage Facility: Means Seller's energy storage facility as described in Exhibit B.

Storage Facility Meter: Means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible 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 Storage Facility Metering Points and the amount of

Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points. For clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

Storage Facility Metering Points: Means the locations of the Storage Facility Meters shown on Exhibit B.

Storage Facility Testing Completion: Has the meaning set forth in Exhibit G-1.

Storage Major Equipment Milestone: Has the meaning set forth in Section 5.3(b)(iii).

Storage Mechanical Completion: Has the meaning set forth in Exhibit G-1.

Storage Mechanical Completion Milestone: Has the meaning set forth in Section 5.3(b)(iv).

Storage Milestones: The key development activities required for the construction and operation of the Storage Facility, as set forth more particularly in Section 5.3(b).

Storage Permitting Milestone: Has the meaning set forth in Section 5.3(b)(i).

Storage Product: Means (a) Discharging Energy, (b) Capacity Attributes (subject to deliverability limitations on Resource Adequacy attributes as set forth on the Cover Sheet and the Storage RA Start Date), (c) Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Storage Facility.

Storage RA Start Date: Has the meaning set forth in Section 3.6(b).

Storage Target Commercial Operation Milestone: Has the meaning set forth in Section 5.3(b).

Stored Energy Level: Means the amount of energy remaining in the Storage Facility that is available for discharge as Discharging Energy.

Supplemental Instructions: Has the meaning set forth in Section 5.6(b)(iii).

Supplementary Storage Capacity Test Protocol: Has the meaning set forth in Exhibit R.

Surplus Energy: Has the meaning set forth in Section 3.2(c).

System Emergency: Has the meaning set forth in the CAISO Tariff.

Term: Has the meaning set forth in Section 2.2(a).

Termination Payment: With respect to the Non-Defaulting Party, the sum of (a) the Losses and Costs, minus the Gains, which the Non-Defaulting Party incurs as a result of the termination of this Agreement, subject to Section 9.3, provided that if such amount is negative, then the amount determined pursuant to this clause (a) of the definition of Termination Payment will be deemed to be zero (0), plus (b) the net of all amounts then owed to the Non-Defaulting Party by the Defaulting Party, or to the Defaulting Party by the Non-Defaulting Party, determined as of the Early Termination Date.

WECC: The Western Electricity Coordinating Council or successor agency.

Weekly Forecast: Has the meaning set forth in Section 5.6(i)(iii).

WREGIS: The Western Renewable Energy Generation Information System, or any successor renewable energy tracking program.

WREGIS Certificate: Has the meaning set forth in the WREGIS Operating Rules and are designated as eligible for compliance with the California RPS.

WREGIS Certificate Deficit: Any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month, after taking into account applicable delays in the issuance of WREGIS Certificates or otherwise arising under WREGIS

Operating Rules.

WREGIS Operating Rules: Those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced from time to time.

ARTICLE 2: CONDITIONS PRECEDENT AND TERM

2.1 Conditions Precedent to Effectiveness of this Agreement

- (a) Conditions Precedent. Other than this Section 2.1 (and those definitions and Exhibits necessary for interpretation and application hereof, but to such extent only), which is effective as of the Execution Date, this Agreement shall not take effect or replace the Original Agreement until the date that all of the following conditions to effectiveness of this Agreement have been satisfied or waived in writing by both Parties (the “Effective Date”):
 - (i) Buyer receives from Seller the conditions precedent documentation listed in Part I of Exhibit A; and
 - (ii) Buyer receives from Seller the Development Assurance;
 - (iii) The Controller has certified in accordance with the City’s Charter that sufficient unencumbered balances are available in the proper fund; and
 - (iv) Seller has received all required consents to this Agreement from its Lenders, as determined by Seller in its sole discretion.
- (b) Notices and Acknowledgement. Buyer will notify Seller promptly in writing when the condition in Section 2.1(a)(iii) has been met. Seller will notify Buyer promptly in writing when the condition in Section 2.1(a)(iv) has been met. Upon occurrence of the Effective Date, the Parties will promptly acknowledge such date in writing.
- (c) Effective Date. On the Effective Date, the Original Agreement shall (i) be replaced in its entirety by this Agreement and (ii) no longer have any force or effect, in each case, subject to reinstatement of such Original Agreement as expressly provided herein.
- (d) Termination Prior to Effective Date. If the conditions to effectiveness of this Agreement set forth in Section 2.1(a) are not satisfied or waived in writing by both Parties within one hundred and twenty (120) days of the Execution Date, then either Party may terminate this Agreement effective upon receipt of notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Damage Payment, Termination Payment, or otherwise, as a result of such termination and Buyer shall return all Development Assurance to Seller. For the avoidance of doubt, such termination will have no impact on the Original Agreement.

2.2 Term, Storage Delivery Term, and Extension

- (a) Term. Subject to the occurrence of the Effective Date, the term of this Agreement shall be deemed to have commenced as of the Original Agreement Effective Date, and, unless earlier terminated pursuant to an express provision of this Agreement, shall remain in effect until delivery to Buyer of all of the Environmental Attributes associated with Energy delivered under this Agreement (“Term”).
- (b) Storage Delivery Term.
 - (i) The Storage Delivery Term shall commence on the first date that Buyer accepts delivery of Storage Product (excluding, for the avoidance of doubt, any Capacity

Attributes associated with Resource Adequacy until the Storage RA Start Date) under this Agreement (the “Storage Delivery Start Date”) and continue until the coterminous end of the Solar Delivery Term (the “Storage Delivery Term”), unless terminated as provided by the terms of this Agreement (including, along with the Solar Term, any termination of this Agreement, the Term, or the Delivery Term).

- (ii) The Storage Delivery Start Date shall occur as soon as practicable once all of the following have been satisfied, but no later than ninety (90) days after the Storage COD:
 - (A) Seller notifies Buyer of the Storage Commercial Operation Date by delivering to Buyer the Storage COD Certification in substantially the form set forth at Exhibit G-2, the Storage Contract Capacity Certificate in substantially the form set forth at Exhibit I;
 - (B) Seller notifies Buyer of the Storage Delivery Start Date by delivering the Storage Delivery Start Date Confirmation attached hereto as Exhibit H;
 - (C) All of the applicable Conditions Precedent in Section 2.1(a) have been satisfied or waived in writing;
 - (D) Seller has demonstrated satisfaction of Seller’s other obligations under this Agreement that commence prior to or as of the Storage Delivery Term; and
 - (E) Seller has delivered Performance Assurance to Buyer with respect to the Guaranteed Storage Contract Capacity.
- (iii) If Seller is unable to commence deliveries of Storage Product under this Agreement within ninety (90) days of Storage COD, Buyer may terminate this Agreement by written notice to Seller. Notwithstanding the foregoing, Seller may request an extension of the Storage Delivery Start Date by providing written notice to Buyer of the reasons for the delay and the term of the proposed extension no later than ten (10) Business Days prior to the expected Storage Delivery Start Date. Buyer may grant the extension at its sole discretion. Upon termination of this Agreement under this Section 2.2(b)(iii), the Original Agreement shall be reinstated, which the Parties shall jointly acknowledge in writing no later than ten (10) days after any such termination, but Buyer shall be entitled to collect the Damage Payment hereunder within ten (10) days of Seller’s receipt of an invoice from Buyer by one or more of the following:
 - (A) drawing upon the Development Assurance;
 - (B) receiving payments from Seller within ten (10) days of receipt of an invoice from Buyer;
 - (C) setting off against any amounts owed to Seller by Buyer under this Agreement.

Receipt of the Damage Payment shall be Buyer’s sole and exclusive remedy in the event of a Buyer termination under this Section 2.2(b)(iii).

- (c) Extension of End of Delivery Term. At its sole discretion, Buyer may provide notice to Seller no later than thirty-six (36) months prior to the end of Delivery Term of its intent to extend the Delivery Term of this Agreement (“Extended Delivery Term”). Buyer and Seller shall promptly enter into good faith negotiations on the price and other terms that will apply to any Extended Delivery Term. If the Parties have not reached agreement on such price

and other terms within ninety (90) days after delivery of Buyer's notice under this Section 2.2(c), then neither Party shall have any further obligation to negotiate for an Extended Delivery Term and Seller may enter into negotiations and definitive agreements with one or more third parties for the sale of the Product or any component thereof with respect to the period occurring after the end of the Delivery Term.

ARTICLE 3: PURCHASE AND SALE

3.1 Purchase and Sale of Product.

- (a) Transaction. During the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase the Product, and Buyer shall receive, or cause to be received, the Product net of Round Trip Efficiency losses at the Delivery Point, and Buyer shall pay Seller for Product in accordance with the terms of this Agreement, unless specifically excused by the terms of this Agreement. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, or sell Product from the Facility to a third party (Subject to Sections 3.2(b), 3.2(c), and 3.9(b)). Buyer shall have no obligation to receive or purchase Product from Seller after the Delivery Term.
- (b) Title and Risk of Loss. Title to and risk of loss as to all Product (net of Round Trip Efficiency losses) purchased by Buyer shall pass from Seller to Buyer at the Delivery Point. Subject to Section 5.6(e), Seller shall be responsible for any costs, fees, taxes, assessments, or charges associated with the Product or the delivery of the Product (net of Round Trip Efficiency losses) up to the Delivery Point and Buyer shall be responsible for any costs, or charges imposed on or associated with the Product (net of Round Trip Efficiency losses) or the delivery of the Product (net of Round Trip Efficiency losses) at and from the Delivery Point. Seller warrants that it shall deliver all Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto created by any Person other than Buyer.

3.2 **Contract Price**. Buyer shall pay Seller [REDACTED] for the Solar Product ("Solar Contract Price") measured by the Solar Facility meter (for the avoidance of doubt, prior to delivery to the Storage Facility) and delivered pursuant to this Agreement and Deemed Delivered Energy as adjusted pursuant to Section 5.6 of this Agreement plus the Seller SC Fee, and Buyer shall pay Seller [REDACTED] for the Storage Product ("Storage Contract Price"). The Solar Contract Price and Storage Contract Price shall be the total compensation owed by Buyer for the Product, adjusted as follows:

- (a) [Intentionally Omitted].
- (b) Excess Quantity. [REDACTED]

[REDACTED] In each Contract Year, if the Facility achieves ninety percent (90%) of the Contract Quantity, Seller shall (i) provide notice to Buyer of such achievement and (ii) request written confirmation from Buyer that Buyer intends to purchase any Excess Quantity. If Buyer does not respond within ten (10) Business Days, Seller shall have the right to sell any Excess Quantity that Buyer does not elect to purchase to a third party; provided that if Buyer is SC and does not elect to purchase the Excess Quantity, the Parties shall cooperate on settlements such that Buyer passes through to Seller any applicable CAISO costs and revenues.

- (c) Surplus Energy Price. If during any Settlement Interval, Seller delivers Solar Product amounts in excess of the quantity of Energy that would be delivered consistent with the power rating of the Solar Contract Capacity (“Surplus Energy”), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0). If the Settlement Point LMP is less than the Buyer RTM Bid Price during such Settlement Interval, Seller shall pay to Buyer an amount equal to the positive difference between the Buyer RTM Bid Price and the Settlement Point LMP multiplied by the amount of the uninstructed Surplus Energy in MWh.

3.3 Contract Quantity.

- (a) Solar Quantity. The Contract Quantity for Solar Product is set forth in Exhibit C.
- (b) Storage Contract Capacity. Seller shall use commercially reasonable efforts to ensure that the Storage Contract Capacity, as of the Storage Commercial Operation Date, is the same as the Guaranteed Storage Contract Capacity on the Cover Sheet.

3.4 Guaranteed Energy Production.

- (a) Guaranteed Energy Production. For each GEP Period throughout the Term, Seller shall deliver no less than eighty (80%) of (i) the sum of the Contract Quantities for the GEP Period from the Solar Facility as measured at the Delivery Point, minus (ii) the Seller Excused Product (“Guaranteed Energy Production” or “GEP”).
- (b) Reporting. No less frequently than quarterly during each year, Seller shall calculate and provide notice to Buyer of the then-cumulative amount of the Seller Excused Product for such year, along with an explanation in reasonable detail of the calculation thereof based on historical Facility data, meteorological data, Product projections (including by the CAISO, if applicable) and other relevant data. The calculation shall be subject to Buyer’s reasonable review and approval.
- (c) Performance LDs. If Seller fails to meet the GEP, then within sixty (60) days after the end of the relevant GEP Period, Buyer shall notify Seller of the quantity of the shortfall (“GEP Shortfall”) and the amount of the performance liquidated damages. Within thirty (30) days after the receipt of notice of the shortfall, Seller shall pay Buyer Performance LDs calculated as: the positive difference obtained by subtracting the (i) Solar Contract Price from (ii) the Replacement Price; multiplied by the GEP shortfall (“Performance LDs”). The Parties agree that, consistent with Section 9.3(b), the damages Buyer would incur due to Seller’s failure to meet the GEP would be difficult or impossible to predict with certainty and the Performance LD amount is a reasonable approximation of such damages.
- (d) Payment of LDs. If within ten (10) Business Days of receipt of notice of a GEP Shortfall, Seller does not deliver payment of the Performance LD amount to Buyer, Buyer shall be entitled to collect Performance LDs by electing, in its sole discretion, one or more of the following payment methods:
 - (i) drawing upon the Performance Assurance; and/or
 - (ii) setting off against any amounts owed to Seller by Buyer under this Agreement.
- (e) Minimum Deliveries. Notwithstanding any other provision of this Agreement, if in any consecutive twelve (12) calendar month period of the Solar Delivery Term the actual Product deliveries from the Solar Facility plus Seller Excused Product are less than fifty percent (50%) of the monthly quantities for each month set forth in the Seller’s Annual Forecast (based on P-90 values) for that twelve (12) month period, Seller shall pay Buyer Performance LDs, calculated as: (i) fifty percent (50%) of the monthly quantities in Seller’s Annual Forecast (based on P- 90 values) minus Seller Excused Product for the twelve (12)

month period minus the actual deliveries during that period, multiplied by (ii) the positive difference obtained by subtracting the (A) Solar Contract Price from (B) the Replacement Price. Buyer shall not be required to purchase Replacement Product. The payment of Performance LDs under Section 3.4(e) shall not excuse Seller's obligations under Section 3.4(c). The Parties agree that, consistent with Section 9.3(b), the damages Buyer would incur due to Seller's failure to meet the minimum delivery levels under this Section 3.4(e) would be difficult or impossible to predict with certainty and the Performance LD amount is a reasonable approximation of such damages.

- (f) Cure. Buyer's receipt of Performance LDs (whether paid by Seller, drawn from the Performance Assurance or set off against amounts owed to Seller), as applicable, shall cure the performance issue that triggered such remedy. The MWhs used in the calculation of Performance LDs which were paid to Buyer pursuant to Section 3.4(c) or 3.4(e), shall be treated as actual deliveries in the most recent month in which the applicable shortfall occurred when assessing Seller's compliance with its obligations under this Agreement including delivery obligations under Section 3.4(a). The quantities of energy for which Seller paid Performance LDs under Section 3.4(c) in the second Contract Year of a GEP Period shall be included in the calculation of the GEP Shortfall for the first Contract Year of the following GEP Period.

3.5 Environmental Attributes.

- (a) Purchase and Sale of Environmental Attributes. During the Term, Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Environmental Attributes associated with Delivered Energy, whether now existing or subsequently created by a Governmental Authority after the Execution Date. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to transfer all rights, title, and interest in and to the Environmental Attributes, whether now existing or that come into existence in the future, associated with the Delivered Energy. Seller shall transfer and make such Environmental Attributes available to Buyer as soon as practicable upon Seller's production of the Environmental Attributes.
- (b) Buyer's Right to Report Ownership of Environmental Attributes. Seller shall not report to any Person or entity that the Environmental Attributes belong to anyone other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.
- (c) Renewable Energy Credits. Seller shall, at its sole expense take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the applicable requirements of the California RPS and transferred within three (3) months of creation to Buyer for Buyer's sole benefit. Seller shall comply with all Applicable Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer. In addition:
 - (i) Seller shall cause REC transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Any fractional MWh amounts shall be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.
 - (ii) Due to the delay in the creation of WREGIS Certificates relative to the timing of the monthly invoice payment under this Agreement, Buyer may make an invoice payment for a given month before the WREGIS Certificates for such month are

formally transferred to Buyer in accordance with the WREGIS Operating Rules. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller.

- (iii) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in such calendar Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer's payment(s) to Seller under Article 4 and the Guaranteed Energy Production for the applicable GEP Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller's next monthly invoice to Buyer in accordance with Article 4, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller.
- (iv) Without limiting Seller's obligations, to the extent a WREGIS Certificate Deficit is caused by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.
- (v) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Agreement, the Parties shall promptly modify this Agreement as reasonably required (A) to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month, or (B) as may otherwise be reasonably appropriate to address such inconsistency.

3.6 Resource Adequacy.

- (a) Capacity Deliverability Status. Seller shall be solely responsible for and take all necessary actions to obtain a FCDS Finding of [REDACTED] MW for the Storage Facility on or prior to the Storage RA Start Date.
- (b) Resource Adequacy Requirements. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Solar Contract Capacity and Storage Contract Capacity, including Capacity Attributes, to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO and/or other regional entity may prescribe, including submission of a supply plan or Resource Adequacy plan. From the Execution Date, and for the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and executing any and all documents or instruments necessary to enable Buyer to use all of the Solar Contract Capacity and the Storage Contract Capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy requirements during the Delivery Term. Notwithstanding anything to the contrary in the foregoing or elsewhere in this Agreement, Seller shall have no obligation to: (i) make any Resource Adequacy compliance showings with respect to the Storage Contract Capacity until the date that the Resource Adequacy attributes from the Storage Facility is eligible to be counted under the CAISO Tariff (the "Storage RA Start Date") or (ii) provide Resource Adequacy from the Storage Contract Capacity for any month prior to the Storage RA Start Date.
- (c) Availability Standards. Seller shall be responsible for all costs, charges, expenses, penalties, and obligations under the Availability Standards due to Forced Outages or Capacity Deficits or failure to comply with its obligations under Section 3.6(b) (but not,

for the avoidance of doubt, those due to any acts or omissions of Buyer as Scheduling Coordinator, if applicable, that are not in accordance with this Agreement and the CAISO Tariff, for which Buyer shall be responsible), if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability standards, if applicable (“Resource Adequacy Costs”).

- (d) NQC. Seller shall use commercially reasonable efforts to (a) cause the CAISO to establish a reasonable NQC value for the Facility, and (b) maintain a reasonable NQC value for the Facility.
- (e) Qualifying Capacity Guarantee. Commencing on the Storage RA Start Date, for any month that the Net Qualifying Capacity of the Storage Facility is less than the Qualifying Capacity other than as a result of unforced capacity reduction, Seller shall pay to Buyer an amount as liquidated damages equal to the product of (i) the Qualifying Capacity minus the Net Qualifying Capacity multiplied by (ii) the lesser of (A) the CPM Soft Offer Cap, or any successor value adopted or implemented by the CAISO for procurement of backstop capacity resources or (B) [REDACTED] (“RA Deficiency Amount”); provided, however, that the RA Deficiency Amount owed by Seller to Buyer shall not exceed [REDACTED] with respect to any given calendar year during which failure to maintain FCDS/PCDS is due to events on the transmission system(s) operated by CAISO beyond Seller’s reasonable control (the “RA Maintenance Shortfall Annual Cap”).

3.7 Compliance Cost Cap. If Seller establishes to Buyer’s reasonable satisfaction that a change in Applicable Law has occurred after the Original Agreement Execution Date with respect to the Solar Facility or the Execution Date with respect to the Storage Facility that results in Compliance Costs as defined in Section 3.7(a), then Seller’s Compliance Costs during the Solar Delivery Term shall be capped annually at [REDACTED] per MW up to the POI Limit and in the aggregate throughout the Solar Delivery Term at [REDACTED] per MW up to the POI Limit (“Compliance Cost Cap”).

- (a) Compliance Costs. This Section shall apply to Seller’s additional, reasonable out-of-pocket costs paid to third parties for obtaining, maintaining, conveying, or complying with:
 - (i) CEC Certification, (ii) Environmental Attributes including WREGIS certificates, (iii) Capacity Attributes, and (iv) Sections 11.1(h)-11.1(k) (“Compliance Costs”). Compliance Costs includes only those new costs associated with the change in Applicable Law after the Execution Date that are in excess of the reasonably anticipated compliance costs as of the Execution Date.
- (b) Reimbursement. In the event that the Compliance Costs exceed the Compliance Cost Cap, Buyer shall either reimburse Seller for such Compliance Costs that exceed the Compliance Cost Cap, or excuse Seller from performing those obligations that cause the Compliance Costs to exceed the Compliance Cost Cap.
- (c) Notice. Seller shall notify Buyer within sixty (60) calendar days after the change in Applicable Law if it anticipates that its Compliance Costs will exceed the Compliance Cost Cap and provide an estimate of the Compliance Costs. Buyer shall notify Seller within ninety (90) calendar days of receipt of the notice whether Buyer (i) agrees to reimburse Seller for the additional costs, or (ii) waives Seller’s performance of such obligations.

3.8 Tax Credits and Incentives. Buyer acknowledges and agrees that all tax credits, deductions, and incentives related to the generation and sale of Energy or investments in the Facility shall be owned by Seller, including tax credits available under Section 45 of Subtitle A, Chapter 1A, Part IV and Section 48(a)(3)(A)(i) and 48(a)(5) of the Internal Revenue Code of 1986 or any successor law.

Buyer agrees to cooperate with Seller, as may be necessary, to allow maximization of the value of, and realization of, all such tax credits and incentives; provided that Buyer shall not be required to incur additional costs or accept any diminution in value of its rights under this Agreement or of the Product purchased hereunder. In addition, Buyer shall not take any action (except as otherwise permitted under this Agreement), that would in any way reduce or eliminate the availability to Seller of any such tax credits and incentives. Notwithstanding the foregoing, Seller's rights under this section shall not include anything that qualifies as Product (including any Environmental Attributes).

3.9 [Intentionally Omitted].

3.10 Refurbishment of the Facility. During the Delivery Term, Seller may not refurbish the Facility, alter components of the Facility, or replace major components of the Facility where such action results in a total increased generation capacity higher than the Solar Contract Capacity or energy storage capacity higher than the Guaranteed Storage Contract Capacity, without the prior written consent of Buyer. Buyer shall have the right, in its sole discretion, to accept or decline to permit any such refurbishment or alteration that may increase the generation capacity of the Solar Facility above the Solar Contract Capacity or the energy storage capacity of the Storage Facility above the Guaranteed Storage Contract Capacity. Nothing in this Section 3.10 is intended to limit Seller's ability to refurbish, repair, maintain, or replace any portion of the Facility where such actions will not increase the total generating capacity of the Solar Facility above the Solar Contract Capacity or the energy storage capacity of the Storage Facility above the Guaranteed Storage Contract Capacity.

3.11 Storage Availability.

- (a) During the Storage Delivery Term, the Storage Facility shall maintain an Annual Storage Availability of no less than [REDACTED] (the "Guaranteed Storage Availability"), which Annual Storage Availability shall be calculated in accordance with Exhibit Q.
- (b) If the Annual Storage Availability during any Contract Year during the Storage Delivery Term is less than the Guaranteed Storage Availability (the "Storage Availability Shortfall Amount"), then Seller shall pay to Buyer Guaranteed Storage Availability Liquidated Damages for such Storage Availability Shortfall Amount. For the avoidance of doubt, the Storage Availability Shortfall Amount shall be calculated by subtracting the Annual Storage Availability for the Contract Year from the Guaranteed Storage Availability.
- (c) Within thirty (30) Days of the end of each Contract Year during the Storage Delivery Term, Seller shall provide to Buyer Seller's calculation of the Annual Storage Availability for such Contract Year, the Storage Availability Shortfall Amount (if any), and the Guaranteed Storage Availability Liquidated Damages associated with such Storage Availability Shortfall Amount, together with all data used by Seller to arrive at the calculations. The Guaranteed Storage Availability Liquidated Damages shall be reflected in the invoice for the following month pursuant to Section 4.1(a). Any disputes regarding the calculation of the Storage Facility Availability, Storage Availability Shortfall Amount, or Guaranteed Storage Availability Liquidated Damages shall be resolved pursuant to Section 4.1(d).
- (d) The Parties agree and acknowledge that the damages sustained by Buyer associated with Seller's failure to provide Annual Storage Availability no less than the Guaranteed Storage Availability would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that Guaranteed Storage Availability Liquidated Damages are a reasonable approximation of such damages. In no event shall Buyer be obligated to pay Guaranteed Storage Availability

Liquidated Damages. Buyer shall have the right to set off any amounts due to Buyer for Guaranteed Storage Availability Liquidated Damages against payments made to Seller.

3.12 Round Trip Efficiency Guarantee.

- (a) Seller shall calculate Round Trip Efficiency and Round Trip Efficiency Adjustment on a Contract Year basis in accordance with Exhibit S, and Seller shall pay Round Trip Efficiency Adjustment, if any, on an annual basis in accordance with this Section 3.12.
- (b) Within thirty (30) Days of the end of each Contract Year during the Storage Delivery Term, Seller shall provide to Buyer Seller's calculation of the Round Trip Efficiency and Round Trip Efficiency Adjustment for such Contract Year. Seller shall owe Buyer Round Trip Efficiency Adjustment equal to the positive amount, if any, for such Contract Year. The Round Trip Efficiency Adjustment shall be reflected in the invoice for the following month pursuant to Section 4.1(a). In no event shall Buyer be obligated to pay Guaranteed Round Trip Efficiency Adjustment.
- (c) Any dispute regarding the calculation of the Round Trip Efficiency or Round Trip Efficiency Adjustment shall be resolved pursuant to Section 4.1(d). The Parties agree and acknowledge that the damages sustained by Buyer associated with Seller's failure to provide Round Trip Efficiency no less than the Guaranteed Round Trip Efficiency would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that the Round Trip Efficiency Adjustment is a reasonable approximation of such damages. Buyer shall have the right to set off any amounts due to Buyer for Guaranteed Round Trip Efficiency Adjustment against payments made to Seller.

3.13 Storage Capacity Tests.

- (a) Prior to the Storage Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit R. Charging Energy for pre-COD Storage Capacity Tests shall be provided by Seller. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit R.
- (b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Buyer shall be responsible for all reasonable costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. Except as otherwise specified in Exhibit R, all other costs or revenues associated with any Storage Capacity Test shall be borne by, or accrue to, Seller, as applicable.
- (c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit R. If the actual capacity determined pursuant to a Storage Capacity Test is less than the Guaranteed Storage Contract Capacity, then the actual capacity determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity at the beginning of the day following the completion of the Storage Capacity Test(s).
- (d) Notwithstanding anything to the contrary in this Agreement, Seller shall be responsible for, and entitled to, all CAISO settlement payments with respect to Charging Energy and Discharging Energy prior to the Storage Commercial Operation Date.

3.14 Grid Charging. Starting after the ninetieth (90th) day of the sixth (6th) Contract Year ("Grid Charging Date"), Buyer may deliver up to [REDACTED] of Charging Energy on an annual basis from the CAISO grid. Upon notice from either Party, Buyer and Seller shall promptly

enter into good faith negotiations on any modifications to this Agreement which are necessary to implement such grid charging.¹

3.15 Discharging Energy Carry-over. If the amount of Discharging Energy during any Contract Year is less than the Discharging Energy Annual Limit, Buyer shall be entitled to carry-over the unused megawatt hours of Discharging Energy, up to a maximum of [REDACTED] (in the aggregate, from the current Contract Year and any preceding Contract Years carried over thereinto), to the following Contract Year. The unused megawatt hours of Discharging Energy will be added to the Discharging Energy Annual Limit for the following Contract Year.

ARTICLE 4: BILLING, PAYMENT, AND CERTIFICATION

4.1 Billing and Payment.

- (a) Monthly Invoices. Seller shall provide to Buyer no sooner than the tenth (10th) calendar day of each month an invoice for the Product and Deemed Delivered Energy for the prior month based upon meter data for Energy delivered in such calendar month, and for other amounts due to or from Seller hereunder. Except for Deemed Delivered Energy and Replacement Product, all Energy purchased under this Agreement must be measured by the Facility’s CAISO revenue meter(s) to be eligible for payment under this Agreement.
 - (i) The “Monthly Payment” for each month will be an amount equal to the summation of the following in such month:
 - (A) the product of (I) the Energy from the Solar Facility delivered to the Delivery Point pursuant to this Agreement as measured by the Solar Facility meter (“Delivered Energy”) plus Charging Energy minus Discharging Energy for each Settlement Interval, multiplied by (II) the Solar Contract Price, plus
 - (B) the product of (I) the Deemed Delivered Energy for each Settlement Interval, multiplied by (II) the Solar Contract Price, minus
 - (C) the Net Buyer CAISO Settlements for each Settlement Interval, minus
 - (D) the Positive Uninstructed Deviation Credit, plus
 - (E) the product of (I) Guaranteed Storage Contract Capacity, multiplied by (II) the Storage Contract Price, minus
 - (F) Guaranteed Storage Availability Liquidated Damages (if any) + Round Trip Efficiency Adjustment (if any) + RA Deficiency Amount (if any), plus
 - (G) the Seller SC Fees.

$$\text{Monthly Payment} = \sum_{i=1}^n \{ [\text{Delivered Energy MWh}_i + \text{Charging Energy MWh}_i$$

$$- \text{Discharging Energy MWh}_i] \times [\text{Solar Contract Price}_i \$] + [\text{Deemed Delivered Energy MWh}_i] \times [\text{Solar Contract Price}_i \$] - [\text{Net Buyer CAISO Settlements}_i] \}$$

$$- [\text{Positive Uninstructed Deviation Credit}] + [[\text{Guaranteed Storage Contract Capacity}] \times [\text{Storage Contract Price} \$]] - [\text{Guaranteed Storage Availability}]$$

¹ [Seller NTD: Requesting a 90-day cushion on grid-charging to protect ITC eligibility.]

Liquidated Damages (if any) + Round Trip Efficiency Adjustment (if any) + RA Deficiency Amount (if any)]+ [Seller SC Fees].

- (ii) The Invoice shall include:
 - (A) the hourly quantities of Delivered Energy delivered in the prior month;
 - (B) a calculation of the Monthly Payment as set forth in Section 4.1(a)(i);
 - (C) credits for WREGIS Certificate Deficits pursuant to Section 3.5(c)(iii), if any;
 - (D) A calculation of the Deemed Delivered Energy for such month; and
 - (E) any other amounts due to or from Seller hereunder.
- (b) Payment. All invoices shall be due and payable on or before the thirtieth (30th) calendar day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day (“Due Date”). Any amount not paid by the Due Date shall be considered late and Buyer shall pay a Late Payment Penalty equal to a daily rate of five dollars and fifty cents (\$5.50) per one hundred thousand dollars (\$100,000) on the unpaid balance for a maximum period of ninety (90) days after the Due Date (“Late Payment Penalty”). For the avoidance of doubt, payment of the Late Payment Penalty by Buyer will not affect Seller’s rights under Article 9 of this Agreement.
- (c) City Vendor Requirements. Notwithstanding any other provision of this Agreement, Buyer shall not be deemed to be in default of this Agreement and no Late Payment Penalty shall be assessed if an invoice under this Agreement cannot be processed by Buyer due to Seller’s failure to comply with all applicable City requirements for City contractors, including but not limited to certification of vendors under Chapter 12 of the San Francisco Administrative Code, payment of business license fees or taxes, insurance requirements, registration in the City’s vendor payment processing system, or any other current or future City requirement for vendor payment processing. Seller understands and acknowledges that vendor certifications may include annual renewals and additional certification requirements may apply to assignees or changes in ownership or control of Seller.
- (d) Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with the Late Payment Penalty from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Buyer from subsequent payments. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 4.1(d) within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which delivery of Product occurred, the right to payment for such delivery is waived.
- (e) CAISO Adjustments. If the CAISO makes any adjustment to any CAISO meter data for a given time period, the Parties shall share information necessary to revise the monthly invoices

pursuant to Section 4.1 and Seller agrees that it shall submit revised monthly invoices covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the Seller receives such binding adjustment to the meter data.

- (f) Meter Malfunction. If Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the Facility meter(s). The tests shall be conducted by independent third-parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced at Seller's cost.

4.2 Designated Fund/Limited Obligations.

- (a) Auto-Appropriating Designated Fund. Buyer's payment obligations under this Agreement shall be paid from a SFPUC designated fund that will automatically appropriate CleanPowerSF revenues on an annual basis without further Buyer action and which shall be used solely for CleanPowerSF costs and expenses, including the obligations under this Agreement. Buyer agrees to establish CleanPowerSF rates and charges that are sufficient to maintain revenues necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for CleanPowerSF. Buyer shall provide Seller with reasonable access to account balance information with respect to the SFPUC designated fund upon request during the Delivery Term.
- (b) Limited Obligations. Buyer's payment obligations are special limited obligations of the Buyer payable solely from the revenues of CleanPowerSF. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of the SFPUC or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City.

4.3 Guaranteed Maximum Costs.

- (a) Controller Certification. The Buyer'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 Buyer are not authorized to request, and Buyer is not required to reimburse Seller for, commodities or services beyond the agreed upon Agreement scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of Buyer are not authorized to offer or promise, nor is Buyer 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.
- (b) Biennial Budget Process. For each City biennial budget cycle during the term of this Agreement, Buyer agrees to take all necessary action to include the maximum amount of the Buyer's payment obligations under this Agreement up to one hundred and fifteen percent (115%) of the Expected Annual Quantity in its budget submitted to the Board of Supervisors for that budget cycle.

ARTICLE 5: FACILITY DEVELOPMENT, OPERATION, AND MAINTENANCE

5.1 General Obligations.

- (a) Records. Seller shall keep complete and accurate operating, test, maintenance, and other records and all other data for the purposes of proper administration of this Agreement,

including such records as may be required by any Governmental Authority or Good Utility Practice.

- (b) Further Development Information. Seller shall provide to Buyer such other information regarding the permitting, engineering, construction or operations of the Facility as Buyer may from time to time reasonably request, subject to licensing or other restrictions of Seller or a third party with respect to confidentiality, disclosure or use; provided, nothing herein shall limit Buyer's right to obtain such information upon agreeing to confidentiality or signing a confidentiality agreement with regard to such information.
- (c) CAISO Agreements. Seller shall enter into any agreements with the CAISO required by the CAISO for generators delivering power into the CAISO-controlled grid.
- (d) Insurance. Seller shall obtain and maintain the policies of insurance in the amounts and with the coverages as set forth on Exhibit D.
- (e) Vendor Certification. Seller shall obtain, renew, and maintain, all City required vendor certifications and requirements during the Term of this Agreement.

5.2 The Facility. Throughout the Term of this Agreement, Seller covenants that at its sole cost and expense, unless otherwise specifically stated in this Agreement, it shall:

- (a) Construction. Design, develop, finance, and construct the Facility.
- (b) Prevailing Wages. Pay any person performing labor in the construction of the Facility not less than the prevailing wage rate for the county in which the Facility will be located, as determined by the California Department of Industrial Relations. Seller shall require in any contract or subcontract related to the construction of the Facility the payment of the prevailing wage rate for the work to be performed.
- (c) Compliance with Laws. Seek, obtain, maintain, and comply with all Applicable Laws, Permits, certificates, agreements, or other authorizations or approvals, which are required for the ownership, construction, operation and maintenance of the Facility and the delivery and sale of the Product pursuant to this Agreement.
- (d) Interconnection and Transmission. Arrange and pay for any and all necessary Electric System Upgrades, obtain any required regulatory approvals, and execute all necessary agreements sufficient to allow Seller to interconnect the Facility to the CAISO grid and deliver the Product to the Delivery Point by the Delivery Start Date in accordance with this Agreement. Seller shall comply with all applicable requirements, rules, contractual obligations, and Good Utility Practice to maintain any Interconnection Facilities and to cause delivery of the Product to Buyer.
- (e) FCDS or PCDS. Ensure that the interconnection, distribution and/or transmission arrangements for the Facility provide for Full Capacity Deliverability Status or Partial Capacity Deliverability Status in accordance with the Cover Sheet.
- (f) Changes to Guaranteed Storage Contract Capacity. If applicable, within fifteen (15) calendar days of the later of (i) obtaining the authority to construct for the Storage Facility from the applicable Governmental Authority or (ii) Seller's receipt of the system impact and facility cost studies from the PTO, Seller shall provide written notice to Buyer of any changes to the Storage Contract Capacity (which shall not be greater than the Guaranteed Storage Contract Capacity specified on the Cover Sheet) and specifying other material changes to Storage Facility design details.
- (g) RPS and Green-e® Certification. Prior to the Solar Delivery Start Date and throughout the Solar Delivery Term, take all actions necessary to obtain and maintain for the Facility (i)

CEC Certification, (ii) tracking and transfer of RECs associated with the Product in WREGIS, and (iii) Green-e® Energy eligibility for renewable energy and greenhouse gas emissions as administered by the Center for Resource Solutions.

5.3 Storage Facility Construction and Storage Milestones.

- (a) Time is of the Essence. The Parties agree that time is of the essence in the performance of this Agreement. The Parties further agree that the Storage Milestones must be achieved in accordance with Section 5.4 or Buyer shall suffer damages which are difficult to estimate with reasonable certainty. Seller shall provide Buyer with any requested information to support the achievement of Storage Milestones within ten (10) Business Days of any request by Buyer.
- (b) Storage Milestone Schedule. Seller covenants that it shall diligently pursue to completion each of the following Storage Milestones:
 - (i) By [May 1, 2022], Seller shall have received all final, and non-appealable discretionary authorizations, approvals, waivers, exceptions, variances, filings, permits, orders, and licenses, including all actions and approvals required under applicable environmental laws, that are required for the construction, of the Storage Facility (the “Storage Permitting Milestone”);
 - (ii) By [June 1, 2022], Seller shall have commenced construction of the Storage Facility (the “Storage Construction Milestone”) as evidenced by mobilization at the Site by Seller or its agents, including site preparation at a sufficient level to reasonably demonstrate that Seller has commenced preparations for construction of the Storage Facility, and provided a notice to Buyer substantially in the form and substance to that attached as Exhibit E;
 - (iii) By [August 1, 2022], Seller shall have caused on-Site delivery of major components of the Storage Facility, including but not limited to modules and inverters (“Storage Major Equipment Milestone”);
 - (iv) By [September 1, 2022], Seller shall have completed Storage Mechanical Completion (“Storage Mechanical Completion Milestone”); and
 - (v) By [October 1, 2022], Seller shall achieve Storage Commercial Operation (the “Storage Commercial Operation Milestone”).

Notwithstanding the Parties’ rights and obligations regarding the Storage Commercial Operation Milestone, Seller shall use good faith efforts to achieve, and Buyer shall accommodate if achieved, the Storage Commercial Operation by [August 31, 2022] (the “Storage Target Commercial Operation Milestone”).

- (c) Quarterly Progress Report. Seller shall provide to Buyer a Quarterly Progress Report concerning the progress towards construction and completion of each of the Storage Milestones (including whether Seller has met or is on target to meet each of the Storage Milestones), which shall be substantially similar in form and substance to that attached as Exhibit F, and include such additional information as reasonably required by Buyer. Seller shall also agree to meetings between representatives of Buyer and Seller to review such Progress Reports and discuss Seller’s construction progress, as Buyer may request from time to time.
- (d) Certification of Completion of Storage Milestones. Except as provided in Section 5.3(f) below, within five (5) Business Days of the completion of each Storage Milestone, Seller

shall provide a certification to Buyer (along with any relevant supporting documentation), stating Seller's achievement or satisfaction of each such Storage Milestone.

- (e) Notice of Failure to Achieve Storage Milestone. Upon becoming aware that it shall, or is reasonably likely to, fail to achieve any Storage Milestone by the required date for any reason including a Force Majeure event, Seller shall notify Buyer in writing as soon as is reasonably practical. Such notice shall provide information regarding the cause of the delay, provide a revised estimated date for achievement of the Storage Milestone(s), and otherwise describe Seller's plan for meeting the Storage Milestone(s). Seller's notice shall also explain any impact such delay may or shall have on any other Storage Milestone, and measures to be taken to mitigate such impact.
- (f) Notice of Storage Commercial Operation Date and Storage COD Certification. Seller shall provide written notice to Buyer thirty (30) calendar days in advance of the anticipated Storage Commercial Operation Date and shall provide Buyer with written weekly updates thereafter detailing the status of Seller's progress in achieving Storage Commercial Operation. On the Storage Commercial Operation Date, Seller shall deliver to Buyer by electronic mail or facsimile, with originals to follow by hand-delivery, courier or mail service, the Storage COD Certification in the form attached hereto as Exhibit G-2.

5.4 Storage Milestone Excused Delay and Liquidated Damages.

- (a) Permitted Extensions to Storage Milestones. The following events constitute "Permitted Extensions":
 - (i) In the event that a Force Majeure event causes a delay to the achievement of any Storage Milestone, each Storage Milestone deadline may be extended by that number of calendar days the applicable Force Majeure event actually delays completion of such Storage Milestone, provided that Seller works diligently to resolve the effect of the Force Majeure event on the achievement of the Storage Milestone. Notwithstanding the foregoing, in no event shall the combined extensions under this Section 5.4(a) for any individual Storage Milestone arising from Force Majeure events exceed six (6) months in the aggregate.
 - (ii) If Seller has used commercially reasonable efforts (including Seller's timely filing of required documents, payment of all applicable fees, and compliance with all applicable CAISO, PTO, FERC, or other requirements of a Governmental Authority, as applicable), including efforts to obtain Storage Facility interconnection, to meet the Storage Milestones, but such Storage Milestones cannot be met and Seller has worked diligently to resolve the delay, Seller may request Storage Milestone extensions for up to six (6) months in the aggregate, which Buyer may grant in its reasonable discretion.
- (b) Notice. If Seller claims a Permitted Extension, Seller shall provide Buyer with sixty (60) days' notice prior to the applicable Storage Milestone, which shall clearly identify the grounds for the requested extensions and include information necessary for Buyer to verify the length of and grounds for the extension. If the delay is due to Force Majeure and sixty (60) days' notice is impracticable or impossible, Seller shall provide notice as soon as possible after the occurrence of the Force Majeure event.
- (c) Maximum Delay.
 - (i) In no event shall the combined Permitted Extensions under this Section 5.4 for all Storage Milestones combined exceed twelve (12) months in the aggregate.

- (ii) If on any given day two or more events cause delay to a Storage Milestone at the same time (i.e., occur concurrently), Seller shall only be entitled to one (1) day of delay for such day.
- (d) Daily LD Amount. Seller shall be liable to Buyer for liquidated damages for each day or portion of a day of unexcused delay in a Storage Milestone in an amount equal to the Daily LD Amount, provided that Seller shall not be liable for more than the Daily LD Amount with respect to any single day, regardless of whether there are unexcused delays with respect to more than one Storage Milestone on such day. Buyer shall promptly provide invoices to Seller for Daily LD Amounts for the relevant number of unexcused days of delay on a monthly basis. If Buyer does not receive payment of the invoice from Seller within five (5) Business Days after Seller's receipt of the invoice from Buyer, at Buyer's sole discretion, Buyer shall be entitled to collect the Daily LD Amount by one or more of the following:
 - (i) drawing upon the Development Assurance; and/or
 - (ii) setting off against any amounts owed to Seller by Buyer under this Agreement.
- (e) No Limitation of Damages. The Parties agree that Buyer's receipt of the Daily LD Amount shall (i) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Article 9, and (ii) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's termination right pursuant to Section 5.4(g) or Article 9. The Parties further agree that, consistent with Section 9.3(b), the damages Buyer would incur due to Seller's failure to meet the Storage Milestone(s) would be difficult or impossible to predict with certainty and the Daily LD Amount is a reasonable approximation of such damages.
- (f) Refund of Daily LD Amounts. If Seller achieves Storage Commercial Operation by the Storage Commercial Operation Milestone, all Daily LD Amounts paid by Seller in connection with a failure to meet the Storage Permitting Milestone, Storage Construction Milestone, the Storage Major Equipment Milestone, or the Storage Mechanical Completion Milestone shall be refunded to Seller. Seller shall include a request for refund with the first invoice to Buyer.
- (g) Termination of Agreement. Buyer may terminate this Agreement by written notice to Seller if:
 - (i) subject to the limitations on Permitted Extensions set forth in Sections 5.4(a) and 5.4(c)(i), the combined Permitted Extensions for the Storage Commercial Operation Milestone exceed twelve (12) months in the aggregate, or
 - (ii) Seller fails to pay, or discontinues paying, any or all of the Daily LD Amount when due and Buyer cannot obtain such amounts by drawing upon the Development Assurance and/or setting off against any amounts owed to Seller by Buyer under this Agreement, or
 - (iii) subject to the limitations on Permitted Extensions set forth in Sections 5.4(a) and 5.4(c)(i), Seller continues to timely pay Daily LD Amounts, but unexcused delays and Permitted Extensions for the Storage Commercial Operation Milestone exceed twelve (12) months in the aggregate;

provided that upon any such termination of this Agreement, the Original Agreement shall be reinstated, which the Parties shall jointly acknowledge in writing no later than ten (10) days after any such termination.

- (h) Damage Payment. Upon termination of this Agreement under Section 5.4(g), Buyer shall be entitled to collect the Damage Payment hereunder within ten (10) days of Seller's receipt of an invoice from Buyer by one or more of the following:
 - (i) drawing upon the Development Assurance;
 - (ii) receiving payments from Seller within ten (10) days of receipt of an invoice from Buyer;
 - (iii) setting off against any amounts owed to Seller by Buyer under this Agreement.

Receipt of the Damage Payment shall be Buyer's sole and exclusive remedy in the event of a Buyer termination under Section 5.4(g).

- (i) Additional Extension. Notwithstanding the foregoing, the Parties may mutually agree in writing to an extension of the Storage Commercial Operation Milestone of up to thirty (30) days beyond the maximum twelve (12) month period for Permitted Extensions with payment of the Daily LD Amount by Seller. Buyer may not terminate this Agreement for failure to achieve the Storage Commercial Operation Milestone during the mutually agreed upon extension period so long as Seller continues to pay the Daily LD Amount.

5.5 Operation and Maintenance.

- (a) Operation and Maintenance. Seller shall be solely responsible for the ownership, operation, maintenance, and repair of the Facility in accordance with this Agreement, all Applicable Laws, the requirements of the CAISO, NERC and WECC, all applicable contractual obligations and Permits, and in accordance with Good Utility Practice, and shall be solely responsible for all associated costs and expenses. In the event Seller requires any data or information from Buyer in order to comply with any Applicable Law, including the requirements of CAISO, NERC and WECC, relating to the Facility, then Seller shall request in writing such data from Buyer no less than forty-five (45) days prior to Seller's requested date of Buyer's response; provided that if Seller has less than forty-five (45) calendar days prior notice of the need for such data, Seller shall request in writing such data from Buyer as soon as reasonably practicable. Buyer shall make a good faith effort to provide such data and/or information within the timeframe specified in writing by Seller or as soon thereafter as reasonably practicable.
- (b) CAISO and WECC Requirements and Good Utility Practice. Each Party shall perform in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs, and protocols of the CAISO, (ii) WECC scheduling practices, and (iii) Good Utility Practice.
- (c) Start-ups and Shut-downs. Seller shall coordinate all Facility start-ups and shut-downs, in whole or in part, with Buyer in accordance with CAISO scheduling protocols and the reasonable protocols established by Buyer that are not inconsistent with the CAISO Tariff and CAISO procedures.
- (d) Metering. All Energy from the Facility must be delivered through CAISO revenue meter(s) dedicated solely to the Facility. The meter data will account for transmission and transformation losses, including Electrical Losses, and will be programmed to reflect such losses, including Electrical Losses, to the Delivery Point, consistent with CAISO requirements. Seller shall (subject to Section 4.1(f)) bear all costs relating to all metering equipment installed to accommodate the Facility. Seller shall grant Buyer read-only rights to retrieve the meter reads from the Customer Market Results Interface, via website and direct download, and directly from the CAISO meter(s) at the Facility site through both (i) physical access and (ii) remote electronic read-only access. Seller shall maintain an updated record of programmed meter parameters (such as channel configuration and other relevant settings)

that is accessible and reasonably acceptable to Buyer. In addition, Seller shall provide all meter data to Buyer in a form reasonably acceptable to Buyer.

- (e) Facility Data. Seller shall take all steps necessary to authorize Buyer to obtain read-only access to (i) all Customer Market Results Interface data for the Facility, including market awards, expected energy and energy forecasts, (ii) all Scheduling Infrastructure Business Rules energy bids for the Facility, and (iii) all Market Results Interface-Settlements meter data for the Facility. If requested by Buyer, Seller shall provide access to Automated Dispatch System data for the Facility through the Seller's Scheduling Coordinator or scheduling agent in a format reasonably acceptable to Buyer.
- (f) 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 with or to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; provided that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.
- (g) Facility Configuration. At Buyer's request, the Parties shall enter into good faith negotiations to reconfigure the Facility as a hybrid solar and storage facility and to make any necessary amendments to this Agreement. All costs of such reconfiguration shall be at Buyer's sole expense. If the Parties are unable to reach agreement on the terms of such reconfiguration within ninety (90) days of Buyer's request, either Party may end the negotiations.

5.6 Scheduling, Forecasts, and Outages.

- (a) Scheduling Coordinator Services.
 - (i) Seller shall provide (or cause to be provided) all required Scheduling Coordinator services for the Facility. [REDACTED]
 - (ii) Upon ninety (90) days prior written notice to Seller, Buyer may elect to become the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services for the Facility and for the delivery of Product to and from the Delivery Point. Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents reasonably necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility. The Parties agree that, as of the date that Buyer assumes Scheduling Coordinator responsibilities pursuant to this Section, the amendments to this Agreement set forth in Exhibit N shall automatically take effect without further action of the Parties and Buyer shall not be obligated to pay the Seller SC Fee to Seller.
 - (iii) Each Party shall use commercially reasonable efforts as necessary to facilitate the other Party's efforts to meet its obligations under applicable CAISO, PTO, FERC, CEC, or other Governmental Authority requirements.
 - (iv) Each Party shall use commercially reasonable efforts to schedule and operate the Storage Facility to maximize Delivered Energy, including Energy that would have otherwise been clipped.
- (b) Standing Instructions.
 - (i) Buyer shall issue Standing Instructions as set forth in Exhibit T to Seller for bidding, scheduling, and operation of the Facility, including charging and discharging of the

Storage Facility. The Standing Instructions shall be consistent with this Agreement, including but not limited to the Operating Parameters and Seller's obligations under the CAISO Tariff and Applicable Law, including compliance with the Availability Standards.

- (ii) Buyer shall issue initial Standing Instructions to Seller prior to the Storage Commercial Operation Date in accordance with the Standing Instructions Protocol in Exhibit T. Buyer may issue revised Standing Instructions to Seller at any time during the Storage Delivery Term. Seller may object to the revised Standing Instructions in part or in whole if the Standing Instructions are not consistent with this Agreement, Seller's obligations under the Tariff, or Applicable Law. If Seller does not object within three (3) Business Days of receipt of the Standing Instructions, the Standing Instructions shall be deemed accepted, and Seller shall comply with the revised Standing Instructions. If Buyer has not received notification from Seller of acceptance or objection to the Standing Instructions within two (2) Business Days of issuance, Buyer shall submit a second notification to Seller. If Seller does not object to the Standing Instructions within one (1) Business Day of receipt of the second notification, the Standing Instructions shall be deemed accepted. If Seller disputes the Standing Instructions, Seller shall continue to follow the prior Standing Instructions. Seller may propose reasonable changes to the Standing Instructions at any time and Buyer shall respond in a timely manner. The Parties shall cooperate in good faith to reach agreement in a timely manner on changes to the revised Standing Instructions.
 - (iii) Buyer may at any time, direct Seller to submit DAM and/or RTM bids that differ from the Standing Instructions ("Supplemental Instructions") upon twenty-four hours advance written notice of the applicable CAISO deadlines. The Supplemental Instructions shall comply with this Agreement, the Operating Parameters, and Seller's obligations under the Tariff.
 - (iv) Seller shall comply with the currently effective Standing Instructions and/or Supplemental Instructions.
- (c) Day-Ahead and Real-Time Market Scheduling. Seller or Seller's SC shall submit bids and offers for the Facility in the Day Ahead Market and shall submit Economic Bids or Self-Schedules at the Settlement Point into the Real-Time Market (including both the FMM and the RTM) in accordance with the currently effective Standing Instructions or Supplemental Instructions, including Buyer's DAM and RTM Bid Prices, and the DA Percentage.
- (d) Changes to DA Percentage, the Buyer RTM Bid Price, and/or the Buyer DAM Bid Price. Buyer may change the DA Percentage, the Buyer RTM Bid Price, and/or the Buyer DAM Bid Price in accordance with the Standing Instructions Protocol in Exhibit T and Section 5.6(b)(iii).
- (e) CAISO Costs and Revenues.
- (i) Seller shall be responsible for:

- (A) CAISO charges, costs, and penalties resulting from (1) the unavailability of the Facility, (2) Seller's failure to notify CAISO of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), (3) any other failure by Seller to abide by the CAISO Tariff, this Agreement, or with any CAISO dispatch instruction or Curtailment Order, or the Forced Outages notice provision in Section 5.6(k), and (4) penalties related to non-performance with respect to Ancillary Services and Residual Unit Commitment awards due to conditions within Seller's control. Notwithstanding the foregoing, Buyer shall be responsible for: (x) any non-performance penalties due solely to decreases in solar irradiance; and (y) all costs, charges, expenses, penalties, and obligations under the Availability Standards due to any acts or omissions of Buyer as Scheduling Coordinator, if applicable, that are not in accordance with this Agreement and the CAISO Tariff.
- (B) If during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon Seller or the Facility due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be Seller's responsibility.
- (C) Seller shall be responsible for all CAISO fees, charges, and penalties imposed as a result of deviations between RTD Scheduled Energy and Delivered Energy during any Settlement Interval, except for those charges due solely to real-time uninstructed Energy caused by decreases in solar irradiance.
- (ii) Buyer shall receive all CAISO net revenues, credits, and other payments (such as Bid Cost Recovery) associated with the Facility for each Settlement Period and shall be responsible for all other CAISO costs, fees, and charges, including the Scheduling Coordinator ID Charge, but excluding those set forth in Section 5.6(e)(i), ("Net Buyer CAISO Settlements") and as identified in Exhibit M.
- (iii) Exhibit M sets forth an initial allocation of responsibility for Charge Codes consistent with this Section 5.6(e). Following the Execution Date, the Parties shall cooperate to prepare and mutually agree upon a written protocol (the "Net Buyer CAISO Settlements Protocol") to set forth appropriate administrative details to carry out the calculation and allocation of CAISO costs and CAISO revenues described in this Section 5.6(e). In the event that the Charge Codes agreed to by the Parties in the Net Buyer CAISO Settlements Protocol are amended or deleted or new CAISO charges, costs, revenues, penalties, or fees are implemented, the Party who is the SC at the time that Charge Codes are amended, deleted, or added shall promptly notify the other Party and the Parties shall mutually agree upon adjustments to the Net Buyer CAISO Settlements Protocol as necessary to allocate the new or amended CAISO costs and revenues in a manner that is consistent with the intent of this Section 5.6(e).
- (f) Positive Uninstructed Deviations. If the RTD Price is lower than the Buyer RTM Bid Price in any Settlement Interval, Seller shall credit Buyer on the monthly invoice for the product of (1) Buyer RTM Bid Price minus the RTD Price, and (2) the quantity of Energy produced by the Facility in excess of the CAISO dispatch instruction (positive uninstructed deviations) for that Settlement Interval ("Positive Uninstructed Deviation Credit").

- (g) CAISO Charges. Each Party shall use commercially reasonable efforts to cooperate with the other Party to allow that Party to comply with any obligations, and minimize any potential liability, it may have under the CAISO Tariff in relation to Product under this Agreement.
- (h) Variable or Intermittent Energy Resource Programs. During the Term, Buyer may direct Seller to participate in any CAISO program for scheduling variable or intermittent energy resources at Buyer's sole cost to the extent that such participation is consistent with Seller's obligations under this Agreement and the CAISO Tariff. Buyer shall use commercially reasonable efforts to facilitate Seller's participation in such programs.
- (i) Forecasts. Seller shall use generally accepted industry standards to produce the forecasts described hereunder. If Seller does not follow Section 4.8.2 of the CAISO Tariff with respect to forecasting, then upon Buyer's written request, Seller shall also retain, at Seller's expense, a third-party forecasting service reasonably acceptable to Buyer to produce such forecasts, in addition to those forecasts produced by Seller. Seller shall provide identical input data to such third-party service provider as are used to produce Seller's own forecast. Such forecast(s) shall be provided to Buyer in a manner reasonably acceptable to Buyer. If, during any given calendar month, the forecast error of such third-party service is larger than the forecast error of the forecasts produced by the Seller, determined as the sum of squared errors between the Seller Day-Ahead Forecast, for each respective forecast, and actual hourly production, then Buyer shall reimburse Seller for such third-party forecasting service costs.
- (i) No later than thirty (30) calendar days prior to the end of each Contract Year, Seller will provide a forecast of available capacity and production ("Annual Forecast") detailing hourly expected available generation and monthly capacity and all proposed Planned Outages for the next Contract Year. Within five (5) Business Days following any change to the Planned Outage schedule for such Contract Year, Seller will provide notice to Buyer with an updated Annual Forecast reflecting the updated Planned Outage schedule, which will automatically supersede the prior Annual Forecast for such Contract Year. During the Delivery Term of this Agreement, Seller shall not schedule Planned Outages of more than twenty four (24) hours during the period of reliability accounting (initially the period between June 1st and September 30th but subject to changes at Buyer's discretion in order to conform to the CAISO's Availability Assessment procedures).
- (ii) No later than ten (10) calendar days prior to the first day of each month of the Delivery Term, Seller shall provide an electronic update, in a format specified by Buyer, to the Annual Forecast for that calendar month ("Monthly Forecast"). The Monthly Forecast shall include hourly available capacity and expected generation and all Planned Outages.
- (iii) No later than seven (7) calendar days prior to the first day of each week of the Delivery Term, Seller shall provide a weekly forecast of available capacity and production and any changes in Planned Outages ("Weekly Forecast"). The Weekly Forecast shall include hourly available capacity and generation and all Planned Outages.
- (iv) By 5:30 PM Pacific Time on the Business Day immediately preceding the date of delivery, Seller shall provide a forecast of available capacity and production for each hour of the date of delivery ("Seller Day-Ahead Forecast"). The Seller Day-Ahead Forecast shall include hourly available capacity and generation and all Planned Outages.

- (j) Planned Outages. Seller shall not schedule or take a Planned Outage unless Seller has provided at least one hundred eighty (180) days advance notice to Buyer of the date, length, and magnitude of the Planned Outage. If Buyer requests a change to the scheduled date of any Planned Outage, Seller shall grant any request that is consistent with the Operating Parameters. If, within ninety (90) days of the notice of the Planned Outage, Buyer is unable to obtain sufficient, cost-effective replacement Resource Adequacy supplies (as determined in Buyer's sole discretion) required by CAISO with respect to the Planned Outages, Buyer shall promptly notify Seller and the Parties shall negotiate in good faith to reschedule the Planned Outage. Buyer shall have no liability to Seller for failure to procure replacement Resource Adequacy or the rescheduling of any Planned Outage. This section 5.6(j) shall not apply to Short-Notice Opportunity Outages approved by the CAISO, as defined in the February 19, 2021 CAISO General Outage Operating Procedure, Procedure Number 3220, Version 6.0, to the extent that such outages do not require replacement Resource Adequacy capacity.
- (k) Forced Outages. Forced Outages shall be reported by Seller to Buyer verbally as soon as practicable and in writing no more than twenty-four (24) hours thereafter. Written notice of a Forced Outage lasting longer than one (1) hour shall include the type of outage, start date and start time of outage, estimated or actual end date and end time of the outage, a text description of the cause of the outage and any other information the Seller deems necessary for the Buyer to understand the causes and impact of the outage. Seller shall notify Buyer as soon as practicable, whenever the Facility is returned to service.
- (l) Curtailement.
- (i) Mandatory Curtailement Periods. Seller shall reduce delivery amounts as directed by the Reliability Coordinator, CAISO, PTO, or any successor thereto pursuant to a Curtailement Order. Except as set forth in Section 5.6(l)(ii)(C), Buyer shall not be required to pay Seller for the Product that Seller could have delivered to Buyer but for such Curtailement Order.
- (ii) Deemed Delivered Energy.
- (A) If a Bid Curtailement occurs, in Seller's monthly invoice Seller will reasonably calculate consistent with Good Utility Practices the difference in MWh between the Final Output Estimate and actual Delivered Energy attributable to such Bid Curtailement ("Deemed Delivered Energy"). The Parties shall share any documentation necessary to create or support such calculation. Seller shall include supporting documentation and calculations for the determination of Deemed Delivered Energy with the monthly invoice.²
- (B) If either Party believes that the Final Output Estimate is an inaccurate estimate of the quantity of Energy the Facility reasonably could have generated based on Facility availability, insolation, and other relevant meteorological conditions, the Parties will mutually agree upon the use of (1) the Day-Ahead Forecast, (2) the Seller Day-Ahead Forecast, (3) the third-party version of the Seller Day-Ahead Forecast (as defined in section 5.6(i)), or (4) another mutually agreed upon methodology to determine the Final Output Estimate.

² [Seller NTD: Our assumption is that CPSF's concern about Deemed Delivered Energy procedures relates to overlapping Bid Curtailements and Curtailement Orders and is addressed in clause (C).]

- (C) In the event of an overlapping Bid Curtailment and a Curtailment Order, Seller shall exclude Energy curtailed during such Curtailment Order time period from the calculation of Deemed Delivered Energy. Notwithstanding the foregoing, if a Bid Curtailment and a CAISO system-wide Overgeneration Curtailment Order occur in the same settlement interval, the curtailment shall be treated as a Bid Curtailment for the purpose of the calculation of Deemed Delivered Energy.
- (D) In addition to paying Seller for all Delivered Energy hereunder, Buyer shall pay Seller the Solar Contract Price for Deemed Delivered Energy.

5.7 Energy Management.

- (a) Charging Generally. Upon receipt of a Charging Notice, Seller shall take such commercially reasonable action as is necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement.
- (b) Charging and Discharging Notices. Buyer shall have the right to charge and discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by issuing Charging and Discharging Notices to Seller, subject to the requirements and limitations set forth in this Agreement, including the Operating Parameters. Each Charging or Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer or CAISO modifies such Charging or Discharging Notice by providing Seller with an updated Charging or Discharging Notice, as the case may be.
- (c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice or as required under the Operating Parameters. Notwithstanding the foregoing, Seller may adjust a Charging Notice to the extent necessary to comply with the Operating Parameters, in connection with a Storage Capacity Test, or pursuant to a notice from the CAISO, Transmission Provider, or any other applicable Governmental Authority. Seller shall comply with all Charging Notices, subject to the requirements and limitations set forth in this Agreement. If, during the Delivery Term, Seller charges the Storage Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 5.7(c), then (i) Seller shall be responsible for all Energy costs associated with such charging of the Storage Facility, (ii) Buyer shall not be required to pay for such Energy, and (iii) Buyer shall be entitled to discharge such Energy and entitled to all of the benefits (including Storage Product) associated with such discharge.
- (d) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice. Notwithstanding the foregoing, Seller may adjust a Discharging Notice to the extent necessary to comply with the Operating Parameters, in connection with a Storage Capacity Test, or pursuant to a notice from the CAISO, Transmission Provider, or any other Governmental Authority.
- (e) Unauthorized Charges and Discharges. Any charges, discharges or use of the Storage Facility that is not in accordance with this Agreement shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated with, and shall be responsible to Buyer for any damages arising from, such unauthorized use. If Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 8.

- (f) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer or Buyer's SC, and Seller shall comply with any CAISO Dispatch. If the Storage Facility deviates from a CAISO Dispatch, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation (in addition to any Buyer remedy related to overcharging of the Storage Facility as set forth in Section 5.6(c)).
- (g) Pre-Commercial Operation Date Period. Prior to the Commercial Operation Date, (i) Buyer shall have no right to charge or discharge the Storage Facility and (ii) Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning, and testing of the Storage Facility, except to the extent otherwise consented to by Buyer in its sole discretion.
- (h) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders shall have priority over any Dispatch Notices, and Seller shall not be in violation of this Section 5.7 or any Dispatch Notice if and to the extent the deviation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order consistent with the Operating Parameters.

ARTICLE 6: DEVELOPMENT AND PERFORMANCE ASSURANCE

6.1 Grant of Security Interests/Remedies.

- (a) To secure its obligations under this Agreement hereunder, the Posting Party hereby grants to the Secured Party a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Development Assurance and Performance Assurance posted in accordance with this Agreement in the form of cash collateral or cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the Secured Party. Within thirty (30) calendar days of the delivery of the Development Assurance or Performance Assurance, as applicable, the Posting Party agrees to take such action as the Secured Party reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Development Assurance or Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof, respectively.
- (b) Upon or any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date, the Secured Party, as the Non-Defaulting Party, may do any one or more of the following:
 - (i) exercise any of the rights and remedies of a secured party with respect to all Development Assurance or Performance Assurance, as applicable, including any such rights and remedies under the law then in effect;
 - (ii) draw on any outstanding Letter of Credit or Guaranty issued for its benefit and retain any cash held by the Secured Party as Development Assurance or Performance Assurance; and
 - (iii) liquidate all Development Assurance or Performance Assurance, as applicable, then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Posting Party, including any equity or right of purchase or redemption by the Posting Party.
- (c) The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Posting Party's obligations under the Agreement (the

Posting Party remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

6.2 Seller Development Assurance and Seller Performance Assurance.

- (a) Provision of Security by Seller. Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:
- (i) Seller Development Assurance. [REDACTED]
[REDACTED] Seller shall post Seller Development Assurance in the form of cash, a Letter of Credit, Performance Bond, or Guaranty within ten (10) calendar days following the later of the date upon which the condition in Section 2.1(a)(iii) has been met and the date upon which the condition in Section 2.1(a)(iv) has been met, until such time as Seller posts the Seller Performance Assurance pursuant to Section 6.2(a)(ii)(B) below with Buyer.
- (ii) Seller Performance Assurance. [REDACTED]
[REDACTED] Seller shall post such Seller Performance Assurance in the form of cash, a Letter of Credit, or a Guaranty; provided that, with Buyer's consent, Seller may elect to apply a portion of the Seller Development Assurance toward the Seller Performance Assurance. The amount of the Seller Performance Assurance shall be adjusted on the first day of each Contract Year to the Seller Performance Assurance amount corresponding to the applicable Contract Year, as set forth in Exhibit C.
- (b) No Limitation of Damages. The amount of Seller Development Assurance and Seller Performance Assurance required under this Agreement shall not be deemed a limitation of damages.
- (c) Use of Seller Development Assurance. Buyer shall be entitled to draw upon the Seller Development Assurance posted by Seller for any reason permitted under this Agreement related to the Storage Facility until the Seller Development Assurance is exhausted. Buyer shall also be entitled to draw upon the Seller Development Assurance for any Damage Payment arising upon Buyer's declaration of an Early Termination Date prior to the Storage Commercial Operation Date.
- (d) Termination of Seller Development Assurance. Buyer shall return the Seller Development Assurance to Seller less any amounts drawn in accordance with this Agreement: (i) within thirty (30) days after Seller posts Seller Performance Assurance for the Storage Facility with Buyer pursuant to Section 6.2(a)(ii)(B) or (ii) within sixty (60) days after early termination of the Agreement pursuant to Section 2.1(c), Section 2.2(b)(iii), Section 5.4(g), or Article 9. The Seller Development Assurance (or portion thereof) shall be returned unless, with Buyer's consent, Seller elects to apply the Seller Development Assurance (or a portion thereof) toward the Seller Performance Assurance.
- (e) Use of Seller Performance Assurance. Buyer shall be entitled to draw upon the Seller Performance Assurance posted by Seller for any reason permitted under this Agreement,

including Buyer's declaration of an Early Termination Date after the Storage Commercial Operation Date.

- (f) Return of Seller Performance Assurance. Buyer shall return the unused portion of Seller Performance Assurance to Seller within thirty (30) days after the following has occurred:
 - (i) the Term of the Agreement has ended, or an Early Termination Date has occurred; and all payment obligations of Seller arising under this Agreement, including payments pursuant to a Damage Payment, Termination Payment, indemnification payments, or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

6.3 Buyer Development and Buyer Performance Assurance.

- [REDACTED]

■ [REDACTED]

6.4 Letter of Credit. Development Assurance or Performance Assurance provided in the form of a Letter of Credit shall be substantially in the form set forth in Exhibit J, or another form reasonably acceptable to the Secured Party, subject to the following provisions:

- (a) Renewal of Letter of Credit. If a Posting Party has provided a Letter of Credit pursuant to any of the applicable provisions in this Article 6, then the Posting Party shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis.
- (b) Failure of Letter of Credit and Cure. In the event the issuer of such Letter of Credit at any time: fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, becomes Bankrupt, indicates its intent not to renew such Letter of Credit, or fails to honor the Secured Party's properly documented request to draw on such Letter of Credit, the Posting Party shall

cure such occurrence by complying with either (i) or (ii) below in an amount equal to the outstanding Letter of Credit, and by completing the action within ten (10) Business Days after the date of the Secured Party's notice to the Posting Party of an occurrence listed in this subsection (Posting Party's compliance with either (i), (ii), or (iii) below is considered the "Cure"):

- (i) providing a substitute Letter of Credit that is issued by an Eligible LC Bank other than the bank which is the subject of the Secured Party's notice to the Posting Party in this section 6.4(b);
 - (ii) providing a Guaranty; or
 - (iii) posting cash.
- (c) Failure to Cure. If the Posting Party fails to cure, or if such Letter of Credit expires or terminates without a full draw thereon by the Secured Party or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then the Posting Party shall be deemed to have failed to meet the collateral requirements of Section 6.2 or 6.3 and Secured Party may declare an Event of Default as set forth in Article 9.
- (d) Letter of Credit Costs. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by the Posting Party.

6.5 Guaranty. The Posting Party shall replace the Guaranty in the event that the Posting Party's Guarantor fails to meet the required criteria for a Guarantor under this Agreement within five (5) Business Days following the Secured Party's written request for replacement of the Guaranty. Posting Party shall provide for the benefit of the Secured Party either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit. If the Posting Party fails to provide replacement Development, or (3) Performance Assurance as required in this Section 6.5, then the Secured Party may declare an Event of Default as set forth in Article 9.

ARTICLE 7: FINANCIAL STATEMENT

7.1 Seller's Obligations. If requested by Buyer, Seller shall deliver to Buyer (i) within six (6) months following the end of each fiscal year, a copy of Seller's and Seller's Parent's annual report containing audited consolidated financial statements for such fiscal year (or if not available, unaudited consolidated financial statements for such fiscal year), and (ii) within sixty (60) calendar days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of Seller's and Seller's Parent's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases, the statements shall be for the most recent accounting period and shall be prepared in accordance with GAAP and shall be certified by the Chief Financial Officer or equivalent officer of Seller on behalf of Seller and of Seller's Parent on behalf of Seller's Parent; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not constitute an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements. If the financial statements of Seller's Parent are publicly available electronically on its website, Seller is deemed to have met the requirements of this Section 7.1.

7.2 Buyer's Obligations. If requested by Seller, Buyer shall deliver to Seller (i) within six (6) months following the end of each fiscal year, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year (or if not available, unaudited consolidated financial

statements for such fiscal year), (ii) within sixty (60) calendar days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, and (iii) on a timely basis, such other financial and operational information as may be reasonably requested by the Seller's financing parties. In all cases, the audited statements shall be for the most recent accounting period and shall be prepared in accordance with GAAP, provided, however, that should any statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not constitute an Event of Default so long as Buyer diligently pursues the preparation, certification and delivery of the statements.

ARTICLE 8: FORCE MAJEURE

- 8.1 Remedial Action.** Subject to the limitation on extensions of Storage Milestones set forth in Sections 5.4(a) and (c), a Party shall not be liable to the other Party if the Party is prevented from performing its obligations hereunder due to a Force Majeure Event. The Party rendered unable to fulfill an obligation by reason of a Force Majeure Event shall take all action necessary to remove such inability with all due speed and diligence. The non-performing Party shall be prompt and diligent in attempting to mitigate the effects of and to remove the cause of its failure to perform, and nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Notwithstanding the foregoing, the existence of a Force Majeure Event shall not excuse any Party from its obligations to make payment of amounts due hereunder.
- 8.2 Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall, as soon as practicable under the circumstances, notify the other Party, in writing, of the nature, cause, date of commencement, and the anticipated extent of any delay or interruption in performance.
- 8.3 Termination Due to Force Majeure Event.** Subject to the provisions of Section 5.4(a) and (c) on extensions of Storage Milestones, if a Party is prevented in any material respect from performing any material obligations under this Agreement solely due to a Force Majeure Event lasting for a period of twelve (12) consecutive months or longer, either Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) calendar days' prior written notice at any time following expiration of such period of twelve (12) consecutive months. In such event, Buyer shall promptly return to Seller all Development Assurance or Performance Assurance, as applicable, less any LD amount paid by or due and payable by Seller prior to the date of such termination for reasons unrelated to this Section 8.3. This Section 8.3 shall not affect the rights and remedies associated with any other termination rights set forth in this Agreement.

ARTICLE 9: DEFAULT, REMEDIES, AND TERMINATION

9.1 Events of Default.

- (a) Events of Default. The occurrence of any of the following shall constitute an Event of Default by a Party:
- (i) the breach of any material obligation or covenant of this Agreement and such Party fails to cure such breach within sixty (60) days after written notification of default by the other Party; however, the Parties may mutually agree upon a longer period for cure if the breach cannot reasonably be cured within sixty (60) days, provided that the extended cure period will only continue for so long as the Party in breach is pursuing a cure with reasonable diligence;
 - (ii) subject to Sections 4.1(c) and (d), failure to make any payment when due under this Agreement within fifteen (15) Business Days after written notice that such payment is due;

- (iii) 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 neither such circumstance nor the adverse effects of such circumstance are cured or remedied within thirty (30) days after written notice;
 - (iv) such Party becomes Bankrupt;
 - (v) such Party fails to comply with their respective obligations under Article 6;
 - (vi) subject to Section 12.1(d), 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) Seller Events of Default. The following shall constitute additional Events of Default by Seller:
- (i) If, in any two (2) full, consecutive Contract Years after the Storage Commercial Operation Date, the Annual Storage Availability is less than fifty percent (50%) in each Contract Year; and
 - (ii) If, in any two (2) full, consecutive Contract Years after the Storage Commercial Operation Date, the Storage Contract Capacity is less than seventy-five percent (75%) of the Guaranteed Storage Contract Capacity in each Contract Year.

9.2 Termination for Default.

- (a) Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party has occurred, is continuing and has not been cured, the other Party (the “Non-Defaulting Party”) shall have the right to:
- (i) send notice, designating a day, no earlier than ten (10) calendar days and no later than sixty (60) days after the day such notice is deemed to be received, as the date on which this Agreement will terminate (the “Early Termination Date”);
 - (ii) accelerate all amounts owing between the Parties, terminate this Agreement and end the Delivery Term effective as of the Early Termination Date;
 - (iii) collect as of the Early Termination Date, the Termination Payment (for the avoidance of doubt, this does not apply to any termination pursuant to Section 2.2(b)(iii) or 5.4(g) or for which a Damage Payment is payable pursuant to Section 9.2(g));
 - (iv) withhold any payments due to the Defaulting Party under this Agreement;
 - (v) suspend performance;
 - (vi) exercise its rights pursuant to Article 6 of this Agreement to draw upon and retain Development Assurance or Performance Assurance, as applicable; and
 - (vii) exercise any other right or remedy available at law or in equity to the extent otherwise permitted under this Agreement.
- (b) Calculation of Termination Payment.
- (i) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Termination Payment as of the Early Termination Date.

- (ii) If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from such termination of this Agreement, the amount of the Termination Payment shall be limited to the amounts set forth in clause (b) of the definition of Termination Payment.
 - (iii) The Non-Defaulting Party is not required to enter into replacement transactions to establish a Termination Payment.
 - (iv) The Termination Payment shall be the sole and exclusive remedy available to the Non-Defaulting Party in connection with its termination of this Agreement for any Event of Default, and shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages.
 - (v) Section 4.3 of this Agreement is not a limitation on Buyer's liability for a Termination Payment.
- (c) Notice of Termination Payment. As soon as practicable after declaration of an Early Termination Date, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Termination Payment due to or from the Defaulting Party to the Non-Defaulting Party, as applicable. 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 shall be made to the Non-Defaulting Party fifteen (15) Business Days after such termination payment notice is effective.
- (d) Disputes Regarding Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Following delivery of such a notice, disputes regarding the Termination Payment shall be resolved in accordance with Section 12.3.
- (e) Liquidated Damages. The Parties agree that the Termination Payment to be paid by Seller shall be considered liquidated damages and not a penalty, in accordance with Section 9.3(b).
- (f) Partial Termination of Agreement (Storage Portion, Post-Storage Delivery Start Date). Notwithstanding anything to the contrary in this Agreement, with respect to any Seller Event of Default under Section 9.1(b):
- (i) Upon Buyer's exercise of its right to terminate this Agreement based on such Event of Default, the Original Agreement shall be reinstated, which the Parties shall jointly acknowledge in writing no later than ten (10) days after any such termination; and
 - (ii) The Termination Payment for such Event of Default shall be based on the net Gains, Losses, and Costs associated with termination of this Agreement and reinstatement of the Original Agreement.
- (g) Partial Termination of Agreement (Storage Portion, Pre-Storage Delivery Start Date). Notwithstanding anything to the contrary in this Agreement, with respect to any Seller Event of Default under Section 9.1(a) that occurs prior to the Storage Delivery Start Date and arises solely in connection with the Storage Facility:
- (i) Upon Buyer's exercise of its right to terminate this Agreement based on such Event of Default, the Original Agreement shall be reinstated, which the Parties shall jointly acknowledge in writing no later than ten (10) days after any such termination; and
 - (ii) Buyer shall be entitled to collect the Damage Payment hereunder within ten (10) days of Seller's receipt of an invoice from Buyer by one or more of the following:

- (A) drawing upon the Development Assurance;
- (B) receiving payments from Seller within ten (10) days of receipt of an invoice from Buyer;
- (C) setting off against any amounts owed to Seller by Buyer under this Agreement.

Receipt of the Damage Payment shall be Buyer's sole and exclusive remedy in the event of a Buyer termination with respect to a Seller Event of Default that is subject to this Section 9.2(g).

9.3 Limitation of Liability/Liquidated Damages.

- (a) **THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.**
- (b) **THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL SUCH OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF REVENUES, LOSS OF PROFIT, OR OTHER BUSINESS INTERRUPTION DAMAGES, INTEREST CHARGES, OR COST OF CAPITAL, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; PROVIDED HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT RELATING TO EXPRESS REMEDIES OR MEASURE OF DAMAGES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIQUIDATED DAMAGES, TERMINATION PAYMENT, AND DAMAGE PAYMENTS SET FORTH IN SECTIONS 3.4(c), 3.4(e), 3.6, 3.11, 3.12, 5.4(d), 5.4(h), AND 9.2 ARE EACH REASONABLE AND REPRESENT A FAIR AND GENUINE ESTIMATE OF THE DAMAGES THAT WOULD OCCUR RELATED TO THE EVENTS DESCRIBED THEREIN. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE DAMAGES FOR THE CIRCUMSTANCES SET FORTH ABOVE WOULD BE IMPOSSIBLE OR DIFFICULT TO MEASURE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS IMPRACTICABLE. THE PARTIES FURTHER AGREE THAT PAYMENT OF SUCH AMOUNTS SHALL BE AS AND FOR LIQUIDATED DAMAGES AND NOT AS A PENALTY AND ARE THEREFORE NOT SUBJECT TO AVOIDANCE UNDER CALIFORNIA CIVIL CODE SECTION 1671.**

- (c) **BUYER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE COMPENSATION PROVIDED FOR IN ARTICLES 3 AND 4, AND SECTIONS 5.6 AND 9.2.**
- (d) **EXCEPT AS OTHERWISE PROVIDED HEREIN, THE RIGHTS AND REMEDIES OF A PARTY PURSUANT TO THIS ARTICLE 9 SHALL BE CUMULATIVE AND IN ADDITION TO THE RIGHTS OF THE PARTIES OTHERWISE PROVIDED IN THIS AGREEMENT.**

ARTICLE 10: INDEMNIFICATION

10.1 Indemnification.

- (a) Seller and Buyer Indemnification. Each Party ("Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its elected officials, officers, directors, employees, agents, affiliates and representatives (each, an "Indemnified Party") from and against any and all losses, including but not limited to losses arising from personal injury or death, or damage to property, but only to the extent such losses result from or arise out of the negligence, willful misconduct or violation of Applicable Law by the Indemnifying Party.
- (b) Environmental Indemnity. Seller shall indemnify, defend, and hold harmless the Buyer Indemnified Parties, from any claim, liability, loss, injury or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the disposal and transportation of Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement.
- (c) Notice. If an Indemnified Party or Buyer Indemnified Party determines that it is entitled to defense and indemnification under this Section 10.1, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the losses, and provide all reasonably necessary or useful information, and authority to settle and/or defend the losses. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party's prior written consent.

ARTICLE 11: REPRESENTATIONS AND WARRANTIES

11.1 Seller's Representations and Warranties. In addition to the representations and warranties set forth in other sections of this Agreement, Seller represents and warrants to Buyer that as of the Execution Date:

- (a) Seller is duly organized and validly existing as a limited liability company under the laws of the State of Delaware, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement, and Seller is duly qualified in California and each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (b) Seller has the legal power and authority to make and carry out this Agreement and to perform all of its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (c) The execution, delivery and performance of this Agreement by Seller shall not conflict with its governing documents, any Applicable Laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected;
- (d) This Agreement has been duly and validly executed and delivered by Seller and, as of the Execution Date, constitutes a legal, valid and binding obligation of Seller, enforceable in

accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;

- (e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing, against Seller or any of its affiliates, at law or in equity, before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement;
- (f) It is not Bankrupt and there are no proceedings pending or being contemplated by it or any of its affiliates, or, to its knowledge, threatened against it or its affiliates which would result in it being or becoming Bankrupt;
- (g) It is a forward contract merchant within the meaning of the U.S. Bankruptcy Code (as in effect as of the Execution Date of this Agreement);
- (h) From the Execution Date until the end of the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;
- (i) Throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;
- (j) All necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under this Agreement;
- (k) It will provide and convey all Environmental Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered, it holds the rights to all Environmental Attributes from the Facility, and it agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Facility;
- (l) It will pay prevailing wages as set forth in Section 5.2(b).

11.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that as of the Execution Date:

- (a) Buyer is a municipal corporation, duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement;

- (b) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (c) The execution, delivery and performance of this Agreement by Buyer shall not conflict with its governing documents, any Applicable Laws or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected;
- (d) This Agreement has been duly and validly executed and delivered by Buyer and, as of the Execution Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened, in writing, against Buyer, at law or in equity, before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer's ability to perform its obligations under this Agreement;
- (f) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt; and
- (g) It is a forward contract merchant within the meaning of the U.S. Bankruptcy Code (as in effect as of the Execution Date of this Agreement);

11.3 Covenants. In addition to other covenants contained in this Agreement, each Party covenants that throughout the Term:

- (a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
- (b) It shall maintain (or obtain from time to time as required, including through renewal, as applicable) 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 a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law.

ARTICLE 12: MISCELLANEOUS

12.1 Assignment.

- (a) General Assignment. Except as provided in Sections 12.1(b), (c) and (d), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed so long as among other things, (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers financial statements, information and other evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder, and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request.
- (b) Assignment to Financing Providers. Notwithstanding any provision to the contrary in this Section 12.1, Buyer hereby consents to assignment of this Agreement by Seller, including to

an Affiliate of Seller (for purposes of a portfolio financing), as collateral for any financing or refinancing of the Facility to a Lender. Seller's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the Seller's interest under this Agreement has been assigned. The notice shall include the names of the Lender's primary contact(s) to whom all communications may be addressed. Seller shall promptly notify Buyer of any changes to the information contained in the notice. Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement in a form substantially similar to Exhibit L ("Form of Consent to Collateral Assignment"). As a condition to Buyer's consent to assignment, the following provisions shall apply to any assignment under this Section 12.1(b):

- (i) Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by the Seller and such act performed by Lender shall be as effective to prevent or cure a default as if done by Seller.
 - (ii) Buyer shall cooperate with Seller or a Lender to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments, and other documents reasonably requested by Seller or Lender in order to complete any financing or refinancing and shall enter into reasonable agreements as necessary to provide for recognition by Buyer of the Lender's security interest in this Agreement and such other provisions as may be reasonably requested by Seller or any Lender, so long as the terms and conditions of such agreements are consistent with this Agreement and such amendments or agreements are reasonably acceptable to both Parties. All costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection with an assignment of this Agreement to a Lender shall be borne by Seller.
 - (iii) In the event of a Default under this Agreement, Buyer shall provide a copy of the notice of Default to the Lender pursuant to Section 9.2(a) at the same time as the notice is provided to Seller. Buyer shall accept a cure performed by a Lender and shall negotiate in good faith with the Lender as to the cure period(s) allowed for the Lender to cure any Event of Default. Buyer shall accept a cure by Lender so long as the cure is accomplished within the applicable cure period. Notwithstanding any Lender cure, Seller shall not be released and discharged from, and shall remain liable for, any and all obligations to the Buyer arising or accruing hereunder.
 - (iv) 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 (i) assume all of Seller's obligations arising under this Agreement, and (ii) shall cure all defaults under this Agreement existing as of the date of change of title or control as required under this Agreement.
- (c) Assignment in Connection with a Change in Control. Notwithstanding any provision to the contrary in this Section 12.1, any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall not require the prior written consent of Buyer. Seller shall promptly notify Buyer of any direct or indirect change in control and shall provide any information reasonably requested by Buyer regarding the change in control, provided that this obligation does not apply to any direct or indirect owners of Seller's Parent. Seller acknowledges that its obligations under this Agreement remain in full force and effect notwithstanding such change in control and that Seller is solely responsible for ensuring that all required changes to its vendor certifications are promptly implemented.
- (d) Assignment to Affiliates.

- (i) Notwithstanding anything to the contrary in this Section 12.1, Buyer hereby consents to the assignment of this Agreement by Seller to its Affiliates, NextEra Energy Operating Partners, LP (“NEOP”) and NextEra Energy Partners, LP (“NEP”) so long as NEOP or NEP, as the case may be, agree in writing to assume all of Seller’s obligations under this Agreement and to comply with the terms and conditions of this Agreement. Seller shall promptly notify Buyer of an assignment under this Section 12.1(d) including new contact and payment information. Seller understands and acknowledges that NEOP or NEP, as the case may be, is required to comply with the City’s vendor registration requirements including, but not limited to, certification of compliance with Section 12.5(m).
- (ii) Seller may assign this Agreement to an Affiliate of Seller with the consent of Buyer not to be unreasonably withheld, conditioned or delayed by providing advance written notice to Buyer; provided that if Buyer does not object in writing within ten (10) Business Days of receipt of the notice of assignment, the assignment shall be deemed granted if the Affiliate meets the following requirements: (1) such Affiliate has executed an assignment agreement with Seller, with an acknowledgment from Buyer, assuming in writing all of the Seller’s obligations (including the obligation to cure any then existing defaults within the time permitted in the Agreement) and agree to be bound by the covenants and agreements of Seller under this Agreement, and (2) such Affiliate shall (A) have at least three (3) years of experience owning or operating generating facilities of the same technology type of comparable size as the Facility or has hired a manager or operator with such qualifications, (B) own, control or operate a minimum of 500 MWs of solar energy generation capacity or has hired a manager or operator with such qualifications, (C) upon assignment of this Agreement, have at least [REDACTED] in tangible net assets, (D) not be disbarred by the City from entering into contracts with the City, and (E) not be in litigation or a contractual dispute with the City at the time of the assignment or have engaged in litigation or a contractual dispute with the City within the five (5) years prior to the assignment.
- (e) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 12.1 is void.

12.2 Proprietary or Confidential Information.

- (a) Confidential Information. Each Party understands and agrees that, in the performance of this Agreement or in contemplation thereof, the other Party may have access to private or confidential information and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Party that owns or controls the Confidential Information. Each Party agrees that all private and confidential information disclosed by one Party to the other Party shall be held in confidence and used only in performance of the Agreement; however, a Party may disclose the Confidential Information of the other Party to its officers, employees, agents, consultants, and contractors as necessary for the performance of its obligations under this Agreement. Each Party shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect its own proprietary data.
- (b) Public Records Act and Sunshine Ordinance. Seller acknowledges that Buyer is a public agency subject to the disclosure requirements of the Public Records Laws. If documents or information submitted to Buyer contain Seller’s proprietary and confidential information and Seller claims that such information falls within one or more Public Records Laws exemptions, Seller must clearly mark such information “CONFIDENTIAL AND PROPRIETARY”, and

identify the specific lines containing such information (the “Confidential Information”). Buyer shall disclose such Confidential Information to third parties only to the extent required by California law (including, without limitation, the California Constitution, the Public Records Laws, and other Applicable Law).

- (c) Disclosure of Confidential Information by Buyer. In the event of a third-party request for Buyer to disclose such Confidential Information, Buyer shall make reasonable efforts to provide notice to Seller prior to disclosure. If Seller contends that any Confidential Information is exempt from the Public Records Laws and wishes to prevent disclosure, Seller shall obtain a protective order, injunctive relief or other appropriate remedy from a court of law in San Francisco County before Buyer’s deadline for responding to the disclosure request. If Seller fails to obtain such remedy prior to Buyer’s deadline for responding to the request, Seller agrees that Buyer may disclose the requested Confidential Information. Seller further agrees that Buyer shall have no liability to Seller arising out of any disclosure by Buyer of any Seller Confidential Information before Seller has timely obtained an order, injunctive relief or other appropriate remedy to prevent Buyer from making the requested third-party disclosure.
- (d) Non-Confidential Information. Notwithstanding anything to the contrary in this Section nothing shall restrict any Party from using or disclosing information related to this Agreement, including Confidential Information if such information (i) is generally available to the public; (ii) was within the using or disclosing Party’s possession prior to it being furnished hereunder, provided that such information is not subject to another confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, any other party with respect to such information; (iii) is rightfully obtained by a Party from third parties authorized to make such disclosure without restriction; (iv) is legally required to be disclosed by judicial or other governmental action as determined by such Party’s attorney acting in good faith; or (v) is disclosed without a duty of confidentiality to a third party by, or with the authorization of, the disclosing Party; or (vi) is furnished to the non-disclosing Party’s Affiliates, or to the auditors, attorneys, advisors, or actual or potential lenders or investors of the non- disclosing Party and/or its Affiliates which are required to keep the information that is disclosed in confidence.
- (e) Nondisclosure of Private Information. If this Agreement requires Buyer to disclose “Private Information” to Seller within the meaning of San Francisco Administrative Code Chapter 12M, Seller shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing this Agreement. Seller is subject to the enforcement and penalty provisions in Chapter 12M.

12.3 Dispute Resolution; Choice of Law.

- (a) Negotiation; Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of this Agreement by negotiation. The status of any dispute or controversy notwithstanding, each Party shall proceed diligently with the performance of its obligations under this Agreement in accordance with and subject to the terms of this Agreement. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither Party will be entitled to legal fees or costs for matters resolved under this section.
- (b) 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. Venue shall be in the County of San Francisco, California.

12.4 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. The Parties shall maintain such data and records in an accessible location and condition for a period of not fewer than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

12.5 General.

- (a) Entire Agreement. This Agreement, the exhibits, attachments, and any written and fully executed supplements hereto, any designated collateral, credit support, or similar arrangement between the Parties constitute the entire agreement between the Parties relating to the subject matter.
- (b) Construction. 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.
- (c) Amendments. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.
- (d) No Third-Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).
- (e) No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) Change in Law. If any provision of this Agreement is rendered unlawful by action by any Governmental Authority, or any change in Applicable Law (a “Change in Law”) occurring after the Execution Date, the remaining lawful obligations that arise under this Agreement shall not be affected. If the Change in Law results in material changes to the Parties’ obligations with regard to any Product sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable, or otherwise modifies the RPS or language required to conform to the RPS, the Parties shall work in good faith to revise this Agreement in a manner that maintains to the greatest extent practicable the original intent of the Parties under this Agreement so that the Parties may perform their obligations regarding the purchase and sale of Product. If the Parties cannot reach a good faith agreement on amendments, the Agreement shall be terminated by mutual agreement without liability for either Party.
- (g) Headings. The headings used herein are for convenience and reference purposes only.
- (h) Assigns. This Agreement shall be binding on each Party’s successors and assigns.
- (i) No Dedication. No undertaking by one Party to the other under any provision of the Agreement shall constitute the dedication of that Party’s system or any portion thereof to the other Party or to the public or affect Seller as an independent entity and not a public utility.
- (j) Relationship of the Parties. The duties, obligations and liabilities of the Parties are independent of one another and shall be limited to those expressly set forth herein. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and Buyer shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party. Seller and Buyer intend to act as energy supplier and energy purchaser,

respectively, and do not intend to act as, or to be treated as, partners in, co-venturers in, or lessor/lessee with respect to the Facility or any business related to the Facility.

- (k) [Limitations on Contributions]. Through execution of this Agreement, Seller acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the rendition of personal services or for the furnishing of any material, supplies or equipment to City, whenever such transaction would require approval by City's elective officer of the board on which that elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either: (1) the termination of negotiations for such contract, or (2) three months after the date this Agreement is approved by the City's elective officer or the board on which that elective officer serves.]
- (l) Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Seller may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco in the performance of this Agreement. Seller agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Seller violates the provisions of this Section, Buyer may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Seller from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Seller's use of profit as a violation of this Section.
- (m) Nondiscrimination Requirements.
 - (i) Seller shall comply with the provisions of Chapter 12B of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a) and 12B.2(c)-(k) 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.
 - (ii) Seller represents that it 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 Buyer 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.
- (n) Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code Section 21.35, any contractor or subcontractor who submits a false claim shall be liable to Buyer for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to Buyer if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of Buyer a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by Buyer; (c) conspires to defraud Buyer by getting a false claim allowed or paid by Buyer; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to Buyer; or (e) is a beneficiary of an inadvertent submission of a false

claim to Buyer, subsequently discovers the falsity of the claim, and fails to disclose the false claim to Buyer within a reasonable time after discovery of the false claim.

- (o) Use of City Opinion. Seller shall not quote, paraphrase, or otherwise refer to or use any opinion of Buyer, its officers or agents, regarding Seller or Seller's performance under this contract without prior written permission of the Buyer.
- (p) Compliance with Laws. Seller shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of City and of all state, and federal laws in any manner affecting the performance of the Agreement, and must at all times materially comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. Buyer shall use best efforts to provide notice to Seller of any such amendment to the City's Charter, codes, ordinances and regulations of which it becomes aware; however, Seller's obligations under this Section shall not be contingent on notice from Buyer.
- (q) Conflict of Interest. Through its execution of this Agreement, Seller acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify Buyer if it becomes aware of any such fact during the term of this Agreement.
- (r) Severability. Should any provision of the Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in full force and effect. 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.
- (s) Survival. All rights pursuant to (i) Section 3.5 (Environmental Attributes); Section 4.1(d) (Disputes and Adjustment of Invoices); Article 9 (Default; Remedies; and Termination), (iii) Article 10 (Indemnification), (iv) Section 12.2 (Proprietary or Confidential Information); (v) Section 12.3 (Dispute Resolution; Choice of Law), and (vi) Section 12.4 (Audit); (vii) Section 12.5(l) (Prohibition on Political Activity with City Funds); and (viii) Section 12.5(o) (City Opinion) shall also survive termination of this Agreement.

12.6 Mobile Sierra. Absent the prior written agreement of all Parties, the standard of review for changes to any rate, charge, term, or condition of service of this Agreement, whether proposed by a Party, a non-party or FERC acting sua sponte, 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).

12.7 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

12.8 Notices. Unless otherwise stated in this Agreement, any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, electronic mail, overnight courier or mailed by certified mail, return receipt requested with postage prepaid, to the contacts set forth in the Cover Sheet. Either Party may change any information listed in the Notice section of the Cover Sheet, by written notice as provided in this Section. Any such notice, demand, request, or communication shall be deemed received on the Business Day on which the notice was transmitted if delivery was made by hand, facsimile or electronic mail, or (ii) upon receipt by the

receiving Party if sent by overnight courier or mailed by certified mail, return receipt requested with postage prepaid.

- 12.9 Counterparts.** This Agreement may be executed in one or more counterparts and by different Parties on separate counterparts, all of which shall be deemed one and the same agreement and each of which shall be deemed an original. Delivery of an executed counterpart of this Agreement by fax or other electronic means shall be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile or other electronic means shall also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement shall not affect the validity or effectiveness of this Agreement.

[Signature page follows on next page.]

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

BUYER:

SELLER:

**City and County of San Francisco, acting by
and through its Public Utilities Commission,
CleanPowerSF**

Blythe Solar IV, LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A

SELLER DOCUMENTATION OF CONDITIONS PRECEDENT

Part I:

Seller has provided to Buyer all of the following documentation prior to the Execution Date:

1. A copy of each of (a) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (b) the by-laws or other similar document of Seller as in effect, or anticipated to be in effect, on the Execution Date.
2. A certificate from the jurisdiction of Seller's incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
3. A copy of the most recent financial statements (which may be unaudited) from Seller's Parent.

Part II:

Seller shall provide to Buyer all of the following documentation in a timely manner following the Execution Date:

1. Evidence of all Permits received for the Storage Facility, as applicable, including but not limited to, any copies of all final environmental review documents.
2. Evidence of Site control for the Storage Facility (e.g. lease with redacted price terms) satisfactory to Buyer.
3. A copy of the Interconnection Agreement as amended for the Storage Facility, as applicable
4. A copy of the load flow analysis performed by the PTO to show power flow capacity at the POI.
5. Insurance documentation as required in Exhibit D.

EXHIBIT B³

FACILITY DESCRIPTION AND SITE DRAWINGS

I. Facility Description

Facility name: Blythe Solar Energy Center IV, CAISO Resource ID DRACKR_2_DS4R4

Facility physical address: 4000 Dracker Drive Blythe, CA 92225; 33° 40' 44.4"N, 114° 44' 9.6"W

Technology type (including any applicable model): Solar Photovoltaic and storage

Nominal capacity of the Solar Facility: 62.5 MW (AC).

Nominal capacity of the Storage Facility ■ MW / 4 hr.

Interconnection Point of Facility: Colorado River Substation 230kV bus

Interconnection Agreement: Executed November 25, 2010.

Assessor's Parcel No: The Facility will use a portion of the Assessor Parcel Numbers listed below.

Private Parcels Owned by the Project

APN	Owner
818160015	Private
818160014	Private

Parcel 1

ALL OF TRACT NO. 48 IN SECTION 11, TRACT 6 SOUTH, RANGE 21 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF

EXCEPTING THEREFROM THE SOUTH HALF OF THE SOUTHEAST QUARTER OF TRACT 48

Parcel 2

The South ½ of the Southeast ¼ of Tract 48, section 11, Township 6 South, Range 21 East, San Bernardino Base and Meridian, in the County of Riverside, State of California, as shown on a Survey and Independent Resurvey approved by the United Surveyor General of California, on April 1, 1918.

Except 75 percent of all mineral rights, without surface entry, as reserved unto Ronald J. Valenta and Kate S. Valenta in that certain Deed, recorded June 22, 1970 as Instrument No. 59130.

³ [NTD: To be updated by Seller for Storage Facility.]

BLM Land held under a Right of Way Grant from U.S. Department of Interior (DOI)

APN	Owner
818180012	DOI
818180015	DOI
818160012	DOI
821020011	DOI
818160004	DOI
818160009	DOI
818160006	DOI
818180014	DOI
818160013	DOI
818160002	DOI
818160010	DOI
818160011	DOI
818180011	DOI
821020008	DOI
818160005	DOI
818180013	DOI
818160003	DOI
818160007	DOI
821050011	DOI
818180010	DOI

BEING PORTIONS OF SECTION 4, SECTION 9, TRACT 37 THROUGH TRACT 43, INCLUSIVE, TRACT 45, TRACT 46, TRACT 47 AND TRACT 49 THROUGH TRACT 56, INCLUSIVE, TOWNSHIP 6 SOUTH, RANGE 21 EAST, SBM; SECTION 6, SECTION 7 AND SECTION 18, TOWNSHIP 6 SOUTH, RANGE 22 EAST, SBM, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT 38, SAID CORNER BEING 1" IRON PIPE WITH 2 1/2" GENERAL LAND OFFICE BRASS TAG PER GOVERNMENT SURVEY FIELD NOTES AS FILED IN BOOK 452-6, PAGE 3, RECORDS OF BUREAU OF LAND MANAGEMENT;

THENCE SOUTH 01°47'10" EAST 88.86 FEET ALONG THE EAST LINE OF SAID TRACT 38 TO THE **TRUE POINT OF BEGINNING**, SAID POINT BEING NORTH 01°47'10" WEST 5183.37 FEET, MEASURED ALONG THE EAST LINE OF SAID TRACT 38 FROM THE SOUTHEAST CORNER THEREOF, SAID CORNER BEING 1" IRON PIPE WITH 2 1/2" GENERAL LAND OFFICE BRASS TAG AS FILED IN BOOK 452-6, PAGE 3, RECORDS OF BUREAU OF LAND MANAGEMENT;

THENCE NORTH 89°24'07" EAST 5287.30 FEET; **THENCE** SOUTH 00°05'01" WEST 3779.86 FEET; **THENCE** SOUTH 00°39'28" EAST 1554.72 FEET; **THENCE** SOUTH

00°07'00" WEST 6055.34 FEET; **THENCE** SOUTH 89°20'32" WEST 1614.80 FEET;
THENCE SOUTH 00°00'00" WEST 568.85 FEET; **THENCE** SOUTH 90°00'00" WEST
890.51 FEET; **THENCE** SOUTH 00°39'28" EAST 2241.31 FEET; **THENCE** SOUTH
89°20'32" WEST 1277.15 FEET; **THENCE** SOUTH 89°54'35" WEST 5840.60 FEET;
THENCE SOUTH 00°47'04" EAST 572.06 FEET; **THENCE** NORTH 90°00'00" WEST
200.02 FEET; **THENCE** NORTH 00°47'04" WEST 1698.80 FEET; **THENCE** NORTH
45°39'28" WEST 821.79 FEET; **THENCE** NORTH 01°47'45" WEST 1950.49 FEET;
THENCE NORTH 01°46'54" WEST 3591.56 FEET; **THENCE** NORTH 45°00'00" WEST
1526.68 FEET; **THENCE** SOUTH 89°59'27" WEST 6691.80 FEET **THENCE** NORTH
00°01'32" WEST 5731.86 FEET;
THENCE NORTH 89°24'07" EAST 13060.67 FEET TO THE **TRUE
POINT OF BEGINNING.**

EXCEPTING THEREFROM TRACT 48, TOWNSHIP 6 SOUTH, RANGE 21
EAST, SBM.

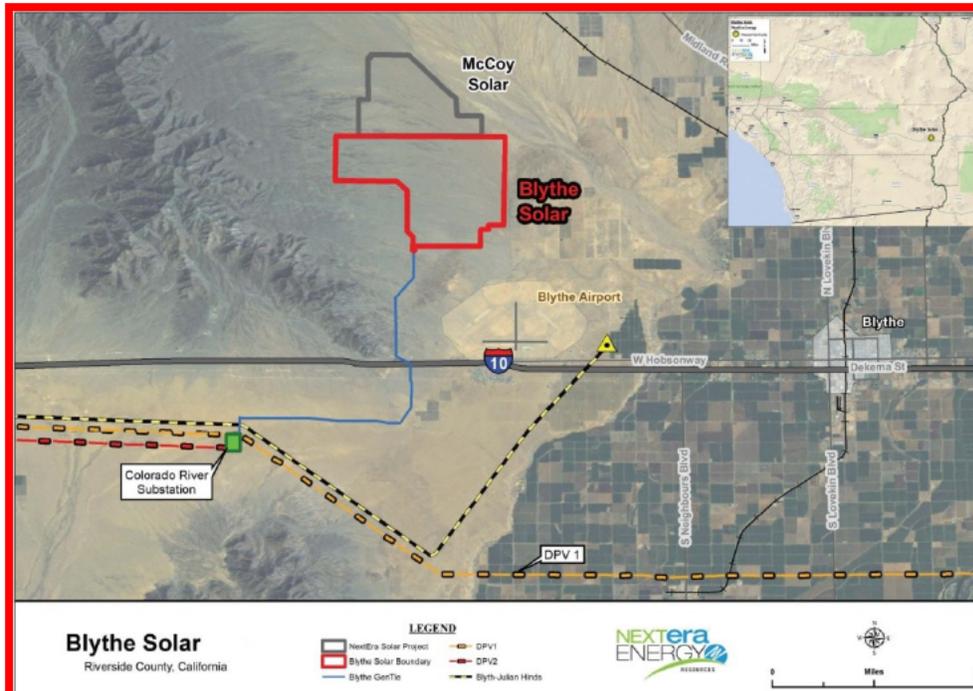
II. Operational Characteristics / Limitations

PMax of the Facility: 62.5 MW

Minimum operating capacity: __MW

III. Site Drawings

A. Site Map



C. Single Line Diagram. (Note: Diagram from Facility's Large Generation Interconnection Agreement (LGIA). The Facility is half of Unit 4.)

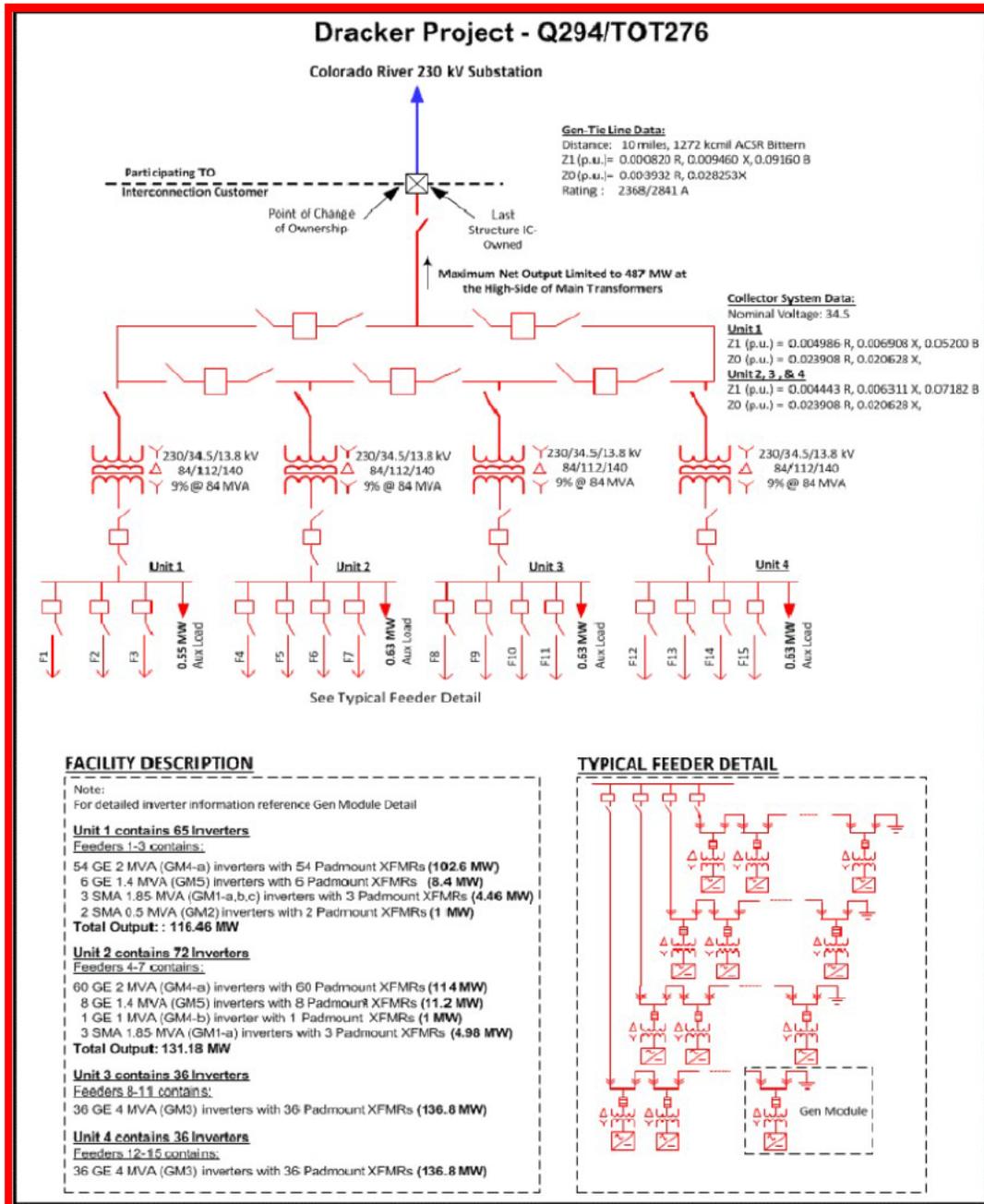


EXHIBIT C⁴
CONTRACT QUANTITY AND PERFORMANCE ASSURANCE AMOUNTS

Contract Year	Solar Facility Contract Quantity (in MWh)	Seller or Buyer Performance Assurance (as applicable)		
		Solar	Storage	Total
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				



⁴ [NTD: To be finalized/confirmed by Seller once COD is confirmed.]

EXHIBIT D

INSURANCE COVERAGES

1. **Liability Coverages.** Without in any way limiting Seller's liability pursuant to the "Indemnification" section of this Agreement, Seller must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance:
 - (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and include a blanket waiver of subrogation; and
 - (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 - (c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
2. **Additional Coverages.** Property insurance, on an all-risk form, including earthquake and flood, for one hundred percent (100%) of the full replacement value of the Site and Facility or 125% of the Loss Limit of the 1/500 year earthquake/flood event as established by a Maximum Foreseeable Loss earthquake and flood study prepared by the applicable insurer in accordance with current industry standard. Such insurance shall, include Business Interruption coverage in an amount equal to twelve months of revenue from this Agreement.
3. **Endorsements.**
 - (a) Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide include blanket endorsements:
 - (i) Name as Additional Insured, the City and County of San Francisco, its Officers, Agents, and Employees.
 - (ii) The certificate of insurance shall state that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
 - (b) All policies shall provide thirty (30) days' advance written notice of cancellation for any reason, intended non-renewal, or reduction in coverages, except ten (10) days' notice for non-payment of premiums.
4. **Length of Coverage.** Should any of the required insurance be provided under a claims-made form, Seller shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
5. **Maintenance of Coverage.** Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Buyer receives satisfactory evidence of reinstated coverage as required by this Agreement,

effective as of the lapse date. If insurance is not reinstated, Buyer may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

6. **Certificates.** Prior to commencement of the Term, Seller shall furnish to Buyer certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VII or higher that are authorized to do business in the State of California, and that are satisfactory to Buyer, in form evidencing all coverages set forth above. Approval of the insurance by Buyer shall not relieve or decrease Seller's liability hereunder.

EXHIBIT E

**CONSTRUCTION START
CERTIFICATION**

(Date)

This certification ("Certification") of the Construction Start Date is delivered by _____ ("Seller") to the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, ("Buyer") in accordance with the terms of that certain Amended and Restated Renewable Power Purchase Agreement dated _____ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer all of the following:

- a) the EPC Contract related to the Storage Facility was executed on _____ with [EPC Contractor name];
- b) [permitting agency name] _ issued grading permits to the Seller on _____;
- c) the Notice to Proceed was issued on _____ (attached), and;
- d) mobilization at the Storage Facility site commenced on _____.

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

Seller:

[Licensed Professional Engineer]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

License Number and LPE Stamp: _____

EXHIBIT F

QUARTERLY PROGRESS REPORT INSTRUCTIONS

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Amended and Restated Renewable Power Purchase Agreement by and between _____, (“Seller”) and the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, (“Buyer”) dated _____(the “Agreement”).

Commencing in the calendar month of the effective date of the Agreement, and every three months (“Calendar Quarter”) thereafter until the Storage Commercial Operation Date, Seller shall prepare and submit to Buyer a Progress Report containing the information set forth in this Exhibit F (“Progress Report”). The Progress Report shall review the status of each Storage Milestone of the construction schedule for the Storage Facility and Seller shall identify any issue which in Seller’s reasonable judgment are expected to adversely affect the schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Storage Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

1. Any material matter or issue arising in connection with a Permit for the Storage Facility, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of an Applicable Law, actual or threatened opposition to the granting of a necessary Permit for the Storage Facility, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Storage Facility, attaining any Storage Milestone, or obtaining any contemplated agreements with other Persons which are necessary for attaining any Storage Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Storage Milestone.
2. Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Storage Facility, attainment of any Storage Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Storage Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Storage Milestone;
3. A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Storage Milestone;
4. Any material change in the Seller’s schedule for initiating or completing any material aspect of the Storage Facility;
5. The status of any matter or issue identified as outstanding in any prior Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

Each overview subsection shall include a summary of the status and progress of major activities associated with that section, whether planned, in progress, or completed, including relevant dates. Each “recent activities” subsection shall include details of activities during the previous month. Each “expected activities” subsection shall include a brief list of major activities planned for the current month.

Seller shall complete, certify, and deliver this form of Progress Report to PowerContracts@sfgwater.org, together with all attachments and exhibits.

A. Executive Summary.

Provide an overview of the Storage Facility, including technology, size, location, and ownership, and a brief chronological cumulative summary of the major activities completed at the Storage Facility. Include the date each item was added to the summary.

B. Financing Activities.

1. **Overview of financing activities.** Provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.
2. **Recent financing activities.** Describe in detail the financing activities that occurred during the previous Calendar Quarter.
3. **Expected financing activities.** List the financing activities that are expected to be performed during the current Calendar Quarter.

C. Major Equipment Procurement.

4. **Overview of major equipment procurement activities.** For each type of equipment, list the number of each major item to be procured, the manufacturer, model number (if applicable), and rating. List the delivery schedule (expected or actual as applicable), breaking out the number of each item to be procured or delivered in each Calendar Quarter.
5. **Recent major equipment procurement activities.** Describe in detail the major equipment procurement activities that occurred during the previous Calendar Quarter.
6. **Expected major equipment procurement activities.** List the major equipment procurement activities that are expected to be performed during the current Calendar Quarter.

D. Construction Activities. Include information on the status of any construction-related factors that may affect the ability of the Facility to deliver Product or Storage Product to the Buyer. Include information on the Facility infrastructure, generating equipment, storage equipment, and major auxiliary equipment. Also include information on the substations, switchyards, gen-ties, telecommunications equipment or other Interconnection Facilities that are the direct responsibility of the Facility.

7. **Overview of major construction activities.** Provide a summary of the status and progress of each major construction activity for all portions of the Storage Facility, including a schedule showing expected or actual dates as applicable. Provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full Notice to Proceed (or equivalent). For each major type of equipment, break out the number of each item (to be) installed and/or commissioned in each Calendar Quarter.
8. **Look-ahead construction schedule.** Provide a look-ahead construction schedule covering the following Calendar Quarter.

E. Interconnection Activities. Include information on interconnection-related factors that may affect the ability of the Facility to deliver Product or Storage Product to the Buyer. Include information on the status of interconnection studies, Interconnection Agreements, design and construction of Interconnection Facilities (e.g., substations, switchyards, gen-ties, system protection schemes, telecommunications equipment to the extent not already covered in the Storage Facility construction information), Network Upgrades, and grid outage and/or interconnection schedules.

9. **Overview of interconnection activities.** Provide a summary of the status and

progress of each major interconnection activity including dates of completion of significant activities and expected timing of future activities.

10. Recent interconnection activities. Describe in detail the interconnection activities that occurred during the previous Calendar Quarter.

11. Expected interconnection activities. List the interconnection activities that are expected to be performed during the current Calendar Quarter.

F. Startup. Include information on the status of activities related to preparation for Storage Commercial Operation, including progress towards the items set forth in Exhibit G-2, the requirements and notifications of the grid operator and PTO, and any other activities that must be conducted before the Storage Facility may deliver Storage Product and/or declare Storage Commercial Operation.

12. Overview of startup activities. Provide a summary of the status and progress of each major startup activity including dates of completion of significant activities and expected timing of future activities.

13. Recent startup activities. Describe in detail the startup activities that occurred during the previous Calendar Quarter.

14. Expected startup activities. List the startup activities that are expected to be performed during the current Calendar Quarter.

I, _____, on behalf of and as an authorized representative of _____, do hereby certify that the information contained in this Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Storage Facility as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT G-1

STORAGE COMMERCIAL OPERATION CERTIFICATION PROCEDURE

In accordance with the terms of that certain Amended and Restated Renewable Power Purchase Agreement dated___ (the “Agreement”) by and between the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF (“Buyer”) and _____ (“Seller”) to declare and recognize the Storage Commercial Operation Date of the Facility, Seller shall provide all of the documents set forth herein to Buyer as of the Storage Commercial Operation Date. All terms not defined herein shall have the meaning set forth in the Agreement.

1. A certification from an authorized officer of Seller, substantially in the form of Exhibit G-2 dated as of the Storage Commercial Operation Date; and
2. A certificate or report from a Licensed Professional Engineer containing all of the following:
 - (a) A statement that the Storage Facility has achieved Mechanical Completion and the date on which it was achieved;
 - (b) A statement that the Storage Facility has successfully completed Storage Facility Testing and the dates on which Seller has accepted the test results; and
 - (c) A statement that the Storage Facility has achieved Substantial Completion and the date on which it was achieved.
3. Seller has provided to Buyer all documents which demonstrate that Seller has satisfied all of the applicable requirements for the interconnection of the Storage Facility to the CAISO Grid and delivery of Storage Product to the Delivery Point.
4. Seller has provided final Site Drawings to Buyer.
5. Definitions.
 - (a) “Mechanical Completion” means that (i) all components and systems of the Storage Facility have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; (ii) the Storage Facility is ready for startup testing and commissioning; (iii) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC Contract.
 - (b) “Storage Facility Testing Completion” means the written acceptance to the EPC Contractor of the completion of startup testing / commissioning, emissions testing (as applicable), and performance / acceptance / warranty testing (all such testing shall be collectively referred to as “Storage Facility Testing”) as required under the EPC Contract. The objectives of the tests shall be generally (i) to verify that the Storage Facility has been properly designed and constructed to meet the performance and operating requirements of the EPC Contract; (ii) to assure warranty coverage for equipment and systems over their warranty periods.
 - (c) “Substantial Completion” means when the following has occurred: (i) the Storage Facility is sufficiently complete, in accordance with the EPC Contract, that Seller has full and unrestricted use and benefit of the Storage Facility in the use for which it is intended; (ii) the Storage Facility has achieved Mechanical Completion; (iii) utilities are fully connected and operating normally; (iv) all necessary permits have been issued; (v) the Storage Facility is fully and properly interconnected and synchronized

with the electrical grid and is capable of producing electricity in accordance with the EPC Contract; (vi) the operating manual has been approved by Seller; (vii) all work other than incidental corrective and incidental punch list work is complete; and (viii) Seller has provided written acceptance to the EPC Contractor of substantial completion as that term is specifically defined in the EPC Contract.

EXHIBIT G-2
STORAGE COMMERCIAL OPERATION CERTIFICATION

This certification (“Certification”) of Storage Commercial Operation is delivered by _____ (“Seller”) to the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF (“Buyer”) in accordance with the terms of that certain Amended and Restated Renewable Power Purchase Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

1. Seller hereby certifies and represents to Buyer the following:
2. Mechanical Completion of the Storage Facility was achieved on ____[DATE]_____.
3. Storage Facility Testing Completion successfully occurred on: [Seller to indicate each type of Storage Facility Testing and date completed]
 - a. NAME OF TEST [DATE]
 - b. NAME OF TEST [DATE]
 - c. NAME OF TEST [DATE]
4. Substantial Completion of the Storage Facility was achieved on ____[DATE]_____.
5. Pre-parallel inspection of the Storage Facility was successfully completed on __[DATE]__.
6. Authorization to parallel the Storage Facility was obtained on ____[DATE]_____.
7. Telemetry / SCADA visibility with PTO and CAISO grid control and power dispatch centers was obtained for the Storage Facility on ____[DATE]_____.
8. Reliability Network Upgrades (as defined in the CAISO Tariff) were completed on the Storage Facility on ____[DATE]_____.
9. Power system stabilizer testing and calibration was obtained for the Storage Facility on ____[DATE]_____ or, was not required.
10. The Participating Transmission Provider or Distribution Provider has provided documentation supporting full unrestricted release for Storage Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _____[DATE]_____.
11. The CAISO has provided notification supporting Storage Commercial Operation, in accordance with the CAISO tariff on _____[DATE]_____.

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Storage Commercial Operation of the Storage Facility to provide Storage Product and meet, at a minimum, the requirements indicated herein.

EXECUTED by SELLER this _____ day of _____, 20__.

Seller:

[Licensed Professional Engineer]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

License Number and LPE Stamp: _____

EXHIBIT H

STORAGE DELIVERY START DATE CONFIRMATION LETTER

In accordance with the terms of that certain Amended and Restated Renewable Power Purchase Agreement dated _____ (“Agreement”) by and between the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, (“Buyer”) and _____ (“Seller”), this letter (“Storage Delivery Start Date Confirmation Letter”) serves to document Seller’s notice that (i) the requirements for the occurrence of the Storage Delivery Start Date have been satisfied as specified in the Agreement, as of this _____ day of _____, _____ (the “Storage Delivery Start Date”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, Seller has caused this Storage Delivery Start Date Confirmation Letter to be duly executed by its authorized representative as of the date provided below.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT I

STORAGE CONTRACT CAPACITY CERTIFICATE

This certification of the Storage Contract Capacity is delivered by [licensed professional engineer] to the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, in accordance with the terms of the Amended and Restated Renewable Power Purchase Agreement dated _____, (“Agreement”) by and between Buyer and Seller. All capitalized terms used in this Certification but not otherwise defined herein shall have the meanings set forth in the Agreement.

The Storage Capacity Test demonstrated a maximum dependable operating capability that can be sustained for four (4) 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 Section 3.13 and Exhibit R prior to the Storage Commercial Operation Date.

EXECUTED BY [LICENSED PROFESSIONAL ENGINEER]

This _____ day of _____, 20__.

[Licensed Professional Engineer]

Signature: _____

Name: _____

EXHIBIT J

[ISSUING BANK] IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUANCE:

[Date of issuance]

[BENEFICIARY] (“Beneficiary”)

[Address]

Attention: [Contact Person]

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No. _____

Sirs/Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “you”) this Irrevocable Standby Letter of Credit No. _____ (the “Letter of Credit”) for the account of [REDACTED] on behalf of [NextEra project entity], located at 700 Universe Boulevard, Juno Beach, Florida 33408 (“Account Parties”), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain [describe the underlying agreement which requires this LC].

1. Stated Amount. The maximum amount available for drawing by you under this Letter of Credit shall be [written dollar amount] United States Dollars (US\$[dollar amount]) (such maximum amount referred to as the “Stated Amount”).

2. Drawings. A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [ISSUING BANK], at any time during its business hours on such Business Day, at [bank address] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the “Draw Certificate”), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of Attachment B hereto (the “Draft”), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile to [insert fax number] or original documents sent by overnight delivery or courier to [ISSUING BANK] at our address set forth above, Attention: _____ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 below). If presentation is made by facsimile transmission, you must contact us at [insert phone number] to confirm our receipt of the transmission. In the event of a presentation by facsimile transmission, the original of such documents need not be sent to us.

3. Time and Method for Payment. We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, [_____] time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, [_____] time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without

regard to the truth or falsity of the assertions made therein.

4. **Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand.

5. **Expiration.** This Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of Attachment C hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any).

6. **Initial Period and Automatic Rollover.** The initial period of this Letter of Credit shall terminate on [one year from the issuance date] (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered *paragraph 9*) that we elect not to consider this Letter of Credit extended for any such additional one year period.

7. **Business Day.** As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of [New York], and inter-bank payments can be effected on the Fedwire system.

8. **Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AND, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, TO THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE “ISP98”), AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF NEW YORK WILL CONTROL, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

9. **Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

10. **Irrevocability.** This Letter of Credit is irrevocable.

11. **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP98 and Attachment A, Attachment B and Attachment C hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

* * *

Sincerely,

[ISSUING BANK]

By: _____
Title: _____
Address:

EXHIBIT J

ATTACHMENT A

FORM OF DRAW CERTIFICATE

The undersigned hereby certifies to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. _____ (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows:

The undersigned is the _____ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.

(2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary’s presentation of the draft accompanying this Certificate, for payment of _____ U.S. dollars (US\$ _____), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).

The conditions for a drawing by Beneficiary are pursuant to [*describe the draw conditions from the underlying agreement*].

(4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

By: _____
Title: _____
Date: _____

(5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[*BENEFICIARY*]

By: _____

Title: _____

Date: _____

EXHIBIT J

ATTACHMENT B

DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO.

Date:

PAY TO: *[BENEFICIARY]*

U.S.\$ _____

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO.

_____.

[BENEFICIARY]

By: _____

Title: _____

Date: _____

EXHIBIT J
ATTACHMENT C
CANCELLATION CERTIFICATE

Irrevocable Letter of Credit No. _____

The undersigned, being authorized by the undersigned (“Beneficiary”), hereby certifies on behalf of Beneficiary to [*ISSUING BANK*] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. _____ issued by Issuer to Beneficiary (the “**Letter of Credit**”), that all obligations of [*PROJECT ENTITY*], under the [*describe the underlying agreement which requires this LC*] have been fulfilled.

Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer’s receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[*BENEFICIARY*]

By: _____

Title: _____

Date: _____

EXHIBIT K
FORM OF GUARANTY
GUARANTY

THIS GUARANTY (this “**Guaranty**”), dated as of _____, _____ (the “**Effective Date**”), is made by _____ (“**Guarantor**”), in favor of _____ (“**Counterparty**”).

RECITALS:

- A. WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary _____ (“**Obligor**”) have entered into, or concurrently herewith are entering into, that certain [*Insert Name of Agreement*] [dated/made/entered into/effective as of] _____, 20__ (the “**Agreement**”); and
- B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement on or after the Effective Date (the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ [*spell out the dollar amount*] U.S. Dollars (U.S. \$ _____) (the “**Maximum Recovery Amount**”).
- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including attorney’s fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. **DEMANDS AND PAYMENT.**

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an “**Overdue Obligation**”), Counterparty may present a written demand to Guarantor calling for Guarantor’s payment of such Overdue Obligation pursuant to this Guaranty (a “**Payment Demand**”).
- (b) Guarantor’s obligation hereunder to pay any particular Overdue Obligation(s) to Counterparty is conditioned upon Guarantor’s receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement

pursuant to which such Overdue Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "Business Day" shall mean all weekdays (i.e., Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Florida or the State of New York.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of Florida and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
- (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. RESERVATION OF CERTAIN DEFENSES. Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Subject to and in accordance with the terms and provisions of this Guaranty:

- (a) Except as required in Section 2 above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof.
- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release any person (other than Obligor or Guarantor) from liability for payment

of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. **TERMINATION.** This Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement or (ii) 11:59:59 Eastern Prevailing Time [_____, ____]; *provided, however*, that no such termination shall affect Guarantor's liability with respect to any Obligation incurred prior to the time the termination is effective, which Obligation shall remain subject to this Guaranty.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

<i>TO GUARANTOR: *</i>	<i>TO COUNTERPARTY:</i>
_____ _____ _____ Attn: _____	
<i>[Tel: _____ -- for use in connection with courier deliveries]</i>	<i>[Tel: (____) ____-____ -- for use in connection with courier deliveries]</i>

* (NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. (561) 625-7504 and ATTN: Credit Department, Fax No. (561) 625-7642. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. **MISCELLANEOUS.**

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws thereunder (other than

Sections 5-1401 and 5-1402 of the New York General Obligations Law).

- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the Supreme Court of the State of New York, New York County (without prejudice to the right of any party to remove to the United States District Court for the Southern District of New York) for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.
- (g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.



By: _____

Name: _____

Title: _____

EXHIBIT L
FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This CONSENT AND AGREEMENT (this "Consent"), dated as of _____, 20[], is executed by the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF (the "Contracting Party"), a municipal corporation, (the "Project Owner"), and [_____] as collateral agent (in such capacity, together with its successors and permitted assigns, the "Collateral Agent") for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the "Secured Parties").

A. The Project Owner owns, operates and maintains [_____] (the "Project").

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "Assigned Agreement").

C. The Borrower, the Project Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders, [_____] as the Administrative Agent and Collateral Agent, have entered into a Credit Agreement, dated as of [_____] (as amended, modified or supplemented from time to time, the "Credit Agreement"), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Project Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Project Owner has assigned all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of [_____] between the Project Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Security Agreement", and, together with the Credit Agreement and any other financing documents relating to the issuance of the Notes, the "Financing Documents").

E. It is a requirement under the Credit Agreement that the Project Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. Consent to Assignment. The Contracting Party hereby acknowledges and consents to the pledge and assignment of all right, title and interest of the Project Owner in, to and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by the Project Owner to the Collateral Agent pursuant to the Security Agreement.

2. Representations and Warranties. The Contracting Party represents and warrants as follows:

(a) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(b) No Previous Assignments. The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.

(c) No Termination Event: No Disputes. After giving effect to the pledge and assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, there exists no event or condition (a “Termination Event”) that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] there are no unresolved disputes between the parties under the Assigned Agreement. All amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. Right to Cure.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an “event of default” or “default” (or any other similar event however defined) by the Project Owner under the Assigned Agreement, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(b) The Contracting Party agrees that it will not (i) terminate the Assigned Agreement [(other than pursuant to Section __ of the Assigned Agreement)] or (ii) suspend the performance of any of its obligations under the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent, except to the extent the Contracting Party may subcontract such obligations to other parties.

(c) If a Termination Event shall occur [(other than a termination pursuant to Section __ of the Assigned Agreement)], and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall have a period of thirty (30) days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a “Non-monetary Event”) the Collateral Agent shall have ninety (90) days to cure the Termination Event, or such longer period mutually agreed upon by the Collateral Agent and the Contracting Party; provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition; provided, however, that during such foreclosure or bankruptcy period, Collateral Assignor shall continue to perform each of Collateral Assignor’s other obligations under the Assigned Agreement.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements

or obligations of the Project Owner under or in respect of the Assigned Agreement.

4. Replacement Agreements. Notwithstanding any provision in the Assigned Agreement to the contrary, in the event the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy, insolvency, reorganization or similar proceedings affecting the Project Owner, at the Collateral Agent's request, the Contracting Party will enter into a new agreement with the Collateral Agent or the Collateral Agent's designee for the remainder of the originally scheduled term of the Assigned Agreement, effective as of the date of such rejection, with the same covenants, agreements, terms, provisions and limitations as are contained in the Assigned Agreement and provided that the Collateral Agent's designee (i) assumes in writing all of Project Owner's obligations and agrees to be bound by the covenants and agreements of Project Owner under the Assigned Agreement, and (ii) such designee shall (A) have a tangible net worth that is equal to or in excess of \$30,000,000, (B) have at least five (5) years of experience owning or operating generating facilities of the same technology type of comparable size as the Project or has hired a manager or operator with such qualifications, (C) own, control or operate a minimum of five hundred (500) MWs of solar energy generation capacity or hired a manager or operator with such qualifications, (D) not be disbarred by the City from entering into contracts with the City, and (E) not be in litigation or a contractual dispute with the City at the time of the assignment or have engaged in litigation or a contractual dispute with the City within the five (5) years prior to the assignment ("Qualified Assignee").

5. Substitute Owner. The Contracting Party acknowledges that in connection with the exercise of remedies following a default under the Financing Documents, the Collateral Agent may (but shall not be obligated to) assume, or cause any purchaser at any foreclosure sale or any assignee or transferee under any instrument of assignment or transfer in lieu of foreclosure to assume, all of the interests, rights and obligations of the Project Owner thereafter arising under the Assigned Agreement. If the interest of the Project Owner in the Assigned Agreement shall be assumed, sold or transferred as provided above, the assuming party shall (i) execute an assignment agreement with Contracting Party agreeing in writing to be bound by and to assume the terms and conditions of the Assigned Agreement and any and all obligations to the Contracting Party arising or accruing thereunder from and after the date of such assumption and (ii) be a Qualified Assignee. Contracting Party shall continue to perform its obligations under the Assigned Agreement in favor of the assuming party as if such party had thereafter been named as the "Seller" under the Assigned Agreement; provided that if the Collateral Agent or its designee (or any entity acting on behalf of the Collateral Agent, the Collateral Agent's designee or any of the other Secured Parties) assumes the Assigned Agreement as provided above, it shall not be personally liable for the performance of the obligations thereunder except to the extent of all of its right, title and interest in and to the Project.

6. Payments. The Contracting Party shall make all payments due to the Project Owner under the Assigned Agreement directly into the account specified on Schedule II hereto, or to such other person or account as shall be specified from time to time by the Collateral Agent to the Contracting Party in writing. All parties hereto agree that each payment by the Contracting Party as specified in the preceding sentence of amounts due to the Project Owner from the Contracting Party under the Assigned Agreement shall satisfy the Contracting Party's corresponding payment obligation under the Assigned Agreement.

7. No Amendments. The Contracting Party acknowledges that the Financing Documents restrict the right of the Project Owner to amend or modify the Assigned Agreement, or to waive or provide consents with respect to certain provisions of the Assigned Agreement, unless certain conditions specified in the Financing Documents are met. The Contracting Party shall not, without the prior written consent of the Collateral Agent, amend or modify the Assigned Agreement, or accept any waiver or consent with respect to certain provisions of the Assigned Agreement, unless the Contracting Party has received from the Project Owner a copy of a certificate delivered by the Project Owner to the Collateral Agent to the effect that such amendment, modification, waiver or consent has been made in accordance with the terms and

conditions of the Financing Documents, which may in certain circumstances require the prior written consent of the Collateral Agent thereto.

8. Additional Provisions. [To be specified if necessary to clarify the Assigned Agreement.]

9. Notices. Notice to any party hereto shall be in writing and shall be deemed to be delivered on the earlier of: (a) the date of personal delivery, (b) postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by facsimile, the date when sent and facsimile confirmation is received; provided that any facsimile communication shall be followed promptly by a hard copy original thereof by express courier:

The Collateral Agent: [_____]
[_____]
Attn: [_____]
Telephone No.: [_____]
Facsimile No.: [_____]

The Project Owner: _____

The Contracting Party: _____

10. Successors and Assigns. This Consent shall be binding upon and shall inure to the benefit of the successors and assigns of the Contracting Party, and shall inure to the benefit of the Collateral Agent, the other Secured Parties, the Project Owner and their respective successors, transferees and assigns.

11. Counterparts. This Consent may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

12. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the State of [_____].

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By: _____
Name:
Title:

[_____]

as Collateral Agent

By: _____
Name:
Title:

Acknowledged and Agreed:

[_____]

By: _____
Name:
Title:

Assigned Agreement

Schedule I

Payment Instructions

(Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Amounts Due and Unpaid under the Assigned Agreement
(Section 2(c))]

[Schedule III]

EXHIBIT M
CAISO CHARGE CODES

The following table sets forth an initial allocation of Charge Codes, which may represent credits (expressed as a negative amount) as well as charges (expressed as a positive amount), between Buyer and Seller as they exist as of the Effective Date of this Agreement. The Parties shall mutually agree upon a final allocation in the Net Buyer Settlements Protocol. As of the Effective Date, the Parties do not anticipate that the Facility will provide Ancillary Services upon COD. To the extent Buyer elects to provide Ancillary Services to CAISO in the future, Seller's liability in the associated Charge Codes shall be limited to items within Seller's control, including but not limited to Forced Outage and compliance with ramp rates on file with CAISO. For the avoidance of doubt, any penalties due solely to decreases in solar irradiance shall be for the account of Buyer; penalties due to overlapping causes including decreases in solar irradiance and factors within Seller's control shall be for the account of the Seller.

Charge Code	Charge Code Description	PPA Section	Net Buyer CAISO Settlements	Net Seller CAISO Settlements
701	Forecasting Service Fee	5.6(i)	Included	Excluded
1487	Emergency Energy Exchange Program Neutrality Adjustment	5.6(e)(i)(B)	Excluded ¹	Included ¹
1591	EP Penalty Charge due CAISO Trustee	5.6(e)(i)(B) or 5.6(e)(ii), as applicable	Excluded or Included ²	Included or Excluded ²
1592	EP Penalty Allocation Payment	5.6(e)(ii)	Included	Excluded
4515	GMC Bid Transaction Fee	5.6(e)(ii)	Included	Excluded
4560	GMC Market Services Charge	5.6(e)(ii)	Included	Excluded
4561	GMC System Operations Charge	5.6(e)(ii)	Included	Excluded
4575	GMC – Scheduling Coordinator Identification Charge	5.6(e)(ii)	Included	Excluded
6011	Day Ahead Energy, Congestion, Loss Settlement	5.6(e)(ii)	Included	Excluded
6100	Day Ahead Spinning Reserve Capacity Settlement	5.6(e)(ii)	Included	Excluded
6124	No Pay Spinning Reserve Settlement	5.6(e)(i)(B)	Excluded ³	Included ³
6170	Real Time Spinning Reserve Capacity Settlement	5.6(e)(ii)	Included	Excluded
6200	Day Ahead Non-Spinning Reserve Capacity Settlement	5.6(e)(ii)	Included	Excluded
6224	No Pay Non-Spinning Reserve Settlement	5.6(e)(i)(B)	Excluded ³	Included ³
6270	Real Time Non-Spinning Reserve Capacity Settlement	5.6(e)(ii)	Included	Excluded
6460	FMM Instructed Imbalance Energy	5.6(e)(ii)	Included	Excluded
6470	Real Time Instructed Imbalance Energy Settlement	5.6(e)(ii)	Included	Excluded
6475	Real Time Uninstructed Imbalance Energy Settlement	5.6(e)(ii)	Included ⁴	Excluded ⁴
6482	Real Time Excess Cost for Instructed Energy Settlement	5.6(e)(ii)	Included	Excluded
6486	Real Time Excess Cost for Instructed Energy Allocation	5.6(e)(i)(B)	Excluded ¹	Included ¹
6488	Exceptional Dispatch Uplift Settlement	5.6(e)(ii)	Included	Excluded
6500	Day Ahead Regulation Up Capacity Settlement	5.6(e)(ii)	Included	Excluded
6524	Non Compliance Regulation Up Settlement	5.6(e)(i)(B)	Excluded ³	Included ³
6570	Real Time Regulation Up Capacity Settlement	5.6(e)(ii)	Included	Excluded

6600	Day Ahead Regulation Down Capacity Settlement	5.6(e)(ii)	Included	Excluded
6620	RUC and RTM Bid Cost Recovery Settlement	5.6(e)(ii)	Included	Excluded
6624	Non Compliance Regulation Down Settlement	5.6(e)(i)(B)	Excluded ³	Included ³
6630	IFM Bid Cost Recovery Settlement	5.6(e)(ii)	Included	Excluded
6636	IFM Bid Cost Recovery Tier 1 Allocation	5.6(e)(ii)	Included	Excluded
6670	Real Time Regulation Down Capacity Settlement	5.6(e)(ii)	Included	Excluded
6800	Day Ahead Residual Unit Commitment (RUC) Availability Settlement	5.6(e)(ii)	Included	Excluded
6824	No Pay Residual Unit Commitment (RUC) Settlement	5.6(e)(i)(B)	Excluded ³	Included ³
7070	Flexible Ramp Forecast Movement Settlement	5.6(e)(ii)	Included	Excluded
7071	Daily Flexible Ramp Up Uncertainty Capacity Settlement	5.6(e)(ii)	Included	Excluded
7077	Daily Flexible Ramp Up Uncertainty Award Allocation	5.6(e)(i)(B)	Excluded ¹	Included ¹
7078	Monthly Flexible Ramp Up Uncertainty Award Allocation	5.6(e)(i)(B)	Excluded ¹	Included ¹
7081	Daily Flexible Ramp Down Uncertainty Capacity Settlement	5.6(e)(ii)	Included	Excluded
7087	Daily Flexible Ramp Down Uncertainty Award Allocation	5.6(e)(i)(B)	Excluded ¹	Included ¹
7088	Monthly Flexible Ramp Down Uncertainty Award Allocation	5.6(e)(i)(B)	Excluded ¹	Included ¹
7251	Regulation Up Mileage Payment	5.6(e)(ii)	Included	Excluded
7261	Regulation Down Mileage Payment	5.6(e)(ii)	Included	Excluded
7891	Monthly CPM Settlement	5.6(e)(ii)	Included	Excluded
7989	Invoice Deviation Interest Distribution	5.6(e)(ii)	Included	Excluded
7999	Invoice Deviation Interest Allocation	5.6(e)(ii)	Included	Excluded
8526	GIP Forfeited Deposit Allocation	5.6(e)(ii)	Included	Excluded
8830	Monthly Resource Adequacy Availability Incentive Mechanism Settlement	3.6(c)	Excluded	Included
8831	Monthly Resource Adequacy Availability Incentive Mechanism Allocation	3.6(c)	Excluded	Included

¹ Seller's liability shall be limited to items within Seller's control, including but not limited to Forced Outage and compliance with ramp rates on file with CAISO, pursuant to Section 5.6(e)(i)(B). Any allocation related solely to decreases in solar irradiance shall be for the account of Buyer; allocation due to overlapping causes including both decreases in solar irradiance and factors within Seller's control shall be for the account of the Seller.

²Responsibility for the penalty should be assigned to the accountable Party.

³ Non-compliance and no-pay charges related to Ancillary Service awards shall be limited to items with Seller's control, including but not limited to Force Outage and compliance with ramp rate on file with CAISO, pursuant to Section 5.6(e)(i)(B). Any charges related solely to decreases in solar irradiance shall be for the account of Buyer; charges due to overlapping causes including both decreases in solar irradiance and factors within Seller's control shall be for the account of the Seller.

⁴ Responsibility of the Buyer per Section 5.6(e)(ii), subject to relevant crediting per Section 5.6(f).

EXHIBIT N
BUYER AS SCHEDULING COORDINATOR

A. Transfer of SC Obligations.

- (1) Upon transfer of Scheduling Coordinator obligations from Seller to Buyer pursuant to Section 5.6(a)(ii) of the Agreement, Seller shall not (i) authorize or designate any other party to act as Scheduling Coordinator for the Facility, or (ii) revoke Buyer's authorization to act as Seller's Scheduling Coordinator for the Facility unless agreed to in writing by Buyer.
- (2) At least ninety (90) days prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or Buyer's designee as Seller's SC. These actions shall include (i) submission of a designation of a new SC for Seller to the CAISO, (ii) causing the newly designated SC to submit a letter to the CAISO accepting the designation, and (iii) informing Buyer and/or its designee of the last date on which Buyer or its designee will be Seller's SC.

B. Amendments to the Agreement. As of the date that Buyer or its designee assumes Scheduling Coordinator responsibilities, the following amendments to the Agreement shall take effect.

- (1) Amendments to Article 1 – Definitions.
 - (i) The following definitions shall be deleted from Article 1:

C. Buyer DAM Bid Price

Customer Market Results

Interface DA Percentage

Net Buyer CAISO Settlements

Net Buyer CAISO Settlements

Protocol Scheduling Infrastructure

Business Rules Seller SC Fee

- (i) The following definitions shall be added to Article 1:

D. Net Seller CAISO Settlements: Has the meaning set forth in Section 5.6(e)(iii).

Net Seller CAISO Settlements Protocol: Has the meaning set forth in Section 5.6(e)(iv).

- (1) Section 4.1(a), Monthly Invoices, shall read as follows:

Seller shall provide to Buyer no sooner than the tenth (10th) calendar day of each month an invoice for the Product and Deemed Delivered Energy for the prior month based upon meter data for Energy delivered in such calendar month, and for other amounts due to or from Seller hereunder. Buyer or its Scheduling Coordinator, shall provide Seller with all necessary CAISO settlement data and the CAISO Charges Invoice no later than five (5) Business Days following receipt of the settlement statements from CAISO in a form mutually agreed upon by Buyer and Seller. Except for Deemed Delivered Energy and Replacement Product, all Energy purchased under this Agreement must be measured by the Facility's CAISO revenue meter to be eligible for payment under this Agreement.

- (i) The “Monthly Payment” for each month will be an amount equal to the summation of the following in such month:
- (A) the product of (I) the Energy from the Solar Facility delivered to the Delivery Point pursuant to this Agreement as by the Solar Facility meter (“Delivered Energy”) plus Charging Energy minus Discharging Energy for such Settlement Interval, multiplied by (II) the Solar Contract Price, plus
 - (B) the product of (I) the Deemed Delivered Energy for each Settlement Interval, times (II) the Solar Contract Price, minus
 - (C) the Net Seller CAISO Settlements for each Settlement Interval, minus
 - (D) the Positive Uninstructed Deviation Credit, plus
 - (E) the product of (I) Guaranteed Storage Contract Capacity, multiplied by (II) the Storage Contract Price, minus
 - (F) Guaranteed Storage Availability Liquidated Damages (if any) + Round Trip Efficiency Adjustment (if any) + RA Deficiency Amount (if any).

Monthly Payment =

$$\begin{aligned}
 & \sum_{i=1}^n \{ [Delivered Energy MWh_i + Charging Energy MWh_i \\
 & - Discharging Energy MWh_i] \times [Solar Contract Price_i \$] \} \\
 & + \{ [Deemed Delivered Energy MWh_i] \times [Solar Contract Price_i \$] \} \\
 & - \{ Net Seller CAISO Settlements_i \} \\
 & - \{ Positive Uninstructed Deviation Credit \} \\
 & + \{ [Guaranteed Storage Contract Capacity] \times [Storage Contract Price \$] \} \\
 & - \{ Guaranteed Storage Availability Liquidated Damages (if any) + Round Trip \\
 & Efficiency Adjustment (if any) + RA Deficiency Amount (if any) \}
 \end{aligned}$$

- (ii) The Invoice shall include:
- (A) the hourly quantities of Delivered Energy delivered in the prior month;
 - (B) a calculation of the Monthly Payment as set forth in Section 4.1(a)(i);
 - (C) credits for WREGIS Certificate Deficits pursuant to Section 3.5(c)(iii), if any;
 - (D) A calculation of the Deemed Delivered Energy for such month; and
 - (E) any other amounts due to or from Seller hereunder.

- (2) Section 5.5(d) Metering, is deleted in its entirety and replaced with the following:

Metering. All Energy from the Facility must be delivered through CAISO revenue meter(s) dedicated solely to the Facility. The meter data will account for transmission and transformation losses, including Electrical Losses and will be programmed to reflect such losses, including Electrical Losses, to the Delivery Point, consistent with CAISO requirements. Seller shall (subject to Section 4.1(f)) bear all costs relating to all metering

equipment installed to accommodate the Facility. Seller shall grant to the Scheduling Coordinator (whether Buyer or Buyer's designee) rights to retrieve the meter reads directly from the CAISO meter(s) at the Facility site through both (i) physical access and (ii) remote electronic access as necessary for the Scheduling Coordinator to meet its obligations under the CAISO Tariff and other applicable rules. Seller shall maintain an updated record of programmed meter parameters (such as channel configuration and other relevant settings) that is accessible and reasonably acceptable to Buyer. In addition, Seller shall provide all meter data in a form reasonably acceptable to Buyer.

- (3) Section 5.5(e) Facility Data, is deleted in its entirety.
- (4) Section 5.6, Scheduling, Forecasts, and Outages, shall be deleted in its entirety and replaced with the following:
 - (a) Scheduling Coordinator Services.
 - (i) Buyer shall provide (or cause to be provided) all required Scheduling Coordinator services for the Facility. Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents reasonably necessary to authorize, designate, or re-designate Buyer or Buyer's designee as Scheduling Coordinator for the Facility.
 - (ii) Seller shall not (A) authorize or designate any other party to act as Scheduling Coordinator for the Facility, or (B) revoke Buyer's authorization to act as Seller's Scheduling Coordinator for the Facility unless agreed to in writing by Buyer.
 - (iii) At least ninety (90) days prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or Buyer's designee as Scheduling Coordinator for the Facility. These actions shall include (A) submitting a designation of a new Scheduling Coordinator for Seller to the CAISO, (B) causing the newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation, and (C) informing Buyer and/or its designee of the last date on which Buyer or its designee will be Scheduling Coordinator for the Facility.
 - (iv) Each Party shall use commercially reasonable efforts to facilitate the other Party to meet its respective obligations under applicable CAISO, PTO, FERC, CEC, or other requirements of a Governmental Authority.
 - (v) Each Party shall use commercially reasonable efforts to schedule and operate the Storage Facility to maximize Delivered Energy, including Energy that would have otherwise been clipped.
 - (b) CAISO Notices and Data.
 - (i) Buyer shall provide Seller with access to a remotely-accessible system through which Seller shall submit to Buyer all notices and updates required under the CAISO Tariff regarding the Facility's status including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the system is not accessible, Seller shall promptly submit such information to Buyer telephonically or electronically to the personnel designated in the Cover Sheet to receive such information.

- (ii) Seller shall provide information to Buyer that is required for the CAISO's Master Data File and Resource Data Template (or successor systems) for the Facility consistent with this Agreement and the CAISO Tariff. Neither Party shall change such data without the other Party's prior written consent.
- (c) Real-Time Market Scheduling. Buyer will submit Economic Bids or Self-Schedules at the CAISO Settlement Point into the Real-Time Market (including both the FMM and the RTD).
- (d) [reserved]
- (e) CAISO Costs and Revenues.
 - (i) Seller shall be responsible for:
 - (A) CAISO Resource Adequacy Costs associated with providing Buyer with replacement Resource Adequacy in the event that Seller is deficient in meeting its Resource Adequacy obligations due to Forced Outages or Capacity Deficits or failure to comply with its obligations under Section 3.6(b) (but not, for the avoidance of doubt, those due to any acts or omissions of Buyer as Scheduling Coordinator, if applicable, that are not in accordance with this Agreement and the CAISO Tariff, for which Buyer shall be responsible).
 - (B) CAISO charges, costs, and penalties resulting from (1) the unavailability of the Facility, (2) Seller's failure to notify CAISO of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), (3) any other failure by Seller to abide by the CAISO Tariff, this Agreement, or with any CAISO dispatch instruction or Curtailment Order, or the Forced Outages notice provision in Section 5.6(k), (4) any Seller actions or inactions that cause Buyer or Buyer's SC to fail to comply with the CAISO Tariff, including any notice requirement for outages or Forced Outages, or any CAISO dispatch instruction or Curtailment Order, or (5) penalties related to non-performance with respect to an Ancillary Services and Residual Unit Commitment awards due to conditions within Seller's control. Notwithstanding the foregoing, Buyer shall be responsible for: (x) any non-performance penalties due solely to decreases in solar irradiance; and (y) all costs, charges, expenses, penalties, and obligations under the Availability Standards due to any acts or omissions of Buyer as Scheduling Coordinator, if applicable, that are not in accordance with this Agreement and the CAISO Tariff.
 - (C) If during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon Seller or the Facility due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be Seller's responsibility.

- (D) Seller shall be responsible for all CAISO fees, charges, and penalties imposed as a result of deviations between RTD Scheduled Energy and Delivered Energy during any Settlement Interval, except for those charges due solely to real-time uninstructed Energy caused by decreases in solar irradiance.
 - (ii) Buyer shall receive all CAISO net revenues, credits, and other payments (such as Bid Cost Recovery) associated with the Facility for each Settlement Period and shall be responsible for all other CAISO costs, fees, and charges, including the Scheduling Coordinator ID Charge, with the exception of those specified in Section 5.6(e)(i).
 - (iii) Seller shall credit Buyer for Seller's responsibility for net charges (or net credits) pursuant Section 5.6(e)(i), ("Net Seller CAISO Settlements"), as identified in Exhibit M.
 - (iv) Exhibit M sets forth an initial allocation of responsibility for Charge Codes consistent with this Section 5.6(e). Following the Execution Date, the Parties shall cooperate to prepare and mutually agree upon a written protocol (the "Net Seller CAISO Settlements Protocol") to set forth appropriate administrative details to carry out the calculation and allocation of CAISO costs and CAISO revenues described in this Section 5.6(e). In the event that the Charge Codes agreed to by the Parties in the Net Seller CAISO Settlements Protocol are amended or deleted or new CAISO charges, costs, revenues, penalties, or fees are implemented, the Party who is the SC at the time that Charge Codes are amended, deleted, or added shall promptly notify the other Party and the Parties shall mutually agree upon adjustments to the Net Seller CAISO Settlements Protocol as necessary to allocate the new or amended CAISO costs and revenues in a manner that is consistent with the intent of this Section 5.6(e).
- (f) Positive Uninstructed Deviations. If the RTD Price is lower than the Buyer RTM Bid Price in any Settlement Interval, Seller shall credit Buyer on the monthly invoice for the product of (1) Buyer RTM Bid Price minus the RTD Price, and (2) the quantity of Energy produced by the Facility in excess of the CAISO dispatch instruction (positive deviations) for that Settlement Interval ("Positive Uninstructed Deviation Credit").
 - (g) CAISO Charges. Each Party shall use commercially reasonable efforts to cooperate with the other Party to allow that Party to comply with any obligations, and minimize any potential liability, it may have under the CAISO Tariff in relation to Product under this Agreement.
 - (h) [reserved].
 - (i) Forecasts. Seller shall use generally accepted industry standards to produce the forecasts described hereunder. Upon Buyer's written request, Seller shall also retain, at Seller's expense, a third-party forecasting service reasonably acceptable to Buyer to produce such forecasts, in addition to those forecasts produced by Seller. Seller shall provide identical input data to such third-party service provider as are used to produce Seller's own forecast. Such forecast(s) shall be provided to Buyer in a manner reasonably acceptable to Buyer. If, during any given calendar month, the forecast error of such third-party service is larger than the forecast error of the forecasts produced by the Seller, determined as the sum of squared errors between the Seller Day-Ahead Forecast, for each respective forecast, and actual hourly production, then Buyer shall reimburse Seller for such third-party forecasting service costs.

- (i) No later than thirty (30) calendar days prior to the end of each Contract Year, Seller will provide a forecast of available capacity and production (“Annual Forecast”) detailing hourly expected available generation and monthly capacity and all proposed Planned Outages for the next Contract Year. Within five (5) Business Days following any change to the Planned Outage schedule for such Contract Year, Seller will provide notice to Buyer with an updated Annual Forecast reflecting the updated Planned Outage schedule, which will automatically supersede the prior Annual Forecast for such Contract Year. During the Delivery Term of this Agreement, Seller shall not schedule Planned Outages [of more than twenty-four (24)] hours during the period of reliability accounting (initially the period between June 1st and September 30th but subject to changes at Buyer’s discretion in order to conform to the CAISO’s Availability Assessment procedures).
 - (ii) No later than ten (10) calendar days prior to the first day of each month of the Delivery Term, Seller shall provide an electronic update, in a format specified by Buyer, to the Annual Forecast for that calendar month (“Monthly Forecast”). The Monthly Forecast shall include hourly available capacity and expected generation and all Planned Outages.
 - (iii) No later than seven (7) calendar days prior to the first day of each week of the Delivery Term, Seller shall provide a weekly forecast of available capacity and production and any changes in Planned Outages (“Weekly Forecast”). The Weekly Forecast shall include hourly available capacity and generation and all Planned Outages.
 - (iv) By 5:30 PM Pacific Time on the Business Day immediately preceding the date of delivery, Seller shall provide a forecast of available capacity and production for each hour of the date of delivery (“Seller Day-Ahead Forecast”). The Seller Day- Ahead Forecast shall include hourly available capacity and generation and all Planned Outages.
- (j) Planned Outages. Seller shall not schedule or take a Planned Outage unless Seller has provided at least one hundred eighty (180) days advance notice to Buyer of the date, length, and magnitude of the Planned Outage. If Buyer requests a change to the scheduled date of any Planned Outage, Seller shall grant any request that is consistent with the Operating Parameters. If, within ninety (90) days of the notice of the Planned Outage, Buyer is unable to obtain sufficient, cost-effective replacement Resource Adequacy supplies (as determined in Buyer’s sole discretion) required by CAISO with respect to the Planned Outages, Buyer shall promptly notify Seller and the Parties shall negotiate in good faith to reschedule the Planned Outage. Buyer shall have no liability to Seller for failure to procure replacement Resource Adequacy or the rescheduling of any Planned Outage. This section 5.6(j) shall not apply to Short-Notice Opportunity Outages approved by the CAISO, as defined in the February 19, 2021 CAISO General Outage Operating Procedure, Procedure Number 3220, Version 6.0, to the extent that such outages do not require replacement Resource Adequacy capacity.
- (k) Forced Outages. Forced Outages shall be reported by Seller to Buyer verbally as soon as practicable and in writing in accordance with the timelines and format required by the CAISO Tariff and business rules, but no later than twenty-four (24) hours thereafter. Written notice of a Forced Outage lasting longer than one (1) hour shall include the type of outage, start date and start time of outage, estimated or actual end date and end time of the outage, a text description of the cause of the outage and any other information the

Seller deems necessary for the Buyer to understand the causes and impact of the outage. Seller shall notify Buyer as soon as practicable, whenever the Facility is returned to service.

(l) Curtailement.

- (i) Mandatory Curtailement Periods. Seller shall reduce delivery amounts as directed by the Reliability Coordinator, CAISO, PTO, or any successor thereto pursuant to a Curtailement Order. Except as set forth in Section 5.6(l)(ii)(C), Buyer shall not be required to pay Seller for the Product that Seller could have delivered to Buyer but for such Curtailement Order.
- (ii) Deemed Delivered Energy.
 - (A) If a Bid Curtailement occurs, in Seller's monthly invoice Seller will reasonably calculate consistent with Good Utility Practices the difference in MWh between the Final Output Estimate and actual Delivered Energy attributable to such Bid Curtailement ("Deemed Delivered Energy"). The Parties shall share any documentation necessary to create or support such calculation. Seller shall include supporting documentation and calculations for the determination of Deemed Delivered Energy with the monthly invoice.
 - (B) If either Party believes that the Final Output Estimate is an inaccurate estimate of the quantity of Energy the Facility reasonably could have generated based on Facility availability, insolation, and other relevant meteorological conditions, the Parties will mutually agree upon the use of
 - (1) the Day-Ahead Forecast, (2) the Seller Day-Ahead Forecast, (3) the third-party version of the Seller Day-Ahead Forecast (as defined in section 5.6(i)), or (4) another mutually agreed upon methodology to determine the Final Output Estimate.
 - (C) In the event of an overlapping Bid Curtailement and a Curtailement Order, Seller shall exclude Energy curtailed during such Curtailement Order time period from the calculation of Deemed Delivered Energy. Notwithstanding the foregoing, if a Bid Curtailement and a CAISO system-wide Overgeneration Curtailement Order occur in the same settlement interval, the curtailement shall be treated as a Bid Curtailement for the purpose of the calculation of Deemed Delivered Energy.
 - (D) In addition to paying Seller for all Delivered Energy hereunder, Buyer shall pay Seller the Solar Contract Price for Deemed Delivered Energy.

EXHIBIT O
COMMUNITY BENEFITS⁵

Terms and Conditions

The Community Benefits Commitments (“CB Commitments”) provided by Seller pursuant to this Exhibit O are independent of the obligations of the Parties under this Agreement. Any failure to perform all or part of the Seller’s CB Commitments shall not affect or excuse either Party’s performance under this Agreement.

Providing community benefits is a deliverable, zero-dollar task. No hours or dollars should be allocated or included in Seller’s costs for the services under this Agreement in order to perform or deliver the voluntarily proposed CB Commitments. Seller shall fund the CB Commitments independently and such funding shall neither be tied to, nor dependent upon, SFPUC funds or sources of funding receivable from SFPUC. This requirement of independent funding includes direct financial contributions and any costs related to the performance or delivery of the CB Commitments. The provision of CB Commitments does not entitle Seller to additional costs or benefits beyond the scope specified within the Agreement.

Seller shall commence performance of the CB Commitments after the Execution Date but prior to the Commercial Operation Date. CB Commitments performed as part of previous contracts or prior to the Execution Date cannot count towards Seller’s CB Commitments for this Agreement. If Seller or its Affiliate(s) have established programs or plans that are consistent with the CB Commitments, Seller or its Affiliate(s) may continue those programs as part of its CB Commitments and will be given credit for activities that are performed following the Execution Date.

Project Team

The CB Commitments plan to be developed by Seller will specify the Executive in Charge and Community Benefits Coordinator. The Executive in Charge shall manage the Seller’s CB Commitments, provide fiduciary oversight, and ensure that the CB Commitments listed in the Community Benefits Summary Table below are delivered to the communities that they are intended to benefit in a transparent and accountable manner. The Executive in Charge shall work with the Community Benefits Coordinator to organize, plan, track, measure, and report to the Buyer on Seller’s CB Commitments. If the Seller replaces the Executive in Charge and the Community Benefits Coordinator, the Seller must inform the SFPUC Community Benefits and Social Responsibility Manager in writing.

Community Benefits Commitments

Seller commits to a contribution of [REDACTED] annually, or as one or more lump sums that provide the equivalent present value, over 5 years, as further described in the Community Benefits Summary Table below. Seller plans to direct the CB Commitments within Riverside County/City of Blythe and/or the City and County of San Francisco. The Community Benefit Priority Areas and the distribution of Direct Financial Contributions shown below are preliminary as of the Execution Date and may be modified by Seller in its Community Benefits Plan (described below), as may be updated from time to time. CB Commitments must support non-profit, charitable, or school-related activities. CB Commitments shall not go to, nor benefit, any City department or employee.

Community Benefits Summary Table

⁵ The CB Commitments were performed prior to the execution date of this Agreement.

Community Benefit Priority Area	Community Benefit Program Area or Partner	Expected Outcomes	Timetable & Duration	Direct Financial Contribution	Total Contributions
1. Education	Non-profits or schools	Support nonprofit or school-based programs that advance engineering and science education and provide mentorship, tutoring, and scholarship opportunities.	5 years	██████████	██████████
2. Economic Development	Non-profits or schools	Support nonprofit programs that develop small, local business and provide economic assistance.	5 years	██████████	██████████
TOTAL				██████████	██████████

Total Contributions shown are based on annual contributions, but the amount may be lower if made in one or more lump sums that provide the equivalent present value of the annual contributions

Accountability and Deliverables

Seller shall provide a description of the accountability methods to ensure that the proposed CB Commitments will be delivered in a transparent and accountable manner. To maximize transparency and accountability, a process must be proposed that will assist in independently verifying that such funds and resources were delivered to the intended beneficiaries.

Seller must provide the following deliverables during performance of the Agreement:

1. Community Benefits Plan and Timeline

- Seller shall develop a Community Benefits Plan within six (6) months of the Execution Date. The Community Benefits Plan will provide details regarding community partnerships, expenditures, a schedule, and timelines.
- Seller is invited to meet once a year thereafter or as needed with the SFPUC External Affairs Community Benefits and Social Responsibility Manager during the term of the Agreement to discuss the work plan, timelines, partners, strategic delivery, scale, and performance necessary to ensure the commitments maximize collective resources and positive impact.

2. Community Benefits Commitments and Reporting

- Seller shall deliver the proposed CB Commitments described herein and specified further in the Community Benefits Plan. Any proposed changes to the CB Commitments as set forth herein shall be submitted in writing for review by the SFPUC External Affairs Community Benefits and Social Responsibility Manager.
- Seller shall submit biannual progress reports to the SFPUC External Affairs Community Benefits and Social Responsibility Manager, which detail the geographic scope of commitment, activities and outcomes, key metrics, and the total number of hours, dollars, etc. contributed to-date. Progress reports must be submitted on the last business day of the month following the close of 2nd and 4th business quarters and are only required if there were activities completed in the reporting period. As part of the progress reports, Seller also must submit documents to substantiate that the CB Commitments and any funds associated therewith were delivered to the communities they were intended to benefit. These reporting requirements may be adjusted over the duration of the program due to system improvements.

Seller shall also submit an annual newsletter documenting the culmination of their CB Commitments, beneficiaries, and outcomes for the year and is only required if there were activities completed in that year.

EXHIBIT P
STORAGE OPERATING PARAMETERS

The Storage Facility shall be subject to the following Operating Parameters:

No later than one hundred eighty (180) days prior to the Storage Commercial Operation Date, representatives of Buyer and Seller shall finalize the Operating Parameters. The Operating Parameters may be reviewed annually (date and time to be mutually agreed) to optimize operations for both Parties. The Parties shall cooperate to integrate the systems and controls necessary to implement the Operating Parameters.

I. Operating Parameters:

- a. If the year-to-date average Stored Energy Level exceeds 85 MWh at any time during the second half of a Contract Year, then the maximum allowed Stored Energy Level shall be limited to the Stored Energy Level that, if held for the rest of the Contract Year, would equal an annual averaged Stored Energy Level of 83 MWh/day. If the allowable Stored Energy Level has been limited, the Stored Energy Level limitation will be released once the year-to-date average Stored Energy Level is less than 83 MWh.
- b. An annual limit on Storage Facility Discharging Energy of [REDACTED] MWh/Contract Year, subject to Section 3.15 of this Agreement.
- c. When the Stored Energy Level is above ninety-seven percent (97%) of the Maximum Allowable Stored Energy Level, the charge rate may be based on constant voltage charging.

II. Data Points to Be Sent from Seller to Buyer Via SCADA

The following data points will be transmitted via SCADA from Seller to Buyer and represent energy storage level data:

Table 1

<u>Energy Storage</u>	
<u>Description</u>	<u>Units</u>
Real Power Set-Point (echo)	MW
Actual Real Power	MW
Actual Reactive Power	MVar
Stored Energy Level	MWh
Remaining Throughput (Contract Year)	MWh
YTD average Stored Energy Level (Contract Year)	MWh/day
Maximum Allowable Stored Energy Level	MWh
Additional Data Points Reserved for Future Use	

The following data points will be transmitted via SCADA from Buyer to Seller and represent energy storage level data:

Table 2

Energy Storage

Description	Units
Charge Power Set-Point*	MW
Discharge Power Set-Point*	MW
Duration of Charge/Discharge Set-Point**	minutes
Target Stored Energy Level*	%
Ramp Rate	MW/s
Control Mode (target time or target SOC)	Boolean
Additional Data Points Reserved for Future Use	

* Parties will resolve any conflicts in priority of signal in the Operating Procedures.

Data points transmitted via SCADA from Seller to Buyer are subject to Operating Parameters.

1. Response times of Storage Facility. The Operating Parameters will include protocols that outline the expectations for responding to Buyer's set points.
2. Backup Communications. In the event of a communications failure, Buyer and Seller shall communicate via telephone in order to correct the failure.

EXHIBIT Q
STORAGE FACILITY AVAILABILITY

Annual Storage Availability

Calculation of Annual Storage Availability. Seller shall calculate the “Annual Storage Availability” using the formula set forth below:

$$\text{Annual Storage Availability (\%)} = \frac{[\text{ANHRS} - \text{UNAVAILHRS}]}{[\text{ANHRS}]}$$

where:

ANHRS is the total number of hours for the year;

UNAVAILHRS, is the total number of hours in the year during which the Storage Facility was unavailable to deliver Storage Product for any reason other than the occurrence of any of the following (each, an “Excused Event”): a Force Majeure Event, Curtailment Orders, Buyer Default, Storage Capacity Tests, System Emergencies, Planned Outage (up to one hundred twenty (120) hours per year), or the Operating Parameters in Exhibit P. To be clear, hours of unavailability caused by any Excused Event will not be included in UNAVAILHRS. During hours in which Storage Contract Capacity is less than the Guaranteed Storage Contract Capacity (“Capacity Deficit Period”), the difference in capacity (“Capacity Deficit”) will be counted as an equivalent amount of UNAVAILHRS. If the Storage Facility is unavailable for less than a full hour or if a portion of the Storage Facility is unavailable during any hour for any reason other than an Excused Event, the hours in which the Storage Facility is partially available will be adjusted by an equivalent percentage to reflect the reduction in availability and will be included in this calculation of UNAVAILHRS. Any Excused Event that results in unavailability of the Storage Facility for less than a full hour or unavailability of a portion of the Storage Facility during any hour, the hours in which the Storage Facility is partially available will be adjusted by an equivalent percentage to reflect the reduction in availability for this calculation.

Example:

Capacity Deficit Period Component
Storage Contract Capacity is [REDACTED] MW.
Capacity Deficit is 1 MW
Capacity Deficit Period is 1000 hrs
The Storage Facility is 50% unavailable during 8% of the Capacity Deficit Period

$$\begin{aligned} \text{UNAVAILHRS} &= ((\text{Capacity Deficit}) + (50\% \text{ unavailability} * \text{Storage Contract Capacity} * 8\%)) * \\ &(\text{Capacity Deficit Period}/\text{Guaranteed Storage Contract Capacity}) = ((1\text{MW}) + (0.5 * [REDACTED] * .08)) * \\ &(1000 \text{ Hr}/[REDACTED]) = 60.4 \text{ hrs during the Capacity Deficit Period} \end{aligned}$$

Remainder of the Contract Year

The Storage Facility has retested and demonstrated Guaranteed Storage Contract Capacity and the entire Storage Facility is unavailable for 3% of the remaining 7,760 hours in the Contract Year.

$$\text{UNAVAILHRS} = \text{remaining hours in the Contract Year} * 3\% = (7,760 \text{ hours} * 0.03) = 232.8 \text{ hrs}$$

during the remainder of the Contract Year UNAVAILHRS for the Contract Year = 60.4 hrs + 232.8 hrs = 293.2 hrs

Annual Storage Availability = (ANHRS – UNAVAILHRS)/ANHRS = (8,760 hrs – 293.2 hrs)/8,760 hrs = 96.65%

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Storage Facility in the Real-Time Market, and the Storage Facility is dispatched in the Real-Time Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

Guaranteed Storage Availability Liquidated Damages

The applicable “**Guaranteed Storage Availability Liquidated Damages**” are calculated as follows:

- (i) [If the Annual Storage Availability is greater than or equal to ■■■■, then:

Guaranteed Storage Availability Liquidated Damages = ■■■■

- (ii) If the Annual Storage Availability is less than ■■■■, but greater than or equal to ■■■■, then:

Guaranteed Storage Availability Liquidated Damages: ■■■■
■■■■

- (iii) If the Annual Storage Availability is less than ■■■■, then:

Guaranteed Storage Availability Liquidated Damages: ■■■■
■■■■

The dollar amounts in the formulas above shall be prorated for any determination of Guaranteed Storage Availability Liquidated Damages for a partial Contract Year during the Storage Delivery Term.

Example:

Annual Storage Facility Availability = ■■■■

Guaranteed Storage Availability Liquidated Damages = ■■■■
■■■■

EXHIBIT R
STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

- A. Storage Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Storage Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit R and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Storage Facility determined by such Storage Capacity Test.
- B. Subsequent Storage Capacity Tests. Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test at any time during any Contract Year upon five (5) Business Days' prior written Notice to Seller (or any shorter period reasonably acceptable to Seller consistent with Prudent Operating Practice). In addition, Buyer shall have the right to require a retest of the most recent Storage Capacity Test at any time upon no less than five (5) Business Days' prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to perform a Storage Capacity Test or run a retest of any Storage Capacity Test at any time during any Contract Year upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice). Notwithstanding anything herein to the contrary, any revenues associated with a Storage Capacity Test that is initiated by Seller shall accrue to Buyer and Buyer shall pay for all Charging Energy. Seller will coordinate such retest to minimize impacts on the costs of Charging Energy.
- C. Test Results and Re-Setting of Storage Capacity. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 3.13(c) of the Agreement and Part II(I) below, the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Contract Capacity shall become the new Storage Contract Capacity at the beginning of the day following the completion of the Storage Capacity Test.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test, each subsequent Storage Capacity Test, and all re-tests thereof permitted under paragraph B above) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit R. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit R as a "SCT". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

- A. Purpose of Test. Each SCT shall:
 - (1) Determine an updated Storage Contract Capacity;
 - (2) Determine the amount of Energy required to fully charge the Storage Facility;
 - (3) Determine the Storage Facility charge ramp rate;

- (4) Determine the Storage Facility discharge ramp rate.
- B. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at a minimum of ten (10) minute intervals:
- (1) time (minutes);
 - (2) charging energy (MWh);
 - (3) discharging energy (MWh);
 - (4) Stored Energy Level (MWh).
- C. Conditions. During each SCT, 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 Storage Facility;
and
 - (3) Ambient air Temperature (°F).
- D. Test Elements. Each SCT shall include the following test elements:
- (1) The discharging of the Storage Facility to 0% Stored Energy Level;
 - (2) The charging of the Storage Facility at a constant power charge rate equal to the Storage Contract Capacity as of the commencement of the Storage Capacity Test;
 - (3) The measurement of the time from when the charge signal is sent until the constant power charge rate is achieved (dividing the constant power charge rate by this measurement will determine the updated charging ramp rate);
 - (4) The measurement of Energy, as measured by the Storage Facility Meter, that is required to charge the Storage Facility until a 100% Stored Energy Level is achieved;
 - (5) The discharging of the Storage Facility at a constant power discharge rate equal to the Storage Contract Capacity as of the commencement of the Storage Capacity Test;
 - (6) The measurement of the time from when the discharge signal is sent until the constant power discharge rate is achieved (dividing the constant power charge rate by this measurement will determine the updated discharging ramp rate);
 - (7) The measurement of Energy, as measured by the Storage Facility Meter, that is discharged from the Storage Facility to the Delivery Point until either a 0% Stored Energy Level is achieved or the constant power charge rate starts to de-rate (the Energy discharged divided by three (3) will determine the new Storage Contract Capacity).
- E. Test Conditions.
- (1) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation.
 - (2) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT (including a level of irradiance that does not permit the Solar Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such SCT 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 SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.
- F. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the

PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

- G. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:
- (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
 - (2) the measured data for each parameter set forth in Part II.A through D, as applicable, including copies of the raw data taken during the test;
 - (3) the Storage Contract Capacity, the amount of Energy required to fully charge the storage, the current charge and discharge ramp rate, and the Maximum Stored Energy Level, each determined by the SCT, including supporting calculations; and
 - (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party reasonably rejects the results of any SCT, such SCT shall be repeated in accordance with Part II(F).

- H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit R with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Storage Facility ("Supplementary Storage 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 Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit R.
- I. Adjustment to Storage Contract Capacity. The total amount of discharged Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first three hours of discharge (up to, but not in excess of, the product of (i) the Guaranteed Storage Contract Capacity, as such Guaranteed Storage Contract Capacity may have been adjusted (if at all) under this Agreement, multiplied by (ii) ___ hours shall be divided by three hours to determine the Storage Contract Capacity, which shall be expressed in MW AC, and shall be the new Storage Contract Capacity in accordance with Section 3.13(c) of the Agreement.

EXHIBIT S

STORAGE FUNCTIONAL SPECIFICATIONS

Seller shall design the Storage Facility as (i) a [REDACTED] MW, (ii) 4-hour energy storage system with a discharge capacity of [REDACTED] MWh measured at the Delivery Point, and (iii) a minimum Round Trip Efficiency as set forth in Exhibit S-1 measured at the Delivery Point (the “Guaranteed Round Trip Efficiency”). The discharge of the Storage Facility shall not result in expected total capacity for the Storage Facility to exceed [REDACTED] MW at the Delivery Point.

Round Trip Efficiency:

Round Trip Efficiency means the ratio of the amount of energy that is discharged from the Storage Facility compared to the amount of energy that is used to charge the Storage Facility. Seller shall calculate the Round Trip Efficiency for each full or partial Contract Year of the Storage Delivery Term (the “Efficiency Measurement Period”) by dividing the Discharging Energy by Charging Energy.

Round Trip Efficiency Adjustment:

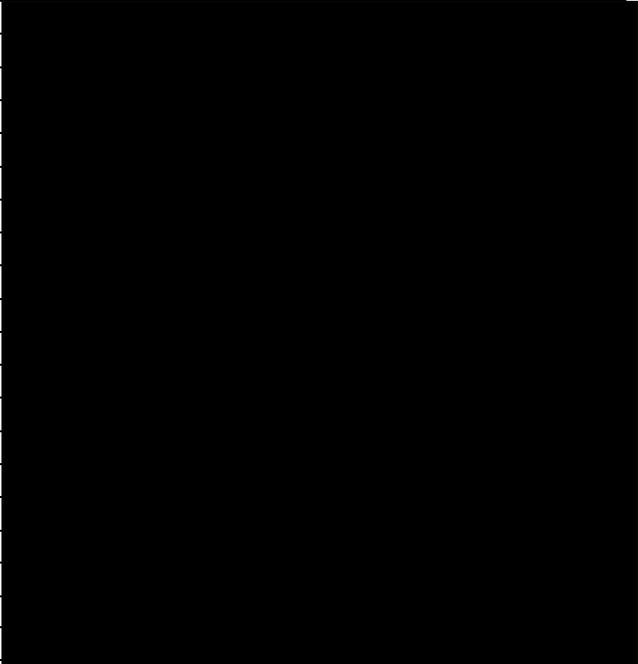
Seller shall calculate Round Trip Efficiency Adjustment only if GRTE is greater than RTE on an annual basis as follows:

$$\text{Round Trip Efficiency Adjustment} = (\text{GRTE} - \text{RTE}) \times \text{ACE} \times \text{CCE}$$

Where:

- GRTE = Then applicable Guaranteed Round Trip Efficiency
- RTE = Round Trip Efficiency calculated in accordance with this Exhibit S for the relevant Efficiency Measurement Period (in %)
- ACE (annual charging energy) = Quantity of energy used to charge the Storage Facility during the relevant Efficiency Measurement Period, as measured and recorded by the Storage Meter (in MWh)
- CCE (cost of charging energy) = The Solar Contract Price.

EXHIBIT S-1
GUARANTEED ROUND TRIP EFFICIENCY

Contract Year	Guaranteed Round Trip Efficiency (GRTE)
1	
2 (likely partial)	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

⁶ [Seller NTD: Subject to further refinement on how to spread GRTE across expected Contract Years under contemplated schedule for Storage COD.]

EXHIBIT T
STANDING INSTRUCTIONS

Standing Instructions Protocol Principles

The Standing Instructions Protocol, including the form and format of the Standing Instructions and the communications methods and timing between Parties, shall be developed through good faith discussions between the Parties no later than 6 months prior to Storage COD. The principles in this section reflect the mutual understanding between the Parties regarding how the Standing Instructions Protocol shall be developed and periodically revised over time. The Buyer and Seller will cooperate to ensure that the bidding, scheduling, and operation of the Facility in the CAISO markets comply with the CAISO Tariff and Business Practice Manuals, which are expected to change to accommodate co-located solar and storage resources.

1. Each Party shall cooperate with the other to implement Protocol specifications that allow for full participation in each CAISO market stage and for all products allowed by CAISO rules as specified in the Agreement, including the ability for the Buyer to instruct Seller to submit specific bid information for each interval.

2. Parties shall confer from time to time as CAISO Tariff language and Business Practice Manual language is being considered and refined through Stakeholder Initiatives, in order to anticipate and implement changes that will be necessary to the Standing Instructions protocol.

3. Additional parameters made available to resources like the Facility that support improved operation beyond the current price-quantity economic bidding or self-scheduling (such as End of Hour State Of Charge parameters which SCs may provide to the CAISO in real-time as developed in the ESDER4 Stakeholder Initiative) shall be incorporated into the Standing Instructions Protocol upon CAISO implementation.

4. The Standing Instructions Protocol shall at all times ensure continuity of bidding/scheduling/operations of the Facility in the CAISO markets that are compliant and feasible, by including terms that shall become effective upon a failure in communications between the Parties which would make the otherwise effective Standing Instructions infeasible. Buyer is responsible for the market strategy, generating market bids for both the DA and RT and compliance with the Operating Parameters.

5. Parties shall work collaboratively to determine whether an algorithm to implement Buyer's side of the Standing Instructions Protocol, located at the Seller's site is feasible to mitigate communication points of failure, as more information is gained, and market rules are finalized.

6. The Scheduling Coordinator ("SC") is in charge of the Project's market interface with the CAISO. That means the SC is responsible for answering questions related to the market, billing and administrative functions, making sure the project is in compliance with CAISO rules, and making sure all bids are submitted correctly to the CAISO.

7. Seller as the Project operator is in charge of making the sure the project is capable and ready to operate while following all applicable standards and rules and when called upon and to primarily dispatch per the CAISO instructions.

8. In accordance with Section 5.6(b)(iii), Buyer may issue Supplemental Instructions at any time directing Seller to submit RTM or DAM bids that differ from the currently effective Standing Instructions.

Standing Instructions Protocol

Standing Instructions Protocol

- 1) DAM bid or Self-Schedules for the Solar Facility (including but not necessarily limited to the DA Percentage, Buyer DAM Bid Price, Buyer RTM Bid Price) and the Storage Facility (including but not necessarily limited to bids to charge and offers to discharge) to be used by the Scheduling Coordinator for Facility participation in the CAISO Day Ahead Market. In addition to sets of price and quantity pairs, other parameters required by, or made available by, the CAISO for each of the Solar Facility and Storage Facility, respectively, shall be included in the Standing Instructions (for example, parameters related to states-of-charge, if applicable, pursuant to CAISO operations for resources that are or contain storage components).
- 2) Real-Time Market bids or Self-Schedules (e.g. to follow the DAM awarded quantities schedule) for both the Solar Facility and the Storage Facility, including other parameters required by, or made available by, the CAISO for each of the Solar Facility and Storage Facility, respectively in the Real-Time Markets (for example, parameters related to states-of-charge, if applicable, pursuant to CAISO operations for resources that are or contain storage components).
- 3) In accordance with Section 5.6(b)(iii), Buyer may issue Supplemental Instructions at any time upon twenty-four (24) hours advance notice directing Seller to submit RTM or DAM bids that differ from the currently effective Standing Instructions. Twenty-four (24) hours advance notice is with respect to CAISO's market gate closure time for the operating hour and market type. For example, DA bids for end of day tomorrow must be submitted greater than 24 hours before that operating hour.
- 4) Other instructions applicable to the Facility consistent with CAISO operational requirements for the Facility in effect at the time.

Communications Process

- 1) Previous Standing Instructions are effective until updated by Buyer, unless Seller rejects the Standing Instructions in accordance with Section 5.6(b).
- 2) Buyer creates DAM bids or Self-Schedules within Operating Parameters and send them to Seller, which then submits to CAISO.
- 3) CAISO creates DAM schedule after DAM run (optimization).
- 4) Buyer creates RTM bids or Self-Schedules within Operating Parameters and sends them to Seller, which then submits to CAISO.
- 5) CAISO runs RTM and dispatches Facility (both Resources).
- 6) CAISO sends dispatch instructions to Seller as the Operator.
- 7) Seller as Operator follows CAISO instructions, utilizing available storage consistent with Standing Instructions and CAISO operational requirements.

Bids

- 1) Day-Ahead Market
 - a. Day-Ahead Market Solar price-quantity bids for each hour – respecting CAISO bid submission regulations.
 - i. Align DAM Solar charging with expected CAISO-optimized storage dispatch
 1. For all intervals for which CAISO is expected to award storage charging, Self-Schedule Solar output up to the storage charging capacity when prices are expected to be below the Buyer DAM Bid Price, adjusted for the DA Percentage.
 2. For intervals for which CAISO is not expected to award storage charging capacity, bid to curtail Solar when prices are below the Buyer DAM Bid Price.

Example DAM Co-Located PV Bid Instructions				
Interval (HE)	Segment 1 (MW)	Segment 1 (\$/MWh)	Segment 2 (MW)	Segment 2 (\$/MWh)
All intervals for which the Storage Facility <i>is expected</i> to be scheduled for charging by CAISO	Min [DA Forecast PV MW _{HEXX} * DA Percentage, Available Storage Charging MW _{HEXX}]	Self-Schedule Price	DA Forecast Solar MW _{HEXX} * DA Percentage	DAM Bid Price
All intervals for which the Storage Facility <i>is NOT expected</i> to be scheduled for charging by CAISO	0 MW	<Buyer DAM Bid Price	DA Forecast Solar MW _{HEXX} * DA Percentage	>=Buyer DAM Bid Price

- b. Storage price-quantity bids for each hour – respecting CAISO bid submission regulations, assuming no grid charging is allowed.
- i. (Negative is charging)
 1. Limit charging MW to the lesser of the Solar DAM Forecast, adjusted for the DAM Percentage and a buffer for Day Ahead forecast error, and the available charging capacity.
 2. Discharging bids will be limited by the storage discharge capacity, with the state of charge optimized by CAISO.
 3. Set Target Charging Price and Target Discharging Price to create a price spread sufficient to cover round-trip efficiency losses and degradation costs. CAISO’s optimization model uses the absolute price spread, so the target prices should be updated to address large variations in prices.

Example DAM Co-Located Storage Bid Instructions				
Interval (HE)	Segment 1 (MW)	Segment 1 (\$/MWh)	Segment 2 (MW)	Segment 2 (\$/MWh)
All intervals	Negative [Min [DA Forecast PV MW _{HEXX} * DA Percentage, Available Storage Charging MW _{HEXX}]]	<Target Charging Price	Available Storage Discharging MW _{HEXX}	>=Target Discharging Price

2) Real-Time Market

- a. Solar price-quantity bids for each hour – respecting CAISO bid submission regulations
 - i. Self-Schedule Solar up to DAM Storage Charging Awarded MW; bid incremental forecast Solar Facility output above those amounts in RTM.
 - 1. For all intervals for which storage charging is expected to be awarded in the RTM, don't curtail Solar Facility output, adjusted for the RTM Forecast Error Buffer).
 - 2. For intervals for which storage charging capacity is not expected to be available (e.g., SOC = 100%, resting after fully discharging), curtail Solar Facility when prices are below the Buyer RTM Bid Price (CAISO market model should do this automatically based on master file parameters and CAISO monitoring of telemetered data).

Example RTM Co-Located PV Bid Instructions				
Interval (HE)	Segment 1 (MW)	Segment 1 (\$/MWh)	Segment 2 (MW)	Segment 2 (\$/MWh)
All intervals	Min [DAM Solar Award MW _{HEXX} , RTM Forecast MW _{HEXX} Int _{yy} * RTM Forecast Error Buffer, DAM Storage Charging Award MW _{HEXX}]	Self-Schedule Price	RTM Solar Forecast MW _{HEXX}	>=Buyer RTM Bid Price

- b. Storage price-quantity bids for each hour – respecting CAISO bid submission regulations, assuming no grid charging is allowed
- i. (Negative is charging)
 1. Use End of Hour State of Charge (EOH SOC) limits, in conjunction with real-time Solar forecast, to self-schedule charging consistent with DAM charging/discharging awards.
 2. If additional state of charge and charging/discharging capacity are available, consistent with Solar Facility output limits, consider allowing for incremental charging/discharging beyond the DAM charging/discharging awards (more work is needed to develop this functionality)
 3. Target RTM Charging Price and Target RTM Discharging Price may need to be different for multiple pricing windows within each day, and may need to be updated multiple times within the day to address changing RTM prices. This process will need to be automated/feed into Seller’s bidding system.

Example RTM Co-Located Storage Bid Instructions						
Interval (HE)	Segment 1 (MW)	Segment 1 (\$/MWh)	Segment 2 (MW)	Segment 2 (\$/MWh)	Segment 3 (MW)	Segment 3 (\$/MWh)
All intervals, set EOH SOC min equal to amounts consistent with DAM charging/discharging award SOC, adjusted as necessary for available PV for charging and prior interval actual performance. Set EOH SOC max either to min or to the maximum allowable SOC, depending on whether want to participate in RTM optimization.	Negative Min[smallest 5 min RTM PV Forecast MW _{HExx} within each hour, Available Charging MW _{HExx}]	<Target RTM Charging Price	DAM Discharging Award MW _{HExx}	Target RTM Discharging Price * Factor designed to mimic a self-schedule	Available Storage Discharging MW _{HExx}	>=Target RTM Discharging Price * Factor designed to result in profitable complete daily discharging

Operating Instructions

- 1) Seller as Operator will plan to operate the Solar Facility and Storage Facility of the co-located resource consistent with the DAM bids and awards, as updated by the RTM bids and awards.
- 2) If, and as indicated in the Standing Instructions, CPSF has elected to utilize CAISO functionality allowing co-located storage resources to produce less than dispatch under the below circumstances, Seller as Operator shall allow the Solar Facility to produce above dispatch, while simultaneously ensuring the co-located Storage Facility is producing below dispatch in an equal amount:
 - b. The co-located Solar Facility must be producing above dispatch
 - c. The co-located Facility would otherwise be producing above POI limits
 - d. The co-located Facility may not be providing ancillary services
 - e. iii. If the Solar Facility output is capable of generating above the RTM Forecast Solar, RTM prices are greater than the Buyer RTM Bid Price, CAISO is allowing generation as capable, and the combined Facility output is below the POI limit, Seller as Operator should generate as capable above the dispatch instruction. A comprehensive list of decision rules will be developed to address anticipated scenarios in an automated fashion.



RENEWABLE POWER PURCHASE AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO,

ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION,

CLEANPOWERSF

AND

BLYTHE SOLAR IV, LLC

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EXHIBITS

The follows Exhibits constitute a part of this Agreement and are incorporated into the Agreement by reference.

EXHIBIT A	SELLER DOCUMENTATION OF CONDITIONS PRECEDENT
EXHIBIT B	FACILITY DESCRIPTION AND SITE DRAWINGS
EXHIBIT C	CONTRACT QUANTITY
EXHIBIT D	INSURANCE COVERAGES
EXHIBIT E	CONSTRUCTION START CERTIFICATION
EXHIBIT F	QUARTERLY PROGRESS REPORT
EXHIBIT G-1	COMMERCIAL OPERATION CERTIFICATION PROCEDURE
EXHIBIT G-2	COMMERCIAL OPERATION CERTIFICATION
EXHIBIT H	DELIVERY START DATE CONFIRMATION
EXHIBIT I	INSTALLED CAPACITY CERTIFICATE
EXHIBIT J	FORM OF LETTER OF CREDIT
EXHIBIT K	FORM OF GUARANTY
EXHIBIT L	FORM OF CONSENT TO COLLATERAL ASSIGNMENT
EXHIBIT M	CAISO CHARGE CODES
EXHIBIT N	BUYER AS SCHEDULING COORDINATOR
EXHIBIT O	COMMUNITY BENEFITS

POWER PURCHASE AGREEMENT

COVER SHEET

This Renewable Power Purchase Agreement (“Agreement”) is entered into between the City and County of San Francisco, acting by and through its Public Utilities Commission, Power Enterprise, CleanPowerSF (“Buyer”) and Blythe Solar IV, LLC (“Seller”), as of July 9, 2019 (the “Execution Date”). The Agreement shall include the exhibits, attachments, any written and fully executed supplements hereto, and any designated collateral, credit support, or similar arrangement between the Parties.

A. Transaction

Product: Energy and associated Environmental Attributes and Capacity Attributes

Facility: Blythe IV Solar Energy Center

Address: 4000 Dracker Drive, Blythe, California 92225

Expected Initial Capacity: 62.5 MW

Contract Price for Product: [REDACTED]

Delivery Point: Colorado River Substation 230kV bus

Delivery Period: The “Delivery Term,” as defined below.

Deliverability: Full Capacity Delivery Status

B. Milestones

Permitting Milestone: [REDACTED]

Construction Milestone: [REDACTED]

Major Equipment Milestone: [REDACTED]

Commercial Operation Milestone: September 30, 2020

C. Seller Collateral

Development Assurance: [REDACTED]

- Cash
- Guaranty
- Letter of Credit

Performance Assurance: [REDACTED]

- Cash
- Guaranty
- Letter of Credit

D. Buyer Collateral

Development Assurance: [REDACTED]

- Cash
- Guaranty
- Letter of Credit

Performance Assurance: [REDACTED]

- Cash
- Guaranty
- Letter of Credit

E. Notices

<p>Buyer: City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF</p>	<p>Seller: Blythe Solar IV, LLC</p>
<p>All Notices: 525 Golden Gate Ave, 7th Floor San Francisco, CA, 94102 Attn: Contract Administration [REDACTED]</p>	<p>All Notices: 700 Universe Blvd Juno Beach, FL 33408 Attn: Vice President, Business Management [REDACTED]</p>
<p>Federal Tax ID Number: [REDACTED]</p>	<p>Federal Tax ID Number: [REDACTED] DUNS Number:</p>
<p>Invoices: [REDACTED] [REDACTED]</p>	<p>Invoices: Attn: Business Management [REDACTED]</p>
<p>Scheduling: [REDACTED]</p>	<p>Scheduling: Attn: NextEra Energy Marketing, LLC [REDACTED]</p>
<p>Payments: [REDACTED] [REDACTED]</p>	<p>Payments: Attn: Business Management [REDACTED]</p>
<p>Wire Transfer: [REDACTED]</p>	<p>Wire Transfer: Seller shall provide to Buyer the information below at least 60 days prior to the Commercial Operation Date. BNK: ABA: ACCT:</p>

Credit and Collections:

[REDACTED]

With additional Notices of an Event of Default or Potential Event of Default to:

[REDACTED]

Credit and Collections:

[REDACTED]

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: General Counsel

[REDACTED]

RECITALS

1. Seller intends to develop, finance, build, own and operate a solar powered generating facility located in Riverside County near Blythe, California; and,
2. Buyer operates CleanPowerSF, a community choice aggregator that serves retail customers in the City and County of San Francisco; and,
3. Buyer is willing to purchase, and Seller is willing to sell, the Product of the Facility, on the terms and conditions and at the prices set forth in this Agreement.

NOW THEREFORE, in consideration of the recitals above and the following covenants, terms and conditions, the Parties agree as follows:

ARTICLE 1: DEFINITIONS

AC: Alternating current.

Adjusted Days of Liquidity on Hand: [REDACTED]

[REDACTED]

Affiliate: With respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management, operations or policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

Agreement: Has the meaning set forth in the Cover Sheet.

Ancillary Services: Has the meaning set forth in the CAISO Tariff.

Annual Forecast: Has the meaning set forth in Section 5.6(i)(i).

Applicable Law: Any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including the CAISO, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties or the terms of the Agreement.

Automated Dispatch System: Has the meaning set forth in the CAISO Tariff.

Availability Standards: The program set forth in Section 40.9 of the CAISO Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible charges and incentive payments for performance thereunder.

Bankrupt: With respect to any entity, such entity (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, or has any such petition filed or commenced against it and such case filed against it is not dismissed within sixty (60) calendar days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) 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 (e) is generally unable to pay its debts as they fall due.

Bid Cost Recovery: Has the meaning set forth in the CAISO Tariff.

Bid Curtailment: An event in which an Economic Bid or Self-Schedule for Energy or Ancillary Services submitted for a Settlement Interval in accordance with this Agreement results in a Real Time energy production schedule awarded or deployed by the CAISO that fails to provide for the delivery of the full quantity of Energy included in the Final Output Estimate.

Board of Supervisors: The Board of Supervisors for the City and County of San Francisco.

Business Day: Any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or a City and County of San Francisco holiday, between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

Buyer: The City and County of San Francisco, acting by and through its Public Utilities Commission.

Buyer DAM Bid Price: The Buyer-determined price component of a bid that is used for an Economic Bid into the Day-Ahead Market, subject to adjustment pursuant to Section 5.6(d).

Buyer Development Assurance: The collateral provided by Buyer to Seller to secure Buyer's obligations hereunder in accordance with Section 6.3(a)(i) of this Agreement.

Buyer Financial Covenants: Has the meaning set forth in Section 6.3(c).

Buyer Indemnified Party: Has the meaning set forth in Section 10.1(a).

Buyer Performance Assurance: The collateral provided by Buyer to Seller to secure Buyer's obligations hereunder in accordance with Section 6.3(a)(ii) of this Agreement.

Buyer RTM Bid Price: The Buyer-determined price component of a bid that is used for an Economic Bid into the Real-Time Market, subject to adjustment pursuant to Section 5.6(d).

CAISO: The California Independent System Operator Corporation, or its functional successor.

CAISO Tariff: The California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

Calendar Quarter: Has the meaning set forth in Exhibit F.

Capacity Attributes: Any current or future defined characteristic (including the ability to generate at a given capacity level, provide Ancillary Services, and ramp up or ramp down at a given rate), certificate, tag, credit, flexibility, or dispatchability attribute, whether general in nature or specific as to the location or any other attribute of the Facility, intended to value any aspect of the capacity of the Facility to produce energy, including any accounting construct, or any other measure by the CPUC, the CAISO, the FERC, or any other Governmental Authority with jurisdiction, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other such attribute.

CEC: The California Energy Commission or any successor agency.

CEC Certification: Means that the CEC has certified, or pre-certified, that the Facility is an ERR for purposes of the California Renewables Portfolio Standard and that all Product produced by the Facility qualifies as generation from an ERR for purposes of the RPS.

CEQA: The California Environmental Quality Act, California Public Resources Code Sections 21000, et. seq., as it may be amended from time to time.

Change in Law: Has the meaning set forth in Section 12.5(f).

Charge Code: Has the meaning set forth in the CAISO Tariff.

City: The City and County of San Francisco.

CleanPowerSF: Buyer's Community Choice Aggregation Program.

COD Certification: Seller's certification of Commercial Operation in the form set forth as Exhibit G-2, duly executed by Seller and its Licensed Professional Engineer.

Commercial Operation: The condition of the Facility, whereupon it is certified by Seller to be operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement.

Commercial Operation Date: The date upon which Seller notifies Buyer that Commercial Operation has commenced by delivering to Buyer the COD Certification in accordance with Section 5.3(f).

Commercial Operation Milestone: Has the meaning set forth in Section 5.3(b)(iv).

Compliance Cost Cap: Has the meaning set forth in Section 3.7.

Compliance Costs: Has the meaning set forth in Section 3.7(a).

Confidential Information: Has the meaning set forth in Section 12.2(b).

Construction Milestone: Has the meaning set forth in Section 5.3(b)(ii).

Construction Start Date: The date on which Seller delivers to Buyer a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Facility.

Contract Price: Has the meaning set forth in Section 3.2.

Contract Quantity: The annual expected Energy production set forth in Exhibit C.

Contract Year: A period of twelve (12) consecutive months, commencing at 12:00 a.m. on the Delivery Start Date, and each subsequent Contract Year commencing on the twelve (12) month anniversary of the Delivery Start Date.

Controller: The Controller for the City and County of San Francisco.

Costs: With respect to a Non-Defaulting Party, (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement entered into pursuant to this Agreement or entering into new arrangements which replace this Agreement and (b) all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

CPUC: The California Public Utilities Commission or any successor entity.

Credit Rating: 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 unsecured senior long-term debt, then the rating assigned to such entity as an issuer rating by S&P and/or Moody's. For the avoidance of doubt, Seller's Parent's blanket guaranty of NextEra Energy Capital Holdings Inc. is not considered a third party credit enhancement.

Curtailment Order: An order of the PTO, distribution provider, Reliability Coordinator, and/or CAISO (whether directly or through a Scheduling Coordinator or the PTO), for any reason, including, but not limited to, any System Emergency, any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO's or PTO's electric system integrity or the integrity of other systems to which the CAISO or the PTO is connected, including curtailment in accordance with Seller's obligations under its Interconnection Agreement with the PTO or distribution operator.

Customer Market Results Interface: Has the meaning set forth in the CAISO Business Practice Manual for Definitions and Acronyms.

DA Percentage: An amount equal to zero percent (0%) of the Day-Ahead Forecast initially, subject to adjustment pursuant to Section 5.6(d).

Daily Liquidated Damages or Daily LD Amount: [REDACTED]

Damage Payment: The dollar amount to be posted as Seller Development Assurance pursuant to Section 6.2(a)(i) minus all Daily Liquidated Damages paid by Seller to Buyer under Section 5.4(d).

Day-Ahead Forecast: Pursuant to CAISO Tariff Section 4.8.2, the forecast of the Facility's output for each Day-Ahead Market interval provided by the CAISO's independent forecast provider or by Seller if Seller is certified by CAISO to submit its own forecast.

Day-Ahead Market or DAM: Has the meaning set forth in the CAISO Tariff.

Deemed Delivered Energy: Has the meaning set forth in Section 5.6(l)(ii)(A).

Defaulting Party: The Party that has caused an Event of Default.

Delivered Energy: Has the meaning set forth in Section 4.1(a)(i)(A).

Delivery Point: Colorado River Substation 230kV bus.

Delivery Start Date: Has the meaning set forth in Section 2.2(b)(i).

Delivery Term: Has the meaning set forth in Section 2.2(b)(i).

Economic Bid: Has the meaning set forth in the CAISO tariff.

Early Termination Date: Has the meaning set forth in Section 9.2(a)(i).

Effective Date: The date on which all of the Conditions Precedent set forth in Section 2.1(a) have been satisfied or waived in writing by both Parties.

Electric System Upgrades: Any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Facility to the Participating Transmission Owner's electric system for receipt of Energy at the Point of Interconnection.

Eligible LC Bank: A U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a Credit Rating of at least A3 from Moody's or A- from S&P and assets of at least \$10 billion.

Eligible Renewable Energy Resource or ERR: Has the meaning set forth in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.

Energy: Three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses.

Environmental Attributes: Any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the sale of generation from the Facility or Expansion Facility(ies) to Buyer under this Agreement, and its avoided emission of pollutants. Environmental Attributes include, without limitation, Renewable Energy Credits as well as:

- (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;

- (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and
- (c) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tag are accumulated on a MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of Energy.

Environmental Attributes do not include:

- (i) any Energy, capacity, reliability or other power attributes from the Facility,
- (ii) production or investment tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation,
- (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) emission reduction credits encumbered or used by a Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or biogas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

EPC Contract: The Seller’s engineering, procurement and construction contract with the EPC Contractor.

EPC Contractor: An engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement, and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of utility-scale renewable generating projects.

Equity to Assets Ratio: [REDACTED]

Event of Default: Has the meaning set forth in Section 9.1.

Excess Quantity: Has the meaning set forth in Section 3.2(b).

Execution Date: Has the meaning set forth in the Cover Sheet.

Expansion Facility: Any expansion of the Facility from its Initial Capacity, or any other electricity generating facility owned or controlled by Seller located at the Site, excluding the portion of the Site used for the Power Purchase Agreement by and between Seller and Modesto Irrigation District dated as of September 26, 2017, as may be amended. Each such expansion of the Facility or additional facility shall be deemed to be an “Expansion Facility.”

Expansion Facility Product: All Product, associated Environmental Attributes, Ancillary Services, contributions towards Resource Adequacy or reserve requirements (if any) and any other reliability or power attributes produced by Seller at any Expansion Facility.

Expected Initial Capacity: Has the meaning set forth in Section 3.3(a)(i).

Extended Delivery Term: Has the meaning set forth in Section 2.2(c).

Facility: The power generation facilities to be constructed, owned and operated by Seller located on the Site for the generation and delivery of electricity as described in Exhibit B.

Facility Testing Completion: Has the meaning set forth in Exhibit G-1.

FERC: The Federal Energy Regulatory Commission and any successor organization.

Fifteen Minute Market or FMM: Has the meaning set forth in the definition of CAISO Real Time Market.

Final Output Estimate: The final estimate of the quantity of Energy the Facility reasonably could have generated based on Facility availability, insolation, and other relevant meteorological conditions. The Final Output Estimate shall be equal to the RTM Forecast initially and may be replaced pursuant to Section 5.6(l)(ii)(B).

Fiscal Year: The period commencing on July 1 and ending on June 30 in the following calendar year.

FMM Price: The LMP for the CAISO Settlement Point for the relevant Settlement Interval in the FMM.

Force Majeure: An event or circumstance, including without limitation, a natural disaster, war, riot, act of terrorism, sabotage, destruction by a third party, or civil disturbance, which prevents one Party (“Claiming Party”) from performing its material obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the action or inaction of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Neither Party may raise a claim of Force Majeure based in whole or in part on;

- (a) failures or delays by the PTO and/or the CAISO in entering into, or performing under, any agreements with Seller contemplated by this Agreement, including a failure to complete, or a delay in completing, interconnection or Electric System Upgrades by the Commercial Operation Milestone except to the extent that such delay is solely caused by a Force Majeure;
- (b) a strike, work stoppage or labor dispute limited only to one or more of Seller, Seller’s Affiliates, Seller’s subcontractors or any other third party employed by Seller to work on the Facility;
- (c) Seller’s failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;
- (d) Seller’s inability to obtain Permits of any type, except where such failure is solely caused by a Force Majeure Event;
- (e) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure;
- (f) a Curtailment Order; or
- (g) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic, including buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy generated by the Facility at a higher price.

Forced Outage: Any unplanned reduction or suspension of the Energy from the Facility or unavailability of the Product in whole or in part from a unit in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of a unit for operation, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

Forecast Fee: Has the meaning set forth in the CAISO Tariff.

Full Capacity Deliverability Status or FCDS: Has the meaning set forth in the CAISO Tariff.

Full Capacity Deliverability Status or FCDS Finding: A written or electronic confirmation from the CAISO that the Facility is eligible for FCDS.

GAAP: The standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant Securities Exchange Commission rule.

Gains: With respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Agreement for the remainder of the Term, determined in a commercially reasonable manner, subject to Section 9.3. Factors used in determining economic benefit may include information either available to the Non-Defaulting Party internally or supplied by one or more third parties, including quotations (either firm or indicative) for a like amount of a like Product at the same or reasonably equivalent pNode of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Product, including the value of Environmental Attributes and Capacity Attributes.

GEP Period: Successive periods consisting of two (2) consecutive Contract Years with the first GEP Period commencing on the Delivery Start Date, and with each subsequent GEP Period commencing on the twelve (12) month anniversary of the commencement of the prior GEP Period.

GEP Shortfall: Has the meaning set forth in Section 3.4(c).

Good Utility Practice: Has the meaning set forth in the CAISO Tariff.

Governmental Authority: Any federal or state government, or political subdivision thereof, including, without limitation, any municipality, township or county, or any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, WREGIS and the CAISO or any corporation or other entity owned or controlled by any of the foregoing.

Guaranteed Energy Production, or GEP: Has the meaning set forth in Section 3.4(a).

Guarantor: With respect to a Party, any Person that (a) has an Investment Grade Credit Rating, (b) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (c) executes and delivers a Guaranty for the benefit of the other Party.

Guaranty: A guaranty from a Guarantor provided by a Party for the benefit of the other Party substantially in the form attached as Exhibit K.

Indemnified Party: Has the meaning set forth in Section 10.1(b).

Indemnifying Party: Has the meaning set forth in Section 10.1(b).

Installed Capacity: The actual generating capacity of the Facility, measured at the pNode for the Facility and adjusted for ambient conditions on the date of the performance test, as set forth in the Installed Capacity Certificate substantially in the form set forth in Exhibit I.

Interconnection Agreement: The agreement and associated documents (or any successor agreement and associated documentation) by and among Seller, the PTO, and the CAISO governing the terms and conditions of the Facility's interconnection with the CAISO grid, including any description of the plan for interconnection of the Facility to the PTO's system.

Interconnection Facilities: Has the meaning set forth in the Interconnection Agreement.

Investment Grade: Means a Credit Rating of “Baa3” or better from Moody’s or “BBB-” or better from S&P.

Late Payment Penalty: Has the meaning set forth in Section 4.1(b).

Lender(s): Any Person(s) providing money or extending credit (including any capital lease) to Seller, including in the form of debt or tax equity, for (a) the construction of the Facility, (b) the term or permanent financing of the Facility, or (c) working capital or other ordinary business requirements for the Facility. “Lender(s)” shall not include any trade creditor(s) of Seller.

Letter of Credit: An irrevocable, non-transferable standby letter of credit issued by an Eligible LC Bank in a form that is substantially similar to the form contained in Exhibit J. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

Licensed Professional Engineer: A Person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Facility, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

Locational Marginal Price, or LMP: Has the meaning set forth in the CAISO Tariff.

Losses: With respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remainder of the Term, determined in a commercially reasonable manner, subject to Section 9.3. Factors used in determining the loss of economic benefit may include reference to information either available to the Non-Defaulting Party internally or supplied by one or more third parties, including quotations (either firm or indicative) for a like amount of a like Product at the same or reasonably equivalent pNode of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Product, including Environmental Attributes and Capacity Attributes. “Losses” shall exclude any (1) associated loss of investment tax credits and other lost tax benefits and (2) any costs, penalties, fees, or charges associated with the termination of related financing agreements or similar obligations.

Major Equipment Milestone: Has the meaning set forth in Section 5.3(b)(iii).

Market Results Interface-Settlements: Has the meaning set forth in the CAISO BPM for Definitions and Acronyms.

Mechanical Completion: Has the meaning set forth in Exhibit G-1.

Monthly Forecast: Has the meaning set forth in Section 5.6(i)(ii).

Monthly Payment: Has the meaning set forth in Section 4.1(a)(i).

Milestones: The key development activities required for the construction and operation of the Facility, as set forth more particularly in Section 5.3(b).

Moody’s: Moody’s Investors Service, Inc.

MW: Megawatt.

MWh: Mega-watt hour.

NERC: Means the North American Electric Reliability Corporation or a successor organization.

Net Buyer CAISO Settlements: Has the meaning set forth in Section 5.6(e)(ii).

Net Buyer CAISO Settlements Protocol: Has the meaning set forth in Section 5.6(e)(iii).

Net Qualifying Capacity or NQC: Has the meaning set forth in the CAISO Tariff.

Network Upgrades: Has the meaning set forth in the CAISO Tariff.

Non-Defaulting Party: Has the meaning set forth in Section 9.2(a).

Notice to Proceed: The full notice to proceed provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EPC Contractor to begin construction of the Facility without any delay or waiting periods.

Operational Limitations: Those limitations set forth in Exhibit B of this Agreement.

Overgeneration: Has the meaning set forth in the CAISO Tariff.

Participating Transmission Owner or PTO: Has the meaning set forth in the CAISO Tariff. The PTO is Southern California Edison.

Parties: Buyer and Seller, and their respective successors and permitted assignees.

Party: Buyer or Seller, and each such Party's respective successors and permitted assignees.

Performance Liquidated Damages or Performance LDs: Has the meaning set forth in Section 3.4(c) and Section 3.4(e).

Permits: All material federal, state or local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Facility, including any such permits or approvals required under CEQA or the National Environmental Policy Act, 42 U.S.C. Sections 4321 et. seq.

Permitted Extensions: Has the meaning set forth in Section 5.4(a).

Permitting Milestone: Has the meaning set forth in Section 5.3(b)(i).

Person: An individual, partnership, corporation, business trust, limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

Planned Outage: The removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller's sole discretion must be of the type that is necessary to reliably maintain the Facility, (b) cannot be reasonably conducted during Facility operations, and (c) causes the generation level of the Facility to be reduced by at least ten percent (10%) of the Installed Capacity.

PNode: Has the meaning set forth in the CAISO Tariff.

Point of Interconnection: The point on the electrical system where the Facility is physically interconnected with the PTO System as further described in the Interconnection Agreement.

Positive Uninstructed Deviation Credit: Has the meaning set forth in Section 5.6(f).

Posting Party: Means the Party providing Development Assurance or Performance Assurance for the benefit of the other Party.

Product: The Energy, Environmental Attributes, Capacity Attributes, Ancillary Services, and any and all other reliability, power, or environmental attributes which are or can be produced by or associated with the Facility.

Product Content Category 1, or PCC 1 Energy: Means any Renewable Energy Credit and associated generation of electricity from an Eligible Renewable Energy Resource that meets the criteria set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Applicable Law.

PTO System: The transmission system owned by the Participating Transmission Owner.

Public Records Laws: The California Public Records Act, California Government Code Sections 6250 et seq., and the San Francisco Sunshine Ordinance, San Francisco Administrative Code, Chapter 67, the Ralph M. Brown Act, California Government Code Sections 54950, et seq., and any other applicable law regarding public records as may be amended from time to time.

Quarterly Progress Report: The report set forth in Exhibit F.

RA Capacity: Has the meaning set forth in the CAISO Tariff.

Real-Time Market or RTM: Has the meaning set forth in the CAISO Tariff.

Reliability Coordinator: Has the meaning set forth in the CAISO Tariff.

Renewable Energy Credit or REC: Has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by applicable law.

Replacement Price: In dollars per MWh (\$/MWh), Buyer's actual, reasonable and reasonably documented cost of Replacement Product, plus five percent (5%) of such cost for Replacement Product purchased by Buyer covering the period of Minimum Deliveries pursuant to Section 3.4(e); provided, however, that if Buyer did not purchase Replacement Product during such period, then the Replacement Price shall be calculated as the sum of (1) the price of Energy based on the hourly Day-Ahead Market price at the NP 15 EZ Gen Hub, plus five percent (5%) of such cost, for hours ending 7 through 22 during the applicable period, and (2) the price of Environmental Attributes and Capacity Attributes, if applicable, based on information either available to Buyer internally or supplied by one or more third parties, including quotations (either firm or indicative) for a like amount of a like Product.

Replacement Product: Energy produced from a facility other than the Facility that at the time of delivery to Buyer qualifies as an ERR and which (1) has the same or similar Environmental Attributes, including PCC 1 Renewable Energy Credits, that would have been generated by the Facility during the Contract Year for which the Replacement Product is provided, and (2) equivalent Capacity Attributes that would have been provided by the Facility during the Contract Year for which the Replacement Product is provided.

Resource Adequacy: The resource adequacy capacity requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions D.04-01-050, 04-10-035 and 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, and 17-06-027 and any other existing or subsequent decisions, resolutions or rulings addressing Resource Adequacy issues, as those obligations may be altered from time to time, the flexible capacity standards under the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

Resource Adequacy Costs: Has the meaning set forth in Section 3.6(c).

RPS: The California Renewable Portfolio Standard as set forth in California Public Utilities Code Sections 399.11 et. seq. and California Public Resources Code Sections 25740, et. seq., as such provisions are amended or supplemented from time to time.

RTD: Has the meaning set forth in the definition of CAISO Real Time Market in the CAISO Tariff.

RTD Price: The relevant LMP for the CAISO Settlement Point during the applicable RTD Settlement Interval.

RTM Forecast: The final forecast of the Energy to be produced by the Facility prepared by the CAISO or its designee in accordance with the Eligible Intermittent Resources Protocol (as defined in the CAISO Tariff) and communicated to the Scheduling Coordinator for the Facility for use in submitting bids in the Real-Time Market.

S&P: Standard & Poor's Financial Services, LLC (a subsidiary of S&P Global, limited liability company).

Scheduled Energy: The Energy economically bid by Seller that clears the applicable CAISO market.

Scheduling Coordinator or SC: Has the meaning set forth in the CAISO Tariff.

Scheduling Coordinator ID Charge: Has the meaning set forth in the CAISO Tariff and designated as CAISO Charge Code 4575.

Scheduling Infrastructure Business Rules: Has the meaning set forth in the CAISO Business Practice Manual for Definitions and Acronyms.

Secured Party: Means the Party who is the beneficiary of the Development Assurance or Performance Assurance.

Self-Schedule: Has the meaning set forth in the CAISO Tariff.

Seller: Has the meaning in the Preamble, and any successor or permitted assignee.

Seller Day-Ahead Forecast: Has the meaning set forth in Section 5.6(i)(iv).

Seller Development Assurance: The collateral provided by Seller to Buyer to secure Seller's obligations hereunder in accordance with Section 6.2(a)(i) of this Agreement.

Seller Excused Product: For any period of time, an amount of Energy expressed in MWh, equal to the Final Output Estimate, but which was not produced as a result of Curtailment Orders, Bid Curtailment, Force Majeure events, Buyer's breach or default hereunder or failure to accept delivered Product, or Forced Outages to the local transmission or distribution system.

Seller Performance Assurance: The collateral provided by Seller to Buyer to secure Seller's obligations hereunder in accordance with Section 6.2(a)(ii) of this Agreement.

Seller SC Fee: Has the meaning set forth in Section 5.6(a)(i).

Seller's Parent: Means NextEra Energy, Inc.

Settlement Interval: Has the meaning set forth in the CAISO Tariff.

Settlement Point: Means the CAISO designated pNode for the Facility.

SFPUC: The San Francisco Public Utilities Commission.

Shared Facilities: Means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real and personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

Site: The location of the Facility as described on Exhibit B.

Site Drawings: Has the meaning set forth on Exhibit B.

Surplus Energy: Has the meaning set forth in Section 3.2(c).

System Emergency: Has the meaning set forth in the CAISO Tariff.

Term: Has the meaning set forth in Section 2.2(a).

Termination Payment: With respect to the Non-Defaulting Party, the sum of (a) the Losses and Costs, minus the Gains, which the Non-Defaulting Party incurs as a result of the termination of this Agreement, subject to Section 9.3, provided that if such amount is negative, then the amount determined pursuant to this clause (a) of the definition of Termination Payment will be deemed to be zero (0), plus (b) the net of all amounts then owed to the Non-Defaulting Party by the Defaulting Party, or to the Defaulting Party by the Non-Defaulting Party, determined as of the Early Termination Date.

Test Energy: Product (to the extent available) generated by the Facility and delivered to the Point of Interconnection prior to the Delivery Start Date.

WECC: The Western Electricity Coordinating Council or successor agency.

Weekly Forecast: Has the meaning set forth in Section 5.6(i)(iii).

WREGIS: The Western Renewable Energy Generation Information System, or any successor renewable energy tracking program.

WREGIS Certificate: Has the meaning set forth in the WREGIS Operating Rules and are designated as eligible for compliance with the California RPS.

WREGIS Certificate Deficit: Any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month, after taking into account applicable delays in the issuance of WREGIS Certificates or otherwise arising under WREGIS Operating Rules.

WREGIS Operating Rules: Those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced from time to time.

ARTICLE 2: CONDITIONS PRECEDENT AND TERM

2.1 Conditions Precedent to Term of Agreement

- (a) Conditions Precedent. The Term of this Agreement shall not commence until the occurrence of all of the following:
 - (i) Buyer receives from Seller the conditions precedent documentation listed in Part I of Exhibit A; and
 - (ii) Buyer receives from Seller the Development Assurance; and
 - (iii) The Controller has certified in accordance with the City's Charter that sufficient unencumbered balances are available in the proper fund.
- (b) Effective Date. The Effective Date of this Agreement shall be the date that all of the Conditions Precedent set forth in Section 2.1(a) have been satisfied or waived in writing by both Parties. Buyer will notify Seller promptly in writing when the condition in Section 2.1(a)(iii) has been met.
- (c) Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Section 2.1(a) are not satisfied or waived in writing by both Parties within ninety (90) days of full execution of this Agreement, then either Party may terminate this Agreement effective upon receipt of notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, as a result of such termination and Buyer shall return all Development Assurance to Seller.

2.2 Term, Delivery Term, and Extension

- (a) Term. The term of this Agreement shall commence, and this Agreement shall be effective, upon the Effective Date and, unless earlier terminated pursuant to an express provision of this Agreement, shall remain in effect until delivery to Buyer of all of the Environmental Attributes associated with Energy delivered under this Agreement ("Term").
- (b) Delivery Term.
 - (i) The Delivery Term shall commence on the first date that Buyer accepts delivery of Product under this Agreement (the "Delivery Start Date") and continuing for twenty (20) years ("Delivery Term"), unless terminated as provided by the terms of this Agreement.

- (ii) The Delivery Start Date shall occur as soon as practicable once all of the following have been satisfied, but no later than ninety (90) days after the COD:
 - (A) Seller notifies Buyer of the Commercial Operation Date by delivering to Buyer the COD Certification in substantially the form set forth at Exhibit G-2, the Installed Capacity Certificate in substantially the form set forth at Exhibit I, and, if applicable, an updated Contract Quantity table in the form attached hereto as Exhibit C based on the Installed Capacity which updated Contract Quantity table shall automatically supersede the previous version of the Contract Quantity table set forth in Exhibit C without requiring an amendment of this Agreement;
 - (B) Seller notifies Buyer of the Delivery Start Date by delivering the Delivery Start Date Confirmation attached hereto as Exhibit H;
 - (C) Seller has obtained the precertification approval component of the CEC Certification requirement for the Facility;
 - (D) All of the applicable Conditions Precedent in Section 2.1(a) have been satisfied or waived in writing;
 - (E) Seller has demonstrated satisfaction of Seller's other obligations under this Agreement that commence prior to or as of the Delivery Term, including taking all necessary steps to allow the RECs from the Facility to be tracked in WREGIS and transferred to Buyer and all other similar requirements applicable to Seller to enable Buyer to use such RECs for its RPS requirements; and
 - (F) Seller has delivered Performance Assurance to Buyer.
- (iii) If Seller is unable to commence deliveries of Product under this Agreement within ninety (90) days of COD, Seller may request an extension of the Delivery Start Date by providing written notice to Buyer of the reasons for the delay and the term of the proposed extension no later than ten (10) Business Days prior to the expected Delivery Start Date. Buyer may grant the extension request at its sole discretion.
- (iv) Seller shall take all necessary actions to obtain final CEC Certification of the Facility and creation of retroactive WREGIS RECs within one hundred and eighty (180) calendar days of the COD.
- (c) Extension of End of Delivery Term. At its sole discretion, Buyer may provide notice to Seller no later than thirty-six (36) months prior to the end of Delivery Term of its intent to extend the Delivery Term of this Agreement ("Extended Delivery Term"). Buyer and Seller shall promptly enter into good faith negotiations on the price and other terms that will apply to any Extended Delivery Term. If the Parties have not reached agreement on such price and other terms within ninety (90) days after delivery of Buyer's notice under this Section 2.2(c), then neither Party shall have any further obligation to negotiate for an Extended Delivery Term and Seller may enter into negotiations and definitive agreements with one or more third parties for the sale of the Product or any component thereof with respect to the period occurring after the end of the Delivery Term.

ARTICLE 3: PURCHASE AND SALE

3.1 Purchase and Sale of Product.

- (a) Transaction. During the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at

the Delivery Point, and Buyer shall pay Seller for delivered Product in accordance with the terms of this Agreement, unless specifically excused by the terms of this Agreement. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, or sell Product from the Facility to a third party (Subject to Sections 3.2(b), 3.2(c), and 3.9(b)). Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term, except for Test Energy.

- (b) Title and Risk of Loss. Title to and risk of loss as to all Product purchased by Buyer shall pass from Seller to Buyer at the Delivery Point. Subject to Section 5.6(e), Seller shall be responsible for any costs, fees, taxes, assessments, or charges associated with the Product or the delivery of the Product up to the Delivery Point and Buyer shall be responsible for any costs, or charges imposed on or associated with the Product or the delivery of the Product at and from the Delivery Point. Seller warrants that it shall deliver all Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto created by any Person other than Buyer.

3.2 Contract Price. Buyer shall pay Seller [REDACTED] for Product delivered pursuant to this Agreement and Deemed Delivered Energy as adjusted pursuant to Section 5.6 of this Agreement plus the Seller SC Fee (“Contract Price”). The Contract Price shall be the total compensation owed by Buyer for the Product, adjusted as follows:

- (a) Test Energy Price. For all Test Energy, Seller’s full compensation for Product sold to Buyer shall be the net amount resulting from (i) the credits and other payments received by Seller as the Scheduling Coordinator as a result of Test Energy from the Facility delivered by Seller prior to the COD, including revenues associated with CAISO dispatches and (ii) the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Facility for, or attributable to, scheduling and deliveries from the Facility under this Agreement, which amount may result in a negative or positive value.
- (b) Excess Quantity. Buyer has the right, but not the obligation, to purchase any Product in excess of [REDACTED] of the Expected Energy Production for the then-current Contract Year (“Excess Quantity”). Buyer shall pay Seller [REDACTED] of the Contract Price for Excess Quantity. In each Contract Year, if the Facility achieves ninety percent (90%) of the Expected Energy Production, Seller shall (i) provide notice to Buyer of such achievement and (ii) request written confirmation from Buyer that Buyer intends to purchase any Excess Quantity. If Buyer does not respond within ten (10) Business Days, Seller shall have the right to sell any Excess Quantity that Buyer does not elect to purchase to a third party; provided that if Buyer is SC and does not elect to purchase the Excess Quantity, the Parties shall cooperate on settlements such that Buyer passes through to Seller any applicable CAISO costs and revenues.
- (c) Surplus Energy Price. If during any Settlement Interval, Seller delivers Product amounts in excess of the quantity of Energy that would be delivered consistent with the power rating of the Installed Capacity (“Surplus Energy”), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0). If the Settlement Point LMP is less than the Buyer RTM Bid Price during such Settlement Interval, Seller shall pay to Buyer an amount equal to the positive difference between the Buyer RTM Bid Price and the Settlement Point LMP multiplied by the amount of the uninstructed Surplus Energy in MWh.

3.3 Contract Quantity. The Contract Quantity for Product is set forth in Exhibit C.

- (a) Capacity.

- (i) As of the Execution Date, the Expected Initial Capacity of the Facility as of the Commercial Operation Date is 62.5 MW AC, net of all auxiliary loads, station electrical uses, and electrical losses occurring on the Facility side of the Settlement Point (the “Expected Initial Capacity”).
 - (ii) Seller shall use commercially reasonable efforts to ensure that the Installed Capacity of the Facility as of the Commercial Operation Date is same as the Expected Initial Capacity, but in no event shall be less than 61 MW AC or more than 64 MW AC, as measured at the Settlement Point. If applicable, Seller shall update the Contract Quantity table in Exhibit C to reflect the Facility’s Installed Capacity pursuant to Section 2.2(b)(ii)(A).
- (b) Test Energy. For a period of up to ninety (90) days prior to the Commercial Operation Date and up to the commencement of the Delivery Term, Buyer shall purchase and accept from Seller at the Delivery Point, the Product relating to any Test Energy pursuant to the terms of this Agreement; provided that the decision to produce and deliver Test Energy hereunder shall be at the sole discretion of Seller. All Test Energy shall be scheduled in accordance with Section 5.6.

3.4 **Guaranteed Energy Production.**

- (a) Guaranteed Energy Production. For each GEP Period throughout the Term, Seller shall deliver no less than eighty (80%) of (i) the sum of the Contract Quantities for the GEP Period, minus (ii) the Seller Excused Product (“Guaranteed Energy Production” or “GEP”).
- (b) Reporting. No less frequently than quarterly during each year, Seller shall calculate and provide notice to Buyer of the then-cumulative amount of the Seller Excused Product for such year, along with an explanation in reasonable detail of the calculation thereof based on historical Facility data, meteorological data, Product projections (including by the CAISO, if applicable) and other relevant data. The calculation shall be subject to Buyer’s reasonable review and approval.
- (c) Performance LDs. If Seller fails to meet the GEP, then within sixty (60) days after the end of the relevant GEP Period, Buyer shall notify Seller of the quantity of the shortfall (“GEP Shortfall”) and the amount of the performance liquidated damages. Within thirty (30) days after the receipt of notice of the shortfall, Seller shall pay Buyer Performance LDs calculated as: the positive difference obtained by subtracting the (i) Contract Price from (ii) the Replacement Price; multiplied by the GEP shortfall (“Performance LDs”). The Parties agree that, consistent with Section 9.3(b), the damages Buyer would incur due to Seller’s failure to meet the GEP would be difficult or impossible to predict with certainty and the Performance LD amount is a reasonable approximation of such damages.
- (d) Payment of LDs. If within ten (10) Business Days of receipt of notice of a GEP Shortfall, Seller does not deliver payment of the Performance LD amount to Buyer, Buyer shall be entitled to collect Performance LDs by electing, in its sole discretion, one or more of the following payment methods:
 - (i) drawing upon the Performance Assurance; and/or
 - (ii) setting off against any amounts owed to Seller by Buyer under this Agreement.
- (e) Minimum Deliveries. Notwithstanding any other provision of this Agreement, if in any consecutive twelve (12) calendar month period of the Delivery Term the actual Product deliveries plus Seller Excused Product are less than fifty percent (50%) of the monthly quantities for each month set forth in the Seller’s Annual Forecast (based on P-90 values) for that twelve (12) month period, Seller shall pay Buyer Performance LDs, calculated as: (i) fifty percent (50%) of the monthly quantities in Seller’s Annual Forecast (based on P-

90 values) minus Seller Excused Product for the twelve (12) month period minus the actual deliveries during that period, multiplied by (ii) the positive difference obtained by subtracting the (i) Contract Price from (ii) the Replacement Price. Buyer shall not be required to purchase Replacement Product. The payment of Performance LDs under Section 3.4(e) shall not excuse Seller's obligations under Section 3.4(c). The Parties agree that, consistent with Section 9.3(b), the damages Buyer would incur due to Seller's failure to meet the GEP would be difficult or impossible to predict with certainty and the Performance LD amount is a reasonable approximation of such damages.

- (f) Cure. Buyer's receipt of Performance LDs (whether paid by Seller, drawn from the Performance Assurance or set off against amounts owed to Seller), as applicable, shall cure the performance issue that triggered such remedy. The MWhs used in the calculation of Performance LDs which were paid to Buyer pursuant to Section 3.4(c) or 3.4(e), shall be treated as actual deliveries in the most recent month in which the applicable shortfall occurred when assessing Seller's compliance with its obligations under this Agreement including delivery obligations under Section 3.4(a). The quantities of energy for which Seller paid Performance LDs under Section 3.4(c) in the second Contract Year of a GEP Period shall be included in the calculation of the GEP Shortfall for the first Contract Year of the following GEP Period.

3.5 Environmental Attributes.

- (a) Purchase and Sale of Environmental Attributes. During the Term, Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Environmental Attributes associated with Delivered Energy, whether now existing or subsequently created by a Governmental Authority after the Execution Date. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to transfer all rights, title, and interest in and to the Environmental Attributes, whether now existing or that come into existence in the future, associated with the Delivered Energy. Seller shall transfer and make such Environmental Attributes available to Buyer as soon as practicable upon Seller's production of the Environmental Attributes.
- (b) Buyer's Right to Report Ownership of Environmental Attributes. Seller shall not report to any Person or entity that the Environmental Attributes belong to anyone other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.
- (c) Renewable Energy Credits. Seller shall, at its sole expense take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the applicable requirements of the California RPS and transferred within three (3) months of creation to Buyer for Buyer's sole benefit. Seller shall comply with all Applicable Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer. In addition:
 - (i) Seller shall cause REC transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Any fractional MWh amounts shall be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.
 - (ii) Due to the delay in the creation of WREGIS Certificates relative to the timing of the monthly invoice payment under this Agreement, Buyer may make an invoice payment for a given month before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules.

Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller.

- (iii) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in such calendar Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer's payment(s) to Seller under Article 4 and the Guaranteed Energy Production for the applicable GEP Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller's next monthly invoice to Buyer in accordance with Article 4, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller.
- (iv) Without limiting Seller's obligations, to the extent a WREGIS Certificate Deficit is caused by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.
- (v) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Agreement, the Parties shall promptly modify this Agreement as reasonably required (A) to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month, or (B) as may otherwise be reasonably appropriate to address such inconsistency.

3.6 Resource Adequacy.

- (a) Full Capacity Deliverability Status. Seller shall be solely responsible for and take all necessary actions to obtain a FDCC Finding for the Facility prior to the Delivery Start Date.
- (b) Resource Adequacy Requirements. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Facility's Installed Capacity, including Capacity Attributes, to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO and/or other regional entity may prescribe, including submission of a supply plan or Resource Adequacy plan. From the Execution Date, and for the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and executing any and all documents or instruments necessary to enable Buyer to use all of the Installed Capacity of the Facility, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy requirements during the Delivery Term.
- (c) Availability Standards. Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Availability Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards, if applicable ("Resource Adequacy Costs").
- (d) NQC. Seller shall use commercially reasonable efforts to (a) cause the CAISO to establish a reasonable NQC value for the Facility, and (b) maintain a reasonable NQC value for the Facility.

3.7 Compliance Cost Cap. If Seller establishes to Buyer's reasonable satisfaction that a change in Applicable Law has occurred after the Effective Date that results in Compliance Costs as defined in Section 3.7(a), then Seller's Compliance Costs during the Delivery Term shall be capped

annually at [REDACTED] per MW of Installed Capacity and in the aggregate throughout the Delivery Term at [REDACTED] per MW of Installed Capacity (“Compliance Cost Cap”).

- (a) Compliance Costs. This Section shall apply to Seller’s additional, reasonable out-of-pocket costs paid to third parties for obtaining, maintaining, conveying, or complying with: (i) CEC Certification, (ii) Environmental Attributes including WREGIS certificates, (iii) Capacity Attributes, and (iv) Sections 11.1(h)-11.1(k) (“Compliance Costs”). Compliance Costs includes only those new costs associated with the change in Applicable Law after the Execution Date that are in excess of the reasonably anticipated compliance costs as of the Execution Date.
- (b) Reimbursement. In the event that the Compliance Costs exceed the Compliance Cost Cap, Buyer shall either reimburse Seller for such Compliance Costs that exceed the Compliance Cost Cap, or excuse Seller from performing those obligations that cause the Compliance Costs to exceed the Compliance Cost Cap.
- (c) Notice. Seller shall notify Buyer within sixty (60) calendar days after the change in Applicable Law if it anticipates that its Compliance Costs will exceed the Compliance Cost Cap and provide an estimate of the Compliance Costs. Buyer shall notify Seller within ninety (90) calendar days of receipt of the notice whether Buyer (i) agrees to reimburse Seller for the additional costs, or (ii) waives Seller’s performance of such obligations.

3.8 Tax Credits and Incentives. Buyer acknowledges and agrees that all tax credits, deductions, and incentives related to the generation and sale of Energy or investments in the Facility shall be owned by Seller, including tax credits available under Section 45 of Subtitle A, Chapter 1A, Part IV and Section 48(a)(3)(A)(i) and 48(a)(5) of the Internal Revenue Code of 1986 or any successor law. Buyer agrees to cooperate with Seller, as may be necessary, to allow maximization of the value of, and realization of, all such tax credits and incentives; provided that Buyer shall not be required to incur additional costs or accept any diminution in value of its rights under this Agreement or of the Product purchased hereunder. In addition, Buyer shall not take any action (except as otherwise permitted under this Agreement), that would in any way reduce or eliminate the availability to Seller of any such tax credits and incentives. Notwithstanding the foregoing, Seller’s rights under this section shall not include anything that qualifies as Product (including any Environmental Attributes).

3.9 Expansion Facility and Expansion Facility Product.

- (a) Buyer’s Right of First Refusal. During the Term, Seller may, at its sole discretion, develop, finance, construct, and/or operate an Expansion Facility. Each time such a determination is made, Seller shall notify Buyer of such determination and shall offer, in writing, to sell the Expansion Facility Product to Buyer. The offer shall include the price to be paid by Buyer for the Expansion Facility Product, the term, and other principal terms and conditions of the proposed sale. If Buyer wishes to accept such offer to purchase all (but not less than all) of the Expansion Facility Product, Buyer shall so notify Seller within ninety (90) calendar days of its receipt of such offer. Buyer and Seller shall promptly thereafter enter into good faith negotiation of commercial modifications to this Agreement incorporating such Expansion Facility Product offer.
- (b) Buyer’s Right to Purchase Expansion Facility Product. If Buyer does not accept Seller’s offer to purchase the Expansion Facility Product within ninety (90) calendar days of receipt of Seller’s offer, Seller shall be deemed authorized to offer to sell that portion of the Expansion Facility Product to one or more third parties at a price and on other terms and conditions which, taken as a whole, are at least as favorable to Seller as the price and other terms and conditions set forth in Seller’s offer to Buyer. If Seller offers to disaggregate the Expansion Facility Product for the purpose of selling the same to

multiple independent buyers, Seller shall notify Buyer, in writing, of the terms and conditions of such offers, and Buyer shall again have the right of first refusal consistent with the terms set forth above for each of the lesser amounts being offered to the third parties. If Buyer does not purchase the Expansion Facility Product and Seller sells such Expansion Facility Product to a third party, Seller shall promptly certify, in writing, to Buyer that the terms and conditions of sale of such Expansion Facility Product to such third party, taken as a whole, are at least as favorable to Seller as the price and other terms and conditions set forth in Seller's offer to Buyer, and, subject to any confidentiality obligations that may apply to Seller, Seller shall provide the relevant final contract and any other supporting documentation for such certification by Buyer. Upon the sale of such Expansion Facility Product in compliance with this Agreement, Buyer shall have no further rights to be offered or to purchase such Expansion Facility Product. Buyer's refusal, in writing, of the Expansion Facility Product from one Expansion Facility shall not affect Buyer's right to purchase the Expansion Facility Product from a subsequently developed Expansion Facility under the terms of this Agreement. Notwithstanding any provision to the contrary herein, Seller shall not sell or provide the Expansion Facility Product to any third party, unless Seller can do so without compromising in any material way its ability to provide the Product or Expansion Facility Product, if any, to Buyer hereunder. The materiality of any such impact shall be determined by Buyer, acting in its reasonable discretion.

- 3.10 Refurbishment of the Facility.** During the Term, Seller may not refurbish the Facility, alter components of the Facility, or replace major components of the Facility where such action results in a total increased capacity higher than the Installed Capacity, without the prior written consent of Buyer. Buyer shall have the right, in its sole discretion, to accept or decline to permit any such refurbishment or alteration that may increase capacity of the Facility above the Installed Capacity. Nothing in this Section 3.10 is intended to limit Seller's ability to refurbish, repair, maintain, or replace any portion of the Facility where such actions will not increase the Facility's total generating capacity above the Installed Capacity.

ARTICLE 4: BILLING, PAYMENT, AND CERTIFICATION

4.1 Billing and Payment.

- (a) Monthly Invoices. Seller shall provide to Buyer no sooner than the tenth (10th) calendar day of each month an invoice for the Product and Deemed Delivered Energy for the prior month based upon meter data for Energy delivered in such calendar month, and for other amounts due to or from Seller hereunder. Except for Deemed Delivered Energy and Replacement Product, all Energy purchased under this Agreement must be measured by the Facility's CAISO revenue meter to be eligible for payment under this Agreement.
- (i) The "Monthly Payment" for each month will be an amount equal to the summation of the following for each Settlement Interval in such month:
- (A) the product of (I) the Energy delivered pursuant to this Agreement as measured by CAISO metering and settlement data ("Delivered Energy") for such Settlement Interval, multiplied by (II) the Contract Price, plus
 - (B) the product of (I) the Deemed Delivered Energy for such Settlement Interval, multiplied by (II) the Contract Price, minus
 - (C) the Net Buyer CAISO Settlements for such Settlement Interval, minus
 - (D) the Positive Uninstructed Deviation Credit, plus
 - (E) the Seller SC Fees.

$$\text{Monthly Payment} = \sum_{i=1}^n \{ [Delivered Energy MWh_i] \times [Contract Price_i \$] \} + ([Deemed Delivered Energy MWh_i] \times [Contract Price_i \$]) - [Net Buyer CAISO Settlements_i] - [Positive Uninstructed Deviation Credit] + [Seller SC Fees].$$

- (ii) The Invoice shall include:
- (A) the hourly quantities of Delivered Energy delivered in the prior month;
 - (B) a calculation of the Monthly Payment as set forth in Section 4.1(a)(i);
 - (C) credits for WREGIS Certificate Deficits pursuant to Section 3.5(c)(iii), if any;
 - (D) A calculation of the Deemed Delivered Energy for such month; and
 - (E) any other amounts due to or from Seller hereunder.
- (b) Payment. All invoices shall be due and payable on or before the thirtieth (30th) calendar day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day (“Due Date”). Any amount not paid by the Due Date shall be considered late and Buyer shall pay a Late Payment Penalty equal to a daily rate of five dollars and fifty cents (\$5.50) per one hundred thousand dollars (\$100,000) on the unpaid balance for a maximum period of ninety (90) days after the Due Date (“Late Payment Penalty”). For the avoidance of doubt, payment of the Late Payment Penalty by Buyer will not affect Seller’s rights under Article 9 of this Agreement.
- (c) City Vendor Requirements. Notwithstanding any other provision of this Agreement, Buyer shall not be deemed to be in default of this Agreement and no Late Payment Penalty shall be assessed if an invoice under this Agreement cannot be processed by Buyer due to Seller’s failure to comply with all applicable City requirements for City contractors, including but not limited to certification of vendors under Chapter 12 of the San Francisco Administrative Code, payment of business license fees or taxes, insurance requirements, registration in the City’s vendor payment processing system, or any other current or future City requirement for vendor payment processing. Seller understands and acknowledges that vendor certifications may include annual renewals and additional certification requirements may apply to assignees or changes in ownership or control of Seller.
- (d) Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with the Late Payment Penalty from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Buyer from subsequent payments. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 4.1(d) within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12)

months after the close of the month during which delivery of Product occurred, the right to payment for such delivery is waived.

- (e) CAISO Adjustments. If the CAISO makes any adjustment to any CAISO meter data for a given time period, the Parties shall share information necessary to revise the monthly invoices pursuant to Section 4.1 and Seller agrees that it shall submit revised monthly invoices covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the Seller receives such binding adjustment to the meter data.
- (f) Meter Malfunction. If Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the Facility meter(s). The tests shall be conducted by independent third-parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced at Seller's cost.

4.2 Designated Fund/Limited Obligations.

- (a) Auto-Appropriating Designated Fund. Buyer's payment obligations under this Agreement shall be paid from a SFPUC designated fund that will automatically appropriate CleanPowerSF revenues on an annual basis without further Buyer action and which shall be used solely for CleanPowerSF costs and expenses, including the obligations under this Agreement. Buyer agrees to establish CleanPowerSF rates and charges that are sufficient to maintain revenues necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for CleanPowerSF. Buyer shall provide Seller with reasonable access to account balance information with respect to the SFPUC designated fund upon request during the Delivery Term.
- (b) Limited Obligations. Buyer's payment obligations are special limited obligations of the Buyer payable solely from the revenues of CleanPowerSF. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of the SFPUC or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City.

4.3 Guaranteed Maximum Costs.

- (a) Controller Certification. The Buyer'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 Buyer are not authorized to request, and Buyer is not required to reimburse Seller for, commodities or services beyond the agreed upon Agreement scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of Buyer are not authorized to offer or promise, nor is Buyer 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.
- (b) Biennial Budget Process. For each City biennial budget cycle during the term of this Agreement, Buyer agrees to take all necessary action to include the maximum amount of the Buyer's payment obligations under this Agreement up to one hundred and fifteen percent (115%) of the Expected Annual Quantity in its budget submitted to the Board of Supervisors for that budget cycle.

ARTICLE 5: FACILITY DEVELOPMENT, OPERATION, AND MAINTENANCE

5.1 General Obligations.

- (a) Records. Seller shall keep complete and accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required by any Governmental Authority or Good Utility Practice.
- (b) Further Development Information. Seller shall provide to Buyer such other information regarding the permitting, engineering, construction or operations of the Facility as Buyer may from time to time reasonably request, subject to licensing or other restrictions of Seller or a third party with respect to confidentiality, disclosure or use; provided, nothing herein shall limit Buyer's right to obtain such information upon agreeing to confidentiality or signing a confidentiality agreement with regard to such information.
- (c) CAISO Agreements. Seller shall enter into any agreements with the CAISO required by the CAISO for generators delivering power into the CAISO-controlled grid.
- (d) Insurance. Seller shall obtain and maintain the policies of insurance in the amounts and with the coverages as set forth on Exhibit D.
- (e) Vendor Certification. Seller shall obtain, renew, and maintain, all City required vendor certifications and requirements during the Term of this Agreement.

5.2 The Facility. Throughout the Term of this Agreement, Seller covenants that at its sole cost and expense, unless otherwise specifically stated in this Agreement, it shall:

- (a) Construction. Design, develop, finance, and construct the Facility.
- (b) Prevailing Wages. Pay any person performing labor in the construction of the Facility not less than the prevailing wage rate for the county in which the Facility will be located, as determined by the California Department of Industrial Relations. Seller shall require in any contract or subcontract related to the construction of the Facility the payment of the prevailing wage rate for the work to be performed.
- (c) Compliance with Laws. Seek, obtain, maintain, and comply with all Applicable Laws, Permits, certificates, agreements, or other authorizations or approvals, which are required for the ownership, construction, operation and maintenance of the Facility and the delivery and sale of the Product pursuant to this Agreement.
- (d) Interconnection and Transmission. Arrange and pay for any and all necessary Electric System Upgrades, obtain any required regulatory approvals, and execute all necessary agreements sufficient to allow Seller to interconnect the Facility to the CAISO grid and deliver the Product to the Delivery Point by the Delivery Start Date in accordance with this Agreement. Seller shall comply with all applicable requirements, rules, contractual obligations, and Good Utility Practice to maintain any Interconnection Facilities and to cause delivery of the Product to Buyer.
- (e) FCDS. Ensure that the interconnection, distribution and/or transmission arrangements for the Facility provide for Full Capacity Deliverability Status as of the Delivery Start Date.
- (f) Notice of Expected Initial Capacity. If applicable, within fifteen (15) calendar days of the later of (i) obtaining the authority to construct for the Facility from the applicable Governmental Authority or (ii) Seller's receipt of the system impact and facility cost studies from the PTO, Seller shall provide written notice to Buyer of any changes to the Initial Capacity of the Facility as set forth in Exhibit B (which shall be subject to the Capacity limits described in Section 3.3(a)(ii)) and specifying other material Facility design details.
- (g) RPS and Green-e® Certification. Prior to the Delivery Start Date and throughout the Delivery Term, take all actions necessary to obtain and maintain for the Facility (i) CEC

Certification, (ii) tracking and transfer of RECs associated with the Product in WREGIS, and (iii) Green-e® Energy eligibility for renewable energy and greenhouse gas emissions as administered by the Center for Resource Solutions.

- (h) Battery Storage. At the request of Buyer at any time during the Term, Seller shall in good faith evaluate and consider proposals for adding a battery storage unit(s) to the Facility, provided that Seller shall not be required to add any such storage unit(s) to the Facility unless and until Seller, Buyer and any Lenders each (in their sole and absolute discretion) approves the technical details of such unit(s) and appropriate amendments to this Agreement related to such unit(s), including additional compensation related to such unit(s).

5.3 Facility Construction and Milestones.

- (a) Time is of the Essence. The Parties agree that time is of the essence in the performance of this Agreement. The Parties further agree that the Milestones must be achieved in accordance with Section 5.4 or Buyer shall suffer damages which are difficult to estimate with reasonable certainty. Seller shall provide Buyer with any requested information to support the achievement of Milestones within ten (10) Business Days of any request by Buyer.
- (b) Milestone Schedule. Seller covenants that it shall diligently pursue to completion each of the following Milestones:
 - (i) By [REDACTED] Seller shall have received all final, and non-appealable discretionary authorizations, approvals, waivers, exceptions, variances, filings, permits, orders, and licenses, including all actions and approvals required under applicable environmental laws, that are required for the construction, of the Facility (the “Permitting Milestone”);
 - (ii) By [REDACTED] Seller shall have commenced construction of the Facility (the “Construction Milestone”) as evidenced by mobilization at the Site by Seller or its agents, including site preparation at a sufficient level to reasonably demonstrate that Seller has commenced preparations for construction of the Facility, and provided a notice to Buyer substantially in the form and substance to that attached as Exhibit E;
 - (iii) By [REDACTED] Seller shall have caused on-Site delivery of major components of the Facility, including but not limited to modules and inverters (“Major Equipment Milestone”); and,
 - (iv) By September 30, 2020, Seller shall achieve Commercial Operation (the “Commercial Operation Milestone”).
- (c) Quarterly Progress Report. Seller shall provide to Buyer a Quarterly Progress Report concerning the progress towards construction and completion of each of the Milestones (including whether Seller has met or is on target to meet each of the Milestones), which shall be substantially similar in form and substance to that attached as Exhibit F, and include such additional information as reasonably required by Buyer. Seller shall also agree to meetings between representatives of Buyer and Seller to review such Progress Reports and discuss Seller’s construction progress, as Buyer may request from time to time.
- (d) Certification of Completion of Milestone. Except as provided in Section 5.3(f) below, within five (5) Business Days of the completion of each Milestone, Seller shall provide a certification to Buyer (along with any relevant supporting documentation), stating Seller’s achievement or satisfaction of each such Milestone.

- (e) Notice of Failure to Achieve Milestone. Upon becoming aware that it shall, or is reasonably likely to, fail to achieve any Milestone by the required date for any reason including a Force Majeure event, Seller shall notify Buyer in writing as soon as is reasonably practical. Such notice shall provide information regarding the cause of the delay, provide a revised estimated date for achievement of the Milestone(s), and otherwise describe Seller's plan for meeting the Milestone(s). Seller's notice shall also explain any impact such delay may or shall have on any other Milestone, and measures to be taken to mitigate such impact.
- (f) Notice of Commercial Operation Date and COD Certification. Seller shall provide written notice to Buyer thirty (30) calendar days in advance of the anticipated Commercial Operation Date and shall provide Buyer with written weekly updates thereafter detailing the status of Seller's progress in achieving Commercial Operation. On the Commercial Operation Date, Seller shall deliver to Buyer by electronic mail or facsimile, with originals to follow by hand-delivery, courier or mail service, the COD Certification in the form attached hereto as Exhibit G-2.

5.4 Milestone Excused Delay and Liquidated Damages.

- (a) Permitted Extensions to Milestones. The following events constitute "Permitted Extensions":
 - (i) In the event that a Force Majeure event causes a delay to the achievement of any Milestone, each Milestone deadline may be extended by that number of calendar days the applicable Force Majeure event actually delays completion of such Milestone, provided that Seller works diligently to resolve the effect of the Force Majeure event on the achievement of the Milestone. Notwithstanding the foregoing, in no event shall the combined extensions under this Section 5.4(a) for any individual Milestone arising from Force Majeure events exceed six (6) months in the aggregate.
 - (ii) If Seller has used commercially reasonable efforts (including Seller's timely filing of required documents, payment of all applicable fees, and compliance with all applicable CAISO, PTO, FERC, CEC, or other requirements of a Governmental Authority, as applicable), including efforts to obtain Facility interconnection, to meet the Milestones, but such Milestones cannot be met and Seller has worked diligently to resolve the delay, Seller may request Milestone extensions for up to six (6) months in the aggregate, which Buyer may grant in its reasonable discretion.
- (b) Notice. If Seller claims a Permitted Extension, Seller shall provide Buyer with sixty (60) days' notice prior to the applicable Milestone, which shall clearly identify the grounds for the requested extensions and include information necessary for Buyer to verify the length of and grounds for the extension. If the delay is due to Force Majeure and sixty (60) days' notice is impracticable or impossible, Seller shall provide notice as soon as possible after the occurrence of the Force Majeure event.
- (c) Maximum Delay.
 - (i) In no event shall the combined Permitted Extensions under this Section 5.4 for all Milestones combined exceed twelve (12) months in the aggregate.
 - (ii) If on any given day two or more events cause delay to a Milestone at the same time (i.e., occur concurrently), Seller shall only be entitled to one (1) day of delay for such day.

- (d) Daily LD Amount. Seller shall be liable to Buyer for liquidated damages for each day or portion of a day of unexcused delay in a Milestone in an amount equal to the Daily LD Amount. Buyer shall promptly provide invoices to Seller for Daily LD Amounts for the relevant number of unexcused days of delay on a monthly basis. If Buyer does not receive payment of the invoice from Seller within five (5) Business Days after Seller's receipt of the invoice from Buyer, at Buyer's sole discretion, Buyer shall be entitled to collect the Daily LD Amount by one or more of the following:
- (i) drawing upon the Development Assurance; and/or
 - (ii) setting off against any amounts owed to Seller by Buyer under this Agreement.
- (e) No Limitation of Damages. The Parties agree that Buyer's receipt of the Daily LD Amount shall (i) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Article 9, and (ii) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's termination right pursuant to Section 5.4(g) or Article 9. The Parties further agree that, consistent with Section 9.3(b), the damages Buyer would incur due to Seller's failure to meet the Milestone(s) would be difficult or impossible to predict with certainty and the Daily LD Amount is a reasonable approximation of such damages.
- (f) Refund of Daily LD Amounts. If Seller achieves Commercial Operation by the Commercial Operation Milestone, all Daily LD Amounts paid by Seller shall be refunded to Seller. Seller shall include a request for refund with the first invoice to Buyer.
- (g) Termination of Agreement. Buyer may terminate this Agreement by written notice to Seller if:
- (i) the combined Permitted Extensions for all Milestones exceed twelve (12) months in the aggregate, or
 - (ii) Seller fails to pay, or discontinues paying, any or all of the Daily LD Amount when due and Buyer cannot obtain such amounts by drawing upon the Development Assurance and/or setting off against any amounts owed to Seller by Buyer under this Agreement, or
 - (iii) Seller continues to timely pay Daily LD Amounts, but unexcused delays and Permitted Extensions exceed twelve (12) months in the aggregate.
- (h) Damage Payment. Upon termination of this Agreement under Section 5.4(g), Buyer shall be entitled to collect the Damage Payment within ten (10) days of Seller's receipt of an invoice from Buyer by one or more of the following:
- (i) drawing upon the Development Assurance;
 - (ii) receiving payments from Seller within ten (10) days of receipt of an invoice from Buyer;
 - (iii) setting off against any amounts owed to Seller by Buyer under this Agreement.
- Receipt of the Damage Payment shall be Buyer's sole and exclusive remedy in the event of a Buyer termination under Section 5.4(g).
- (i) Additional Extension. Notwithstanding the foregoing, the Parties may mutually agree in writing to an extension of the Commercial Operation Milestone of up to thirty (30) days beyond the maximum twelve (12) month period for Permitted Extensions with payment of the Daily LD Amount by Seller. Buyer may not terminate this Agreement for failure to achieve the Commercial Operation Milestone during the mutually agreed upon extension period so long as Seller continues to pay the Daily LD Amount.

5.5 Operation and Maintenance.

- (a) Operation and Maintenance. Seller shall be solely responsible for the ownership, operation, maintenance, and repair of the Facility in accordance with this Agreement, all Applicable Laws, the requirements of the CAISO, NERC and WECC, all applicable contractual obligations and Permits, and in accordance with Good Utility Practice, and shall be solely responsible for all associated costs and expenses. In the event Seller requires any data or information from Buyer in order to comply with any Applicable Law, including the requirements of CAISO, NERC and WECC, relating to the Facility, then Seller shall request in writing such data from Buyer no less than forty-five (45) days prior to Seller's requested date of Buyer's response; provided that if Seller has less than forty-five (45) calendar days prior notice of the need for such data, Seller shall request in writing such data from Buyer as soon as reasonably practicable. Buyer shall make a good faith effort to provide such data and/or information within the timeframe specified in writing by Seller or as soon thereafter as reasonably practicable.
- (b) CAISO and WECC Requirements and Good Utility Practice. Each Party shall perform in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs, and protocols of the CAISO, (ii) WECC scheduling practices, and (iii) Good Utility Practice.
- (c) Start-ups and Shut-downs. Seller shall coordinate all Facility start-ups and shut-downs, in whole or in part, with Buyer in accordance with CAISO scheduling protocols and the reasonable protocols established by Buyer that are not inconsistent with the CAISO Tariff and CAISO procedures.
- (d) Metering. All Energy from the Facility must be delivered through a CAISO revenue meter dedicated solely to the Facility. The meter data will account for transformer losses and will be programmed to reflect losses to the Delivery Point, consistent with CAISO requirements. Seller shall (subject to Section 4.1(f)) bear all costs relating to all metering equipment installed to accommodate the Facility. Seller shall grant Buyer read-only rights to retrieve the meter reads from the Customer Market Results Interface, via website and direct download, and directly from the CAISO meter(s) at the Facility site through both (i) physical access and (ii) remote electronic read-only access. Seller shall maintain an updated record of programmed meter parameters (such as channel configuration and other relevant settings) that is accessible and reasonably acceptable to Buyer. In addition, Seller shall provide all meter data to Buyer in a form reasonably acceptable to Buyer.
- (e) Facility Data. Seller shall take all steps necessary to authorize Buyer to obtain read-only access to (i) all Customer Market Results Interface data for the Facility, including market awards, expected energy and energy forecasts, (ii) all Scheduling Infrastructure Business Rules energy bids for the Facility, and (iii) all Market Results Interface-Settlements meter data for the Facility. If requested by Buyer, Seller shall provide access to Automated Dispatch System data for the Facility through the Seller's Scheduling Coordinator or scheduling agent in a format reasonably acceptable to Buyer.
- (f) Shared Facilities. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; provided that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

5.6 Scheduling, Forecasts, and Outages.

- (a) Scheduling Coordinator Services.

- (i) Seller shall provide (or cause to be provided) all required Scheduling Coordinator services for the Facility. [REDACTED]
 - (ii) Upon ninety (90) days prior written notice to Seller, Buyer may elect to become the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services for the Facility and for the delivery of Product to and from the Delivery Point. Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents reasonably necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility. The Parties agree that, as of the date that Buyer assumes Scheduling Coordinator responsibilities pursuant to this Section, the amendments to this Agreement set forth in Exhibit N shall automatically take effect without further action of the Parties and Buyer shall not be obligated to pay the Seller SC Fee to Seller.
 - (iii) Each Party shall use commercially reasonable efforts as necessary to facilitate the other Party's efforts to meet its obligations under applicable CAISO, PTO, FERC, CEC, or other Governmental Authority requirements.
- (b) Day-Ahead Market Scheduling. For any period of time for which the DA Percentage is greater than zero percent (0%), Seller shall submit Economic Bids at the Settlement Point in the Day-Ahead Market for volumes equal to the DA Percentage multiplied by the Day-Ahead Forecast for the applicable period and specifying a bid price equal to the Buyer DAM Bid Price. For any period of time for which the DA Percentage is zero percent (0%), Seller shall not submit Economic Bids at the Settlement Point in the Day-Ahead Market. Notwithstanding anything to the contrary in this Agreement, the DA Percentage shall be consistent with any applicable RA Capacity obligations incurred on behalf of the Facility.
- (c) Real-Time Market Scheduling. Seller shall submit Economic Bids or Self-Schedules at the Settlement Point into the Real-Time Market (including both the FMM and the RTD) at the Buyer RTM Bid Price and specifying volumes equal to the Final Output Estimate for the applicable Real-Time Market period.
- (d) Changes to DA Percentage, the Buyer RTM Bid Price, and/or the Buyer DAM Bid Price. Buyer may change the DA Percentage, the Buyer RTM Bid Price, and/or the Buyer DAM Bid Price once every thirty (30) days by providing written notice to Seller at least five (5) Business Days prior to the effective date of such change, which notice must identify the new value(s) and the effective date for the change; provided, however, the DA Percentage must be greater than or equal to zero percent (0%) and less than or equal to one-hundred percent (100%).
- (e) CAISO Costs and Revenues.
- (i) Seller shall be responsible for:
 - (A) The CAISO Resource Adequacy Costs associated with providing Buyer with replacement Resource Adequacy in the event that Seller is deficient meeting its Resource Adequacy obligations due to Facility outages or derates or fails to comply with its obligations under Section 3.6(b).
 - (B) CAISO charges, costs, and penalties resulting from (1) the unavailability of the Facility, (2) Seller's failure to notify CAISO of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), (3) any other failure by Seller to abide by the CAISO Tariff, this Agreement, or with any CAISO dispatch instruction or Curtailment Order, or the Forced Outages notice provision in Section 5.6(k), and (4) penalties related to non-performance with respect to Ancillary Services

and Residual Unit Commitment awards due to conditions within Seller's control. Notwithstanding the foregoing, Buyer shall be responsible for any non-performance penalties due solely to decreases in solar irradiance.

- (C) If during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon Seller or the Facility due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be Seller's responsibility.
 - (D) Seller shall be responsible for all CAISO fees, charges, and penalties imposed as a result of deviations between RTD Scheduled Energy and Delivered Energy during any Settlement Interval, except for those charges due solely to real-time uninstructed Energy caused by decreases in solar irradiance.
- (ii) Buyer shall receive all CAISO net revenues, credits, and other payments (such as Bid Cost Recovery) associated with the Facility for each Settlement Period and shall be responsible for all other CAISO costs, fees, and charges, including the Scheduling Coordinator ID Charge, but excluding those set forth in Section 5.6(e)(i), ("Net Buyer CAISO Settlements") and as identified in Exhibit M.
 - (iii) Exhibit M sets forth an initial allocation of responsibility for Charge Codes consistent with this Section 5.6(e). Following the Execution Date, the Parties shall cooperate to prepare and mutually agree upon a written protocol (the "Net Buyer CAISO Settlements Protocol") to set forth appropriate administrative details to carry out the calculation and allocation of CAISO costs and CAISO revenues described in this Section 5.6(e). In the event that the Charge Codes agreed to by the Parties in the Net Buyer CAISO Settlements Protocol are amended or deleted or new CAISO charges, costs, revenues, penalties, or fees are implemented, the Party who is the SC at the time that Charge Codes are amended, deleted, or added shall promptly notify the other Party and the Parties shall mutually agree upon adjustments to the Net Buyer CAISO Settlements Protocol as necessary to allocate the new or amended CAISO costs and revenues in a manner that is consistent with the intent of this Section 5.6(e).
- (f) Positive Uninstructed Deviations. If the RTD Price is lower than the Buyer RTM Bid Price in any Settlement Interval, Seller shall credit Buyer on the monthly invoice for the product of (1) Buyer RTM Bid Price minus the RTD Price, and (2) the quantity of Energy produced by the Facility in excess of the CAISO dispatch instruction (positive uninstructed deviations) for that Settlement Interval ("Positive Uninstructed Deviation Credit").
 - (g) CAISO Charges. Each Party shall use commercially reasonable efforts to cooperate with the other Party to allow that Party to comply with any obligations, and minimize any potential liability, it may have under the CAISO Tariff in relation to Product under this Agreement.
 - (h) Variable or Intermittent Energy Resource Programs. During the Term, Buyer may direct Seller to participate in any CAISO program for scheduling variable or intermittent energy resources at Buyer's sole cost to the extent that such participation is consistent with Seller's obligations under this Agreement and the CAISO Tariff. Buyer shall use commercially reasonable efforts to facilitate Seller's participation in such programs.
 - (i) Forecasts. Seller shall use generally accepted industry standards to produce the forecasts described hereunder. If Seller does not follow Section 4.8.2 of the CAISO Tariff with respect to forecasting, then upon Buyer's written request, Seller shall also retain, at

Seller's expense, a third-party forecasting service reasonably acceptable to Buyer to produce such forecasts, in addition to those forecasts produced by Seller. Seller shall provide identical input data to such third-party service provider as are used to produce Seller's own forecast. Such forecast(s) shall be provided to Buyer in a manner reasonably acceptable to Buyer. If, during any given calendar month, the forecast error of such third-party service is larger than the forecast error of the forecasts produced by the Seller, determined as the sum of squared errors between the Seller Day-Ahead Forecast, for each respective forecast, and actual hourly production, then Buyer shall reimburse Seller for such third-party forecasting service costs.

- (i) No later than thirty (30) calendar days prior to the end of each Contract Year, Seller will provide a forecast of available capacity and production ("Annual Forecast") detailing hourly expected available generation and monthly capacity and all proposed Planned Outages for the next Contract Year. Within five (5) Business Days following any change to the Planned Outage schedule for such Contract Year, Seller will provide notice to Buyer with an updated Annual Forecast reflecting the updated Planned Outage schedule, which will automatically supersede the prior Annual Forecast for such Contract Year. During the Delivery Term of this Agreement, Seller shall not schedule Planned Outages of more than twenty-four (24) hours during the period of reliability accounting (initially the period between June 1st and September 30th but subject to changes at Buyer's discretion in order to conform to the CAISO's Availability Assessment procedures).
- (ii) No later than ten (10) calendar days prior to the first day of each month of the Delivery Term, Seller shall provide an electronic update, in a format specified by Buyer, to the Annual Forecast for that calendar month ("Monthly Forecast"). The Monthly Forecast shall include hourly available capacity and expected generation and all Planned Outages.
- (iii) No later than seven (7) calendar days prior to the first day of each week of the Delivery Term, Seller shall provide a weekly forecast of available capacity and production and any changes in Planned Outages ("Weekly Forecast"). The Weekly Forecast shall include hourly available capacity and generation and all Planned Outages.
- (iv) By 5:30 PM Pacific Time on the Business Day immediately preceding the date of delivery, Seller shall provide a forecast of available capacity and production for each hour of the date of delivery ("Seller Day-Ahead Forecast"). The Seller Day-Ahead Forecast shall include hourly available capacity and generation and all Planned Outages.
- (j) Planned Outages. If Buyer requests a change to the scheduled date of any Planned Outage, Seller shall consider such request in good faith and notify Buyer of its decision within seven (7) calendar days of receipt of Buyer's request.
- (k) Forced Outages. Forced Outages shall be reported by Seller to Buyer verbally as soon as practicable and in writing no more than twenty-four (24) hours thereafter. Written notice of a Forced Outage lasting longer than one (1) hour shall include the type of outage, start date and start time of outage, estimated or actual end date and end time of the outage, a text description of the cause of the outage and any other information the Seller deems necessary for the Buyer to understand the causes and impact of the outage. Seller shall notify Buyer as soon as practicable, whenever the Facility is returned to service.
- (l) Curtailment.
 - (i) Mandatory Curtailment Periods. Seller shall reduce delivery amounts as directed by the Reliability Coordinator, CAISO, PTO, or any successor thereto pursuant

to a Curtailment Order. Except as set forth in Section 5.6(l)(ii)(C), Buyer shall not be required to pay Seller for the Product that Seller could have delivered to Buyer but for such Curtailment Order.

- (ii) Deemed Delivered Energy.
 - (A) If a Bid Curtailment occurs, in Seller's monthly invoice Seller will reasonably calculate consistent with Good Utility Practices the difference in MWh between the Final Output Estimate and actual Delivered Energy attributable to such Bid Curtailment ("Deemed Delivered Energy"). The Parties shall share any documentation necessary to create or support such calculation. Seller shall include supporting documentation and calculations for the determination of Deemed Delivered Energy with the monthly invoice.
 - (B) If either Party believes that the Final Output Estimate is an inaccurate estimate of the quantity of Energy the Facility reasonably could have generated based on Facility availability, insolation, and other relevant meteorological conditions, the Parties will mutually agree upon the use of (1) the Day-Ahead Forecast, (2) the Seller Day-Ahead Forecast, (3) the third-party version of the Seller Day-Ahead Forecast (as defined in section 5.6(i)), or (4) another mutually agreed upon methodology to determine the Final Output Estimate.
 - (C) In the event of an overlapping Bid Curtailment and a Curtailment Order, Seller shall exclude Energy curtailed during such Curtailment Order time period from the calculation of Deemed Delivered Energy. Notwithstanding the foregoing, if a Bid Curtailment and a CAISO system-wide Overgeneration Curtailment Order occur in the same settlement interval, the curtailment shall be treated as a Bid Curtailment for the purpose of the calculation of Deemed Delivered Energy.
 - (D) In addition to paying Seller for all Delivered Energy hereunder, Buyer shall pay Seller the Contract Price for Deemed Delivered Energy.

ARTICLE 6: DEVELOPMENT AND PERFORMANCE ASSURANCE

6.1 Grant of Security Interests/Remedies.

- (a) To secure its obligations under this Agreement hereunder, the Posting Party hereby grants to the Secured Party a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Development Assurance and Performance Assurance posted in accordance with this Agreement in the form of cash collateral or cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the Secured Party. Within thirty (30) calendar days of the delivery of the Development Assurance or Performance Assurance, as applicable, the Posting Party agrees to take such action as the Secured Party reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Development Assurance or Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof, respectively.
- (b) Upon or any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date, the Secured Party, as the Non-Defaulting Party, may do any one or more of the following:

- (i) exercise any of the rights and remedies of a secured party with respect to all Development Assurance or Performance Assurance, as applicable, including any such rights and remedies under the law then in effect;
 - (ii) draw on any outstanding Letter of Credit or Guaranty issued for its benefit and retain any cash held by the Secured Party as Development Assurance or Performance Assurance; and
 - (iii) liquidate all Development Assurance or Performance Assurance, as applicable, then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Posting Party, including any equity or right of purchase or redemption by the Posting Party.
- (c) The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Posting Party's obligations under the Agreement (the Posting Party remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

6.2 Seller Development Assurance and Seller Performance Assurance.

- (a) Provision of Security by Seller. Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:
- (i) Seller Development Assurance. [REDACTED]
Seller shall post Seller Development Assurance in the form of cash, a Letter of Credit, Performance Bond, or Guaranty within ten (10) calendar days following the Execution Date until such time as Seller posts the Seller Performance Assurance pursuant to Section 6.2(a)(ii) below with Buyer.
 - (ii) Seller Performance Assurance. [REDACTED]
[REDACTED] Seller shall post Seller Performance Assurance in the form of cash, a Letter of Credit, or a Guaranty from the Commercial Operation Date and ending at the expiration of the Delivery Term; provided that, with Buyer's consent, Seller may elect to apply a portion of the Seller Development Assurance toward the Seller Performance Assurance. The amount of the Seller Performance Assurance shall be adjusted on the first day of each Contract Year to the Seller Performance Assurance amount corresponding to the applicable Contract Year, as set forth in Exhibit C.
- (b) No Limitation of Damages. The amount of Seller Development Assurance and Seller Performance Assurance required under this Agreement shall not be deemed a limitation of damages.
- (c) Use of Seller Development Assurance. Buyer shall be entitled to draw upon the Seller Development Assurance posted by Seller for any reason permitted under this Agreement until the Seller Development Assurance is exhausted. Buyer shall also be entitled to draw upon the Seller Development Assurance for any Damage Payment arising upon Buyer's declaration of an Early Termination Date prior to the Commercial Operation Date.
- (d) Termination of Seller Development Assurance. Buyer shall return the Seller Development Assurance to Seller less any amounts drawn in accordance with this Agreement: (i) within thirty (30) days after Seller posts Seller Performance Assurance with Buyer or (ii) within sixty (60) days after early termination of the Agreement pursuant to Section 2.1(c), Section 5.4(g), or Article 9. The Seller Development

Assurance (or portion thereof) shall be returned unless, with Buyer's consent, Seller elects to apply the Seller Development Assurance (or a portion thereof) toward the Seller Performance Assurance.

- (e) Use of Seller Performance Assurance. Buyer shall be entitled to draw upon the Seller Performance Assurance posted by Seller for any reason permitted under this Agreement, including Buyer's declaration of an Early Termination Date after the Commercial Operation Date.
- (f) Return of Seller Performance Assurance. Buyer shall return the unused portion of Seller Performance Assurance to Seller within thirty (30) days after the following has occurred:
 - (i) the Term of the Agreement has ended, or an Early Termination Date has occurred; and
 - (ii) all payment obligations of Seller arising under this Agreement, including payments pursuant to a Damage Payment, Termination Payment, indemnification payments, or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

6.3 Buyer Development and Buyer Performance Assurance.

- (a) Provision of Security by Buyer: Buyer agrees to deliver collateral to secure its obligations under this Agreement as follows:
 - (i) Buyer Development Assurance: [REDACTED]
[REDACTED] Subject to Sections 6.3(b) and (c), Buyer shall post Buyer Development Assurance in the form of cash, a Letter of Credit, or Guaranty as provided in Section 6.3(d) or until such time as Buyer posts the Buyer Performance Assurance pursuant to Section 6.3(a)(ii) below.
 - (ii) Buyer Performance Assurance. [REDACTED]
[REDACTED] Subject to Sections 6.3(b) and (c), Buyer shall post Buyer Performance Assurance in the form of cash, a Letter of Credit, or a Guaranty from the Commercial Operation Date and ending at the expiration of the Delivery Term; provided that, with Seller's consent, Buyer may elect to apply a portion of the Buyer Development Assurance toward the Buyer Performance Assurance. The amount of the Buyer Performance Assurance shall be adjusted on the first day of each Contract Year to the Buyer Performance Assurance amount corresponding to the applicable Contract Year, as set forth in Exhibit C.
- (b) Buyer shall not be required to post Buyer Development Assurance or Buyer Performance Assurance if Buyer obtains and maintains an Investment Grade Credit Rating during the Term of this Agreement.
- (c) If Buyer does not have an Investment Grade Credit Rating, Buyer shall be required to post Buyer Development Assurance or Buyer Performance Assurance if Buyer fails to meet either of the following covenants based on Buyer's annual audited financial statements ("Buyer Financial Covenants"):
 - (i) [REDACTED] Adjusted Days of Liquidity on Hand.
 - (ii) An Equity to Assets Ratio [REDACTED]
[REDACTED]

- (d) Annual Review. Seller shall review Buyer's compliance with the Buyer Financial Covenants on an annual basis based on Buyer's most recent audited annual financial statements. If Buyer fails to meet either of the Buyer Financial Covenants, Seller shall provide notice to Buyer and Buyer shall provide Buyer Development Assurance or Buyer Performance Assurance within fifteen (15) Business Days of receipt of such notice. If Buyer meets the Buyer Financial Covenants based on its audited annual financial statements in the following Fiscal Year, Buyer shall have no obligation to post Buyer Development Assurance or Buyer Performance Assurance for that Fiscal Year and Seller shall return the unused portion of the Buyer Development Assurance or Buyer Performance Assurance within thirty (30) days of the date that Seller provides notice to Buyer that it has met the Buyer Financial Covenants.
- (e) No Limitation of Damages. The amount of Buyer Development Assurance or Buyer Performance Assurance required under this Agreement shall not be deemed a limitation of damages.
- (f) Use of Buyer Development Assurance. Seller shall be entitled to draw upon the Buyer Development Assurance posted by Buyer for any reason permitted under this Agreement until the Buyer Development Assurance is exhausted.
- (g) Termination of Buyer Development Assurance. Seller shall return the Buyer Development Assurance to Buyer less any amounts drawn in accordance with this Agreement: (i) within thirty (30) days if Buyer has complied with the Buyer Financial Covenants based on the annual review of the Buyer Financial Covenants, (ii) within thirty (30) days after Buyer posts Buyer Performance Assurance with Seller, or (iii) within sixty (60) days after early termination of the Agreement pursuant to Section 2.1(c), Section 5.4(g), or Article 9. The Buyer Development Assurance (or portion thereof) shall be returned unless, with Seller's consent, Buyer elects to apply the Buyer Development Assurance (or a portion thereof) toward the Buyer Performance Assurance.
- (h) Use of Buyer Performance Assurance. Seller shall be entitled to draw upon the Buyer Performance Assurance posted by Buyer for any reason permitted under this Agreement, including Seller's declaration of an Early Termination Date.
- (i) Return of Buyer Performance Assurance. Seller shall return the unused portion of Buyer Performance Assurance to Buyer within thirty (30) days after the following has occurred: (i) Buyer has complied with the Buyer Financial Covenants based on the annual review of the Buyer Financial Covenants, or (ii) the Term of the Agreement has ended, or an Early Termination Date has occurred and all payment obligations of Buyer arising under this Agreement, including payments pursuant to a Termination Payment, indemnification payments, or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

6.4 Letter of Credit. Development Assurance or Performance Assurance provided in the form of a Letter of Credit shall be substantially in the form set forth in Exhibit J, or another form reasonably acceptable to the Secured Party, subject to the following provisions:

- (a) Renewal of Letter of Credit. If a Posting Party has provided a Letter of Credit pursuant to any of the applicable provisions in this Article 6, then the Posting Party shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis.
- (b) Failure of Letter of Credit and Cure. In the event the issuer of such Letter of Credit at any time: fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, becomes Bankrupt, indicates its intent not to renew such Letter of Credit, or fails to honor the Secured Party's properly documented request to draw on such Letter of Credit, the Posting Party shall cure such occurrence by complying with either (i) or (ii) below in an amount equal to the outstanding Letter of Credit, and by completing the action within ten (10) Business Days after the date of the Secured Party's notice to the Posting Party of an

occurrence listed in this subsection (Posting Party's compliance with either (i), (ii), or (iii) below is considered the "Cure"):

- (i) providing a substitute Letter of Credit that is issued by an Eligible LC Bank other than the bank which is the subject of the Secured Party's notice to the Posting Party in this section 6.4(b);
 - (ii) providing a Guaranty; or
 - (iii) posting cash.
- (c) Failure to Cure. If the Posting Party fails to cure, or if such Letter of Credit expires or terminates without a full draw thereon by the Secured Party or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then the Posting Party shall be deemed to have failed to meet the collateral requirements of Section 6.2 or 6.3 and Secured Party may declare an Event of Default as set forth in Article 9.
- (d) Letter of Credit Costs. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by the Posting Party.

6.5 Guaranty. The Posting Party shall replace the Guaranty in the event that the Posting Party's Guarantor fails to meet the required criteria for a Guarantor under this Agreement within five (5) Business Days following the Secured Party's written request for replacement of the Guaranty. Posting Party shall provide for the benefit of the Secured Party either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit. If the Posting Party fails to provide replacement Development or Performance Assurance as required in this Section 6.5, then the Secured Party may declare an Event of Default as set forth in Article 9.

ARTICLE 7: FINANCIAL STATEMENT

7.1 Seller's Obligations. If requested by Buyer, Seller shall deliver to Buyer (i) within six (6) months following the end of each fiscal year, a copy of Seller's and Seller's Parent's annual report containing audited consolidated financial statements for such fiscal year (or if not available, unaudited consolidated financial statements for such fiscal year), and (ii) within sixty (60) calendar days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of Seller's and Seller's Parent's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases, the statements shall be for the most recent accounting period and shall be prepared in accordance with GAAP and shall be certified by the Chief Financial Officer or equivalent officer of Seller on behalf of Seller and of Seller's Parent on behalf of Seller's Parent; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not constitute an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements. If the financial statements of Seller's Parent are publicly available electronically on its website, Seller is deemed to have met the requirements of this Section 7.1.

7.2 Buyer's Obligations. If requested by Seller, Buyer shall deliver to Seller (i) within six (6) months following the end of each fiscal year, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year (or if not available, unaudited consolidated financial statements for such fiscal year), (ii) within sixty (60) calendar days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, and (iii) on a timely basis, such other financial and operational information as may be reasonably requested by the Seller's financing parties. In all cases, the audited statements shall be for the most recent

accounting period and shall be prepared in accordance with GAAP, provided, however, that should any statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not constitute an Event of Default so long as Buyer diligently pursues the preparation, certification and delivery of the statements.

ARTICLE 8: FORCE MAJEURE

- 8.1 Remedial Action.** Subject to the limitation on extensions of Milestones set forth in Sections 5.4(a) and (c), a Party shall not be liable to the other Party if the Party is prevented from performing its obligations hereunder due to a Force Majeure Event. The Party rendered unable to fulfill an obligation by reason of a Force Majeure Event shall take all action necessary to remove such inability with all due speed and diligence. The non-performing Party shall be prompt and diligent in attempting to mitigate the effects of and to remove the cause of its failure to perform, and nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Notwithstanding the foregoing, the existence of a Force Majeure Event shall not excuse any Party from its obligations to make payment of amounts due hereunder.
- 8.2 Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall, as soon as practicable under the circumstances, notify the other Party, in writing, of the nature, cause, date of commencement, and the anticipated extent of any delay or interruption in performance.
- 8.3 Termination Due to Force Majeure Event.** Subject to the provisions of Section 5.4(a) and (c) on extensions of Milestones, if a Party is prevented in any material respect from performing any material obligations under this Agreement solely due to a Force Majeure Event lasting for a period of twelve (12) consecutive months or longer, either Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) calendar days' prior written notice at any time following expiration of such period of twelve (12) consecutive months. In such event, Buyer shall promptly return to Seller all Development Assurance or Performance Assurance, as applicable, less any LD amount paid by or due and payable by Seller prior to the date of such termination for reasons unrelated to this Section 8.3. This Section 8.3 shall not affect the rights and remedies associated with any other termination rights set forth in this Agreement.

ARTICLE 9: DEFAULT, REMEDIES, AND TERMINATION

9.1 Events of Default.

- (a) Events of Default. The occurrence of any of the following shall constitute an Event of Default by a Party:
- (i) the breach of any material obligation or covenant of this Agreement and such Party fails to cure such breach within sixty (60) days after written notification of default by the other Party; however, the Parties may mutually agree upon a longer period for cure if the breach cannot reasonably be cured within sixty (60) days, provided that the extended cure period will only continue for so long as the Party in breach is pursuing a cure with reasonable diligence;
 - (ii) subject to Sections 4.1(c) and (d), failure to make any payment when due under this Agreement within fifteen (15) Business Days after written notice that such payment is due;
 - (iii) 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 neither such circumstance nor the adverse effects of such circumstance are cured or remedied within thirty (30) days after written notice;
 - (iv) such Party becomes Bankrupt;

- (v) such Party fails to comply with their respective obligations under Article 6;
 - (vi) subject to Section 12.1(d), 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) Seller Events of Default. The following shall constitute additional Events of Default by Seller:
- (i) Subject to Section 2.2(b)(iii), Seller fails, for any reason other than an unauthorized act or omission by Buyer, to achieve the Delivery Start Date;
 - (ii) Subject to Section 5.4(a), the occurrence of any of the events set forth in Section 5.4(g).

9.2 Termination for Default.

- (a) Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party has occurred, is continuing and has not been cured, the other Party (the “Non-Defaulting Party”) shall have the right to:
- (i) send notice, designating a day, no earlier than ten (10) calendar days and no later than sixty (60) days after the day such notice is deemed to be received, as the date on which this Agreement will terminate (the “Early Termination Date”);
 - (ii) accelerate all amounts owing between the Parties, terminate this Agreement and end the Delivery Term effective as of the Early Termination Date;
 - (iii) collect as of the Early Termination Date, (A) the Damage Payment in the case of a Seller Event of Default arising at any time prior to the Commercial Operation Date, including an Event of Default pursuant to Section 9.1, or (B) the Termination Payment if any Event of Default by either Party arose after the Commercial Operation Date or in the case of a Buyer Event of Default arising prior to the Commercial Operation Date;
 - (iv) withhold any payments due to the Defaulting Party under this Agreement;
 - (v) suspend performance;
 - (vi) exercise its rights pursuant to Article 6 of this Agreement to draw upon and retain Development Assurance or Performance Assurance, as applicable; and
 - (vii) exercise any other right or remedy available at law or in equity to the extent otherwise permitted under this Agreement.
- (b) Calculation of Termination Payment.
- (i) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Termination Payment as of the Early Termination Date.
 - (ii) If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from such termination of this Agreement, the amount of the Termination Payment shall be limited to the amounts set forth in clause (b) of the definition of Termination Payment.
 - (iii) The Non-Defaulting Party is not required to enter into replacement transactions to establish a Termination Payment.

- (iv) The Termination Payment shall be the sole and exclusive remedy available to the Non-Defaulting Party in connection with its termination of this Agreement if any Event of Default arose after the Commercial Operation Date, and shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages.
- (v) Section 4.3 of this Agreement is not a limitation on Buyer's liability for a Termination Payment.
- (c) Notice of Termination Payment. As soon as practicable after declaration of an Early Termination Date, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Termination Payment due to or from the Defaulting Party to the Non-Defaulting Party, as applicable. 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 shall be made to the Non-Defaulting Party fifteen (15) Business Days after such termination payment notice is effective.
- (d) Disputes Regarding Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Following delivery of such a notice, disputes regarding the Termination Payment shall be resolved in accordance with Section 12.3.
- (e) Liquidated Damages. The Parties agree that the Damage Payment to be paid by Seller shall be considered liquidated damages and not a penalty, in accordance with Section 9.3(b).

9.3 Limitation of Liability/Liquidated Damages.

- (a) **THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.**
- (b) **THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL SUCH OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY PROVIDED. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF REVENUES, LOSS OF PROFIT, OR OTHER BUSINESS INTERRUPTION DAMAGES, INTEREST CHARGES, OR COST OF CAPITAL, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE;**

PROVIDED HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT RELATING TO EXPRESS REMEDIES OR MEASURE OF DAMAGES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIQUIDATED DAMAGES AND DAMAGE PAYMENTS SET FORTH IN SECTIONS 3.4(c), 3.4(e), 5.4(d), 5.4(h), AND 9.2(a)(iii) ARE EACH REASONABLE AND REPRESENT A FAIR AND GENUINE ESTIMATE OF THE DAMAGES THAT WOULD OCCUR RELATED TO THE EVENTS DESCRIBED THEREIN. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE DAMAGES FOR THE CIRCUMSTANCES SET FORTH ABOVE WOULD BE IMPOSSIBLE OR DIFFICULT TO MEASURE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS IMPRACTICABLE. THE PARTIES FURTHER AGREE THAT PAYMENT OF SUCH AMOUNTS SHALL BE AS AND FOR LIQUIDATED DAMAGES AND NOT AS A PENALTY AND ARE THEREFORE NOT SUBJECT TO AVOIDANCE UNDER CALIFORNIA CIVIL CODE SECTION 1671.

- (c) **BUYER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE COMPENSATION PROVIDED FOR IN ARTICLES 3 AND 4, AND SECTIONS 5.6 and 9.2.**
- (d) **EXCEPT AS OTHERWISE PROVIDED HEREIN, THE RIGHTS AND REMEDIES OF A PARTY PURSUANT TO THIS ARTICLE 9 SHALL BE CUMULATIVE AND IN ADDITION TO THE RIGHTS OF THE PARTIES OTHERWISE PROVIDED IN THIS AGREEMENT.**

ARTICLE 10: INDEMNIFICATION

10.1 Indemnification.

- (a) Seller Indemnification Prior to Commercial Operation Date. Up to and including the Commercial Operation Date, Seller shall indemnify, defend, and hold harmless Buyer, and its officials, directors, agents and employees ("Buyer Indemnified Party"), from any claim, liability, loss, injury or damage arising out of, or in connection with, the negligence, willful misconduct or violation of Applicable Law by Seller and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the active negligence, willful misconduct or violation of Applicable Law by a Buyer Indemnified Party.
- (b) Seller and Buyer Indemnification after Commercial Operation Date. After the Commercial Operation Date, each Party ("Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its elected officials, officers, directors, employees, agents, affiliates and representatives (each, an "Indemnified Party") from and against any and all losses, including but not limited to losses arising from personal injury or death, or damage to property, but only to the extent such losses result from or arise out of the negligence, willful misconduct or violation of Applicable Law by the Indemnifying Party.
- (c) Notice. If an Indemnified Party or Buyer Indemnified Party determines that it is entitled to defense and indemnification under this Section 10.1, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the losses, and provide all reasonably necessary or useful information, and authority to settle and/or defend the losses. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party's prior written consent.

ARTICLE 11: REPRESENTATIONS AND WARRANTIES

11.1 Seller's Representations and Warranties. In addition to the representations and warranties set forth in other sections of this Agreement, Seller represents and warrants to Buyer that as of the Execution Date:

- (a) Seller is duly organized and validly existing as a limited liability company under the laws of the State of Delaware, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement, and Seller is duly qualified in California and each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (b) Seller has the legal power and authority to make and carry out this Agreement and to perform all of its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (c) The execution, delivery and performance of this Agreement by Seller shall not conflict with its governing documents, any Applicable Laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected;
- (d) This Agreement has been duly and validly executed and delivered by Seller and, as of the Execution Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing, against Seller or any of its affiliates, at law or in equity, before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement;
- (f) It is not Bankrupt and there are no proceedings pending or being contemplated by it or any of its affiliates, or, to its knowledge, threatened against it or its affiliates which would result in it being or becoming Bankrupt;
- (g) It is a forward contract merchant within the meaning of the U.S. Bankruptcy Code (as in effect as of the Execution Date of this Agreement);
- (h) Subject to Section 2.2(b)(iv), throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;
- (i) Throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation

and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;

- (j) All necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under this Agreement;
- (k) It will provide and convey all Environmental Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered, it holds the rights to all Environmental Attributes from the Facility, and it agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Facility;
- (l) It will pay prevailing wages as set forth in Section 5.2(b).

11.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that as of the Execution Date:

- (a) Buyer is a municipal corporation, duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement;
- (b) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (c) The execution, delivery and performance of this Agreement by Buyer shall not conflict with its governing documents, any Applicable Laws or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected;
- (d) This Agreement has been duly and validly executed and delivered by Buyer and, as of the Execution Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened, in writing, against Buyer, at law or in equity, before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer's ability to perform its obligations under this Agreement;
- (f) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt; and
- (g) It is a forward contract merchant within the meaning of the U.S. Bankruptcy Code (as in effect as of the Execution Date of this Agreement);

11.3 Covenants. In addition to other covenants contained in this Agreement, each Party covenants that throughout the Term:

- (a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
- (b) It shall maintain (or obtain from time to time as required, including through renewal, as applicable) 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 a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law.

ARTICLE 12: MISCELLANEOUS

12.1 Assignment.

- (a) General Assignment. Except as provided in Sections 12.1(b), (c) and (d), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed so long as among other things, (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers financial statements, information and other evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder, and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request.
- (b) Assignment to Financing Providers. Notwithstanding any provision to the contrary in this Section 12.1, Buyer hereby consents to assignment of this Agreement by Seller, including to an Affiliate of Seller (for purposes of a portfolio financing), as collateral for any financing or refinancing of the Facility to a Lender. Seller's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the Seller's interest under this Agreement has been assigned. The notice shall include the names of the Lender's primary contact(s) to whom all communications may be addressed. Seller shall promptly notify Buyer of any changes to the information contained in the notice. Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement in a form substantially similar to Exhibit L ("Form of Consent to Collateral Assignment"). As a condition to Buyer's consent to assignment, the following provisions shall apply to any assignment under this Section 12.1(b):
 - (i) Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by the Seller and such act performed by Lender shall be as effective to prevent or cure a default as if done by Seller.
 - (ii) Buyer shall cooperate with Seller or a Lender to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments, and other documents reasonably requested by Seller or Lender in order to complete any financing or refinancing and shall enter into reasonable agreements as necessary to provide for recognition by Buyer of the Lender's security interest in this Agreement and such other provisions as may be reasonably requested by Seller or any Lender, so long as the terms and conditions of such agreements are consistent with this Agreement and such amendments or agreements are reasonably acceptable to both Parties. All costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection with an assignment of this Agreement to a Lender shall be borne by Seller.
 - (iii) In the event of a Default under this Agreement, Buyer shall provide a copy of the notice of Default to the Lender pursuant to Section 9.2(a) at the same time as the notice is provided to Seller. Buyer shall accept a cure performed by a Lender and shall negotiate in good faith with the Lender as to the cure period(s) allowed for the Lender to cure any Event of Default. Buyer shall accept a cure by Lender so

long as the cure is accomplished within the applicable cure period. Notwithstanding any Lender cure, Seller shall not be released and discharged from, and shall remain liable for, any and all obligations to the Buyer arising or accruing hereunder.

- (iv) 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 (i) assume all of Seller's obligations arising under this Agreement, and (ii) shall cure all defaults under this Agreement existing as of the date of change of title or control as required under this Agreement.
- (c) Assignment in Connection with a Change in Control. Notwithstanding any provision to the contrary in this Section 12.1, any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall not require the prior written consent of Buyer. Seller shall promptly notify Buyer of any direct or indirect change in control and shall provide any information reasonably requested by Buyer regarding the change in control, provided that this obligation does not apply to any direct or indirect owners of Seller's Parent. Seller acknowledges that its obligations under this Agreement remain in full force and effect notwithstanding such change in control and that Seller is solely responsible for ensuring that all required changes to its vendor certifications are promptly implemented.
- (d) Assignment to Affiliates.
 - (i) Notwithstanding anything to the contrary in this Section 12.1, Buyer hereby consents to the assignment of this Agreement by Seller to its Affiliates, NextEra Energy Operating Partners, LP ("NEOP") and NextEra Energy Partners, LP ("NEP") so long as NEOP or NEP, as the case may be, agree in writing to assume all of Seller's obligations under this Agreement and to comply with the terms and conditions of this Agreement. Seller shall promptly notify Buyer of an assignment under this Section 12.1(d) including new contact and payment information. Seller understands and acknowledges that NEOP or NEP, as the case may be, is required to comply with the City's vendor registration requirements including, but not limited to, certification of compliance with Section 12.5(m).

(ii)



- (e) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 12.1 is void.

12.2 Proprietary or Confidential Information.

- (a) Confidential Information. Each Party understands and agrees that, in the performance of this Agreement or in contemplation thereof, the other Party may have access to private or confidential information and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Party that owns or controls the Confidential Information. Each Party agrees that all private and confidential information disclosed by one Party to the other Party shall be held in confidence and used only in performance of the Agreement; however, a Party may disclose the Confidential Information of the other Party to its officers, employees, agents, consultants, and contractors as necessary for the performance of its obligations under this Agreement. Each Party shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect its own proprietary data.
- (b) Public Records Act and Sunshine Ordinance. Seller acknowledges that Buyer is a public agency subject to the disclosure requirements of the Public Records Laws. If documents or information submitted to Buyer contain Seller's proprietary and confidential information and Seller claims that such information falls within one or more Public Records Laws exemptions, Seller must clearly mark such information "CONFIDENTIAL AND PROPRIETARY", and identify the specific lines containing such information (the "Confidential Information"). Buyer shall disclose such Confidential Information to third parties only to the extent required by California law (including, without limitation, the California Constitution, the Public Records Laws, and other Applicable Law).
- (c) Disclosure of Confidential Information by Buyer. In the event of a third-party request for Buyer to disclose such Confidential Information, Buyer shall make reasonable efforts to provide notice to Seller prior to disclosure. If Seller contends that any Confidential Information is exempt from the Public Records Laws and wishes to prevent disclosure, Seller shall obtain a protective order, injunctive relief or other appropriate remedy from a court of law in San Francisco County before Buyer's deadline for responding to the disclosure request. If Seller fails to obtain such remedy prior to Buyer's deadline for responding to the request, Seller agrees that Buyer may disclose the requested Confidential Information. Seller further agrees that Buyer shall have no liability to Seller arising out of any disclosure by Buyer of any Seller Confidential Information before Seller has timely obtained an order, injunctive relief or other appropriate remedy to prevent Buyer from making the requested third-party disclosure.
- (d) Non-Confidential Information. Notwithstanding anything to the contrary in this Section 12.2 nothing shall restrict any Party from using or disclosing information related to this Agreement, including Confidential Information if such information (i) is generally available to the public; (ii) was within the using or disclosing Party's possession prior to it being furnished hereunder, provided that such information is not subject to another confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, any other party with respect to such information; (iii) is rightfully obtained by a Party from third parties authorized to make such disclosure without restriction; (iv) is legally required to be disclosed by judicial or other governmental action as determined by such Party's attorney acting in good faith; or (v) is disclosed without a duty of confidentiality to a third party by, or with the authorization of, the disclosing Party; or (vi) is furnished to the non-disclosing Party's Affiliates, or to the auditors, attorneys, advisors, or actual or potential lenders or investors of the non-disclosing Party and/or its Affiliates which are required to keep the information that is disclosed in confidence.

- (e) Nondisclosure of Private Information. If this Agreement requires Buyer to disclose “Private Information” to Seller within the meaning of San Francisco Administrative Code Chapter 12M, Seller shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing this Agreement. Seller is subject to the enforcement and penalty provisions in Chapter 12M.

12.3 Dispute Resolution; Choice of Law.

- (a) Negotiation; Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of this Agreement by negotiation. The status of any dispute or controversy notwithstanding, each Party shall proceed diligently with the performance of its obligations under this Agreement in accordance with and subject to the terms of this Agreement. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither Party will be entitled to legal fees or costs for matters resolved under this section.
- (b) 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. Venue shall be in the County of San Francisco, California.

12.4 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. The Parties shall maintain such data and records in an accessible location and condition for a period of not fewer than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

12.5 General.

- (a) Entire Agreement. This Agreement, the exhibits, attachments, and any written and fully executed supplements hereto, any designated collateral, credit support, or similar arrangement between the Parties constitute the entire agreement between the Parties relating to the subject matter.
- (b) Construction. 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.
- (c) Amendments. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.
- (d) No Third-Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).
- (e) No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) Change in Law. If any provision of this Agreement is rendered unlawful by action by any Governmental Authority, or any change in Applicable Law (a “Change in Law”) occurring after the Execution Date, the remaining lawful obligations that arise under this Agreement shall not be affected. If the Change in Law results in material changes to the Parties’ obligations with regard to any Product sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable, or otherwise modifies the RPS or language required to conform to the RPS, the Parties shall work in

good faith to revise this Agreement in a manner that maintains to the greatest extent practicable the original intent of the Parties under this Agreement so that the Parties may perform their obligations regarding the purchase and sale of Product. If the Parties cannot reach a good faith agreement on amendments, the Agreement shall be terminated by mutual agreement without liability for either Party.

- (g) Headings. The headings used herein are for convenience and reference purposes only.
- (h) Assigns. This Agreement shall be binding on each Party's successors and assigns.
- (i) No Dedication. No undertaking by one Party to the other under any provision of the Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect Seller as an independent entity and not a public utility.
- (j) Relationship of the Parties. The duties, obligations and liabilities of the Parties are independent of one another and shall be limited to those expressly set forth herein. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and Buyer shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party. Seller and Buyer intend to act as energy supplier and energy purchaser, respectively, and do not intend to act as, or to be treated as, partners in, co-venturers in, or lessor/lessee with respect to the Facility or any business related to the Facility.
- (k) Limitations on Contributions. Through execution of this Agreement, Seller acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the rendition of personal services or for the furnishing of any material, supplies or equipment to City, whenever such transaction would require approval by City's elective officer of the board on which that elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either: (1) the termination of negotiations for such contract, or (2) three months after the date this Agreement is approved by the City's elective officer or the board on which that elective officer serves.
- (l) Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Seller may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco in the performance of this Agreement. Seller agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Seller violates the provisions of this Section, Buyer may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Seller from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Seller's use of profit as a violation of this Section.
- (m) Nondiscrimination Requirements.
 - (i) Seller shall comply with the provisions of Chapter 12B of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a) and 12B.2(c)-(k) 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.

- (ii) Seller represents that it 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 Buyer 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.
- (n) Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code Section 21.35, any contractor or subcontractor who submits a false claim shall be liable to Buyer for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to Buyer if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of Buyer a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by Buyer; (c) conspires to defraud Buyer by getting a false claim allowed or paid by Buyer; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to Buyer; or (e) is a beneficiary of an inadvertent submission of a false claim to Buyer, subsequently discovers the falsity of the claim, and fails to disclose the false claim to Buyer within a reasonable time after discovery of the false claim.
- (o) Use of City Opinion. Seller shall not quote, paraphrase, or otherwise refer to or use any opinion of Buyer, its officers or agents, regarding Seller or Seller's performance under this contract without prior written permission of the Buyer.
- (p) Compliance with Laws. Seller shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of City and of all state, and federal laws in any manner affecting the performance of the Agreement, and must at all times materially comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. Buyer shall use best efforts to provide notice to Seller of any such amendment to the City's Charter, codes, ordinances and regulations of which it becomes aware; however, Seller's obligations under this Section shall not be contingent on notice from Buyer.
- (q) Conflict of Interest. Through its execution of this Agreement, Seller acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify Buyer if it becomes aware of any such fact during the term of this Agreement.
- (r) Severability. Should any provision of the Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in full force and effect. 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.
- (s) Survival. All rights pursuant to (i) Section 3.5 (Environmental Attributes); Section 4.1(d) (Disputes and Adjustment of Invoices); Article 9 (Default; Remedies; and Termination), (iii) Article 10 (Indemnification), (iv) Section 12.2 (Proprietary or Confidential Information); (v) Section 12.3 (Dispute Resolution; Choice of Law), and (vi) Section

12.4 (Audit); (vii) Section 12.5(l) (Prohibition on Political Activity with City Funds); and (viii) Section 12.5(o) (City Opinion) shall also survive termination of this Agreement.

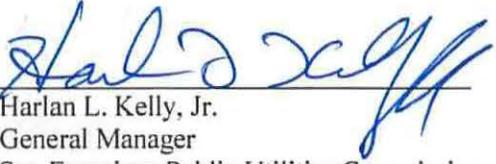
- 12.6 Mobile Sierra.** Absent the prior written agreement of all Parties, the standard of review for changes to any rate, charge, term, or condition of service of this Agreement, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set 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).
- 12.7 Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.
- 12.8 Notices.** Unless otherwise stated in this Agreement, any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, electronic mail, overnight courier or mailed by certified mail, return receipt requested with postage prepaid, to the contacts set forth in the Cover Sheet. Either Party may change any information listed in the Notice section of the Cover Sheet, by written notice as provided in this Section. Any such notice, demand, request, or communication shall be deemed received on the Business Day on which the notice was transmitted if delivery was made by hand, facsimile or electronic mail, or (ii) upon receipt by the receiving Party if sent by overnight courier or mailed by certified mail, return receipt requested with postage prepaid.
- 12.9 Counterparts.** This Agreement may be executed in one or more counterparts and by different Parties on separate counterparts, all of which shall be deemed one and the same agreement and each of which shall be deemed an original. Delivery of an executed counterpart of this Agreement by fax or other electronic means shall be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile or other electronic means shall also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement shall not affect the validity or effectiveness of this Agreement.

[Signature page follows on next page.]

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

City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF

Seller

By: 
Harlan L. Kelly, Jr.
General Manager
San Francisco Public Utilities Commission

By: _____
Name: _____
Title: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 
Deputy City Attorney

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

City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF

Seller

By: _____
Harlan L. Kelly, Jr.
General Manager
San Francisco Public Utilities Commission

By:  _____
Name: Michael O'Sullivan
Title: Senior Vice President

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

EXHIBIT A

SELLER DOCUMENTATION OF CONDITIONS PRECEDENT

Part I:

Seller has provided to Buyer all of the following documentation prior to the Execution Date:

1. A copy of each of (a) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (b) the by-laws or other similar document of Seller as in effect, or anticipated to be in effect, on the Execution Date.
2. A certificate from the jurisdiction of Seller's incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
3. Evidence of Site control (e.g. lease with redacted price terms) satisfactory to Buyer.
4. Evidence of CEC Certification or pre-certification received, as applicable, satisfactory to Buyer.
5. A copy of the Interconnection Agreement, if any.
6. Insurance documentation as required in Exhibit D.
7. A copy of the most recent financial statements (which may be unaudited) from Seller's Parent.
8. A completed Contract Quantity table based on the Facility's Expected Initial Capacity in the form set forth at Exhibit C.

Part II:

Seller shall provide to Buyer all of the following documentation in a timely manner following the Execution Date:

1. Evidence of all Permits received, as applicable, including but not limited to, any copies of all final environmental review documents.
2. A copy of the Project Labor Agreement, if any, for the Facility.

EXHIBIT B

FACILITY DESCRIPTION AND SITE DRAWINGS

I. Facility Description

Facility name: Blythe Solar IV

Facility physical address: 4000 Dracker Drive Blythe, CA 92225; 33° 40' 44.4"N, 114° 44' 9.6"W

Technology type (including any applicable model): Solar Photovoltaic

Expected Initial Capacity: The Facility is a 62.5 MW (AC) portion of the 125 MW (AC) Blythe Solar IV project, which is the last phase of 485 MW developed at the site.

Interconnection Point of Facility: Colorado River Substation 230kV bus

Interconnection Agreement: Executed November 25, 2010

Assessor's Parcel No: The Facility will use a portion of the Assessor Parcel Numbers listed below.

Private Parcels Owned by the Project

APN	Owner
818160015	Private
818160014	Private

Parcel 1

ALL OF TRACT NO. 48 IN SECTION 11, TRACT 6 SOUTH, RANGE 21 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF

EXCEPTING THEREFROM THE SOUTH HALF OF THE SOUTHEAST QUARTER OF TRACT 48

Parcel 2

The South ½ of the Southeast ¼ of Tract 48, section 11, Township 6 South, Range 21 East, San Bernardino Base and Meridian, in the County of Riverside, State of California, as shown on a Survey and Independent Resurvey approved by the United Surveyor General of California, on April 1, 1918.

Except 75 percent of all mineral rights, without surface entry, as reserved unto Ronald J.Valenta and Kate S. Valenta in that certain Deed, recorded June 22, 1970 as Instrument No. 59130.

BLM Land held under a Right of Way Grant from U.S. Department of Interior (DOI)

APN	Owner
818180012	DOI
818180015	DOI
818160012	DOI
821020011	DOI
818160004	DOI
818160009	DOI
818160006	DOI
818180014	DOI
818160013	DOI
818160002	DOI
818160010	DOI
818160011	DOI
818180011	DOI
821020008	DOI
818160005	DOI
818180013	DOI
818160003	DOI
818160007	DOI
821050011	DOI
818180010	DOI

BEING PORTIONS OF SECTION 4, SECTION 9, TRACT 37 THROUGH TRACT 43, INCLUSIVE, TRACT 45, TRACT 46, TRACT 47 AND TRACT 49 THROUGH TRACT 56, INCLUSIVE, TOWNSHIP 6 SOUTH, RANGE 21 EAST, SBM; SECTION 6, SECTION 7 AND SECTION 18, TOWNSHIP 6 SOUTH, RANGE 22 EAST, SBM, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT 38, SAID CORNER BEING 1" IRON PIPE WITH 2 1/2" GENERAL LAND OFFICE BRASS TAG PER GOVERNMENT SURVEY FIELD NOTES AS FILED IN BOOK 452-6, PAGE 3, RECORDS OF BUREAU OF LAND MANAGEMENT;

THENCE SOUTH 01°47'10" EAST 88.86 FEET ALONG THE EAST LINE OF SAID TRACT 38 TO THE **TRUE POINT OF BEGINNING**, SAID POINT BEING NORTH 01°47'10" WEST 5183.37 FEET, MEASURED ALONG THE EAST LINE OF SAID TRACT 38 FROM THE SOUTHEAST CORNER THEREOF, SAID CORNER BEING 1" IRON PIPE WITH 2 1/2" GENERAL LAND OFFICE BRASS TAG AS FILED IN BOOK 452-6, PAGE 3, RECORDS OF BUREAU OF LAND MANAGEMENT;

THENCE NORTH 89°24'07" EAST 5287.30 FEET;

THENCE SOUTH 00°05'01" WEST 3779.86 FEET;

THENCE SOUTH 00°39'28" EAST 1554.72 FEET;

THENCE SOUTH 00°07'00" WEST 6055.34 FEET;
THENCE SOUTH 89°20'32" WEST 1614.80 FEET;
THENCE SOUTH 00°00'00" WEST 568.85 FEET;
THENCE SOUTH 90°00'00" WEST 890.51 FEET;
THENCE SOUTH 00°39'28" EAST 2241.31 FEET;
THENCE SOUTH 89°20'32" WEST 1277.15 FEET;
THENCE SOUTH 89°54'35" WEST 5840.60 FEET;
THENCE SOUTH 00°47'04" EAST 572.06 FEET;
THENCE NORTH 90°00'00" WEST 200.02 FEET;
THENCE NORTH 00°47'04" WEST 1698.80 FEET;
THENCE NORTH 45°39'28" WEST 821.79 FEET;
THENCE NORTH 01°47'45" WEST 1950.49 FEET;
THENCE NORTH 01°46'54" WEST 3591.56 FEET;
THENCE NORTH 45°00'00" WEST 1526.68 FEET;
THENCE SOUTH 89°59'27" WEST 6691.80 FEET
THENCE NORTH 00°01'32" WEST 5731.86 FEET;
THENCE NORTH 89°24'07" EAST 13060.67 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM TRACT 48, TOWNSHIP 6 SOUTH, RANGE 21 EAST, SBM.

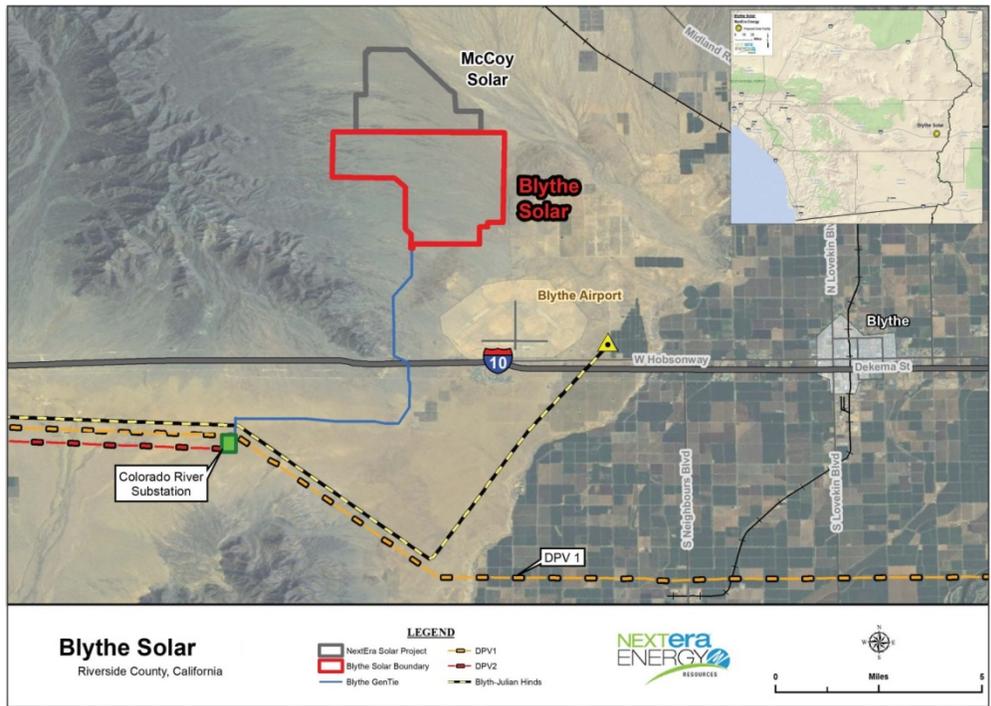
II. Operational Characteristics / Limitations

PMax of the Facility: 62.5 MW

Minimum operating capacity: 0 MW

III. Site Drawings

A. Site Map



B. Single Line Diagram. (Note: Diagram from Facility's Large Generation Interconnection Agreement (LGIA). The Facility is half of Unit 4.)

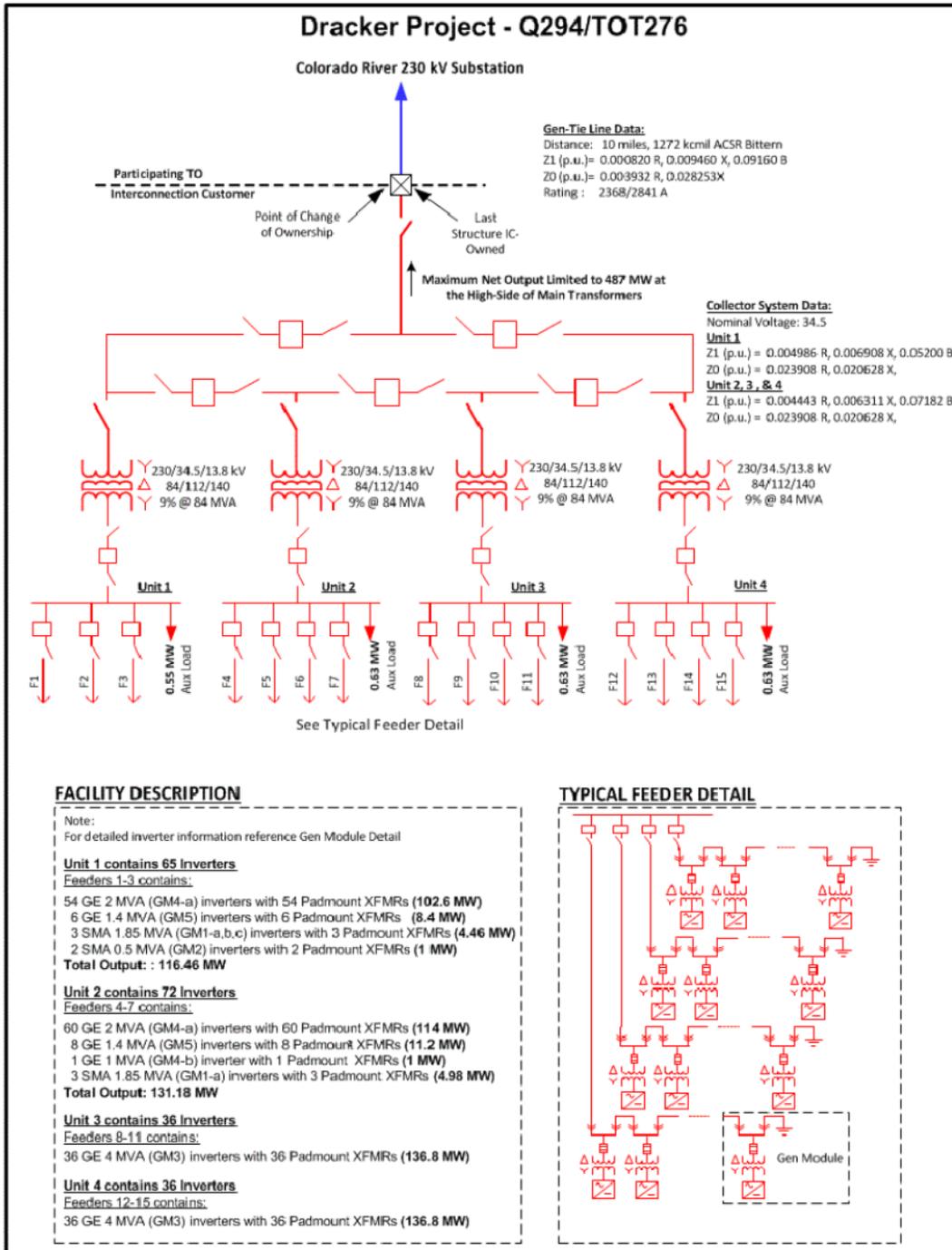


EXHIBIT C

CONTRACT QUANTITY

Contract Year	Contract Quantity (in MWh)	Seller or Buyer Performance Assurance (as applicable)
1	194,037	
2	195,902	
3	196,471	
4	196,085	
5	195,686	
6	195,273	
7	194,847	
8	194,406	
9	193,950	
10	193,479	
11	192,990	
12	192,486	
13	191,965	
14	191,430	
15	190,881	
16	190,319	
17	189,744	
18	189,156	
19	188,554	
20	187,937	

Dated as of Seller Execution, with the Contract Quantity for Contract Year 1 based on the Expected Initial Capacity of 62.5 MW AC.

EXHIBIT D

INSURANCE COVERAGES

1. **Liability Coverages.** Without in any way limiting Seller's liability pursuant to the "Indemnification" section of this Agreement, Seller must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance:
 - (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and include a blanket waiver of subrogation; and
 - (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 - (c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
2. **Additional Coverages**
 - (a) Property insurance, on an all-risk form, including earthquake and flood, for one hundred percent (100%) of the full replacement value of the Site and Facility or 125% of the Loss Limit of the 1/500 year earthquake/flood event as established by a Maximum Foreseeable Loss earthquake and flood study prepared by the applicable insurer in accordance with current industry standard. Such insurance shall, include Business Interruption coverage in an amount equal to twelve months of revenue from this Agreement.
3. **Endorsements.**
 - (a) Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide include blanket endorsements:
 - (i) Name as Additional Insured, the City and County of San Francisco, its Officers, Agents, and Employees.
 - (ii) The certificate of insurance shall state that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
 - (b) All policies shall provide thirty (30) days' advance written notice of cancellation for any reason, intended non-renewal, or reduction in coverages, except ten (10) days' notice for non-payment of premiums.
4. **Length of Coverage.** Should any of the required insurance be provided under a claims-made form, Seller shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
5. **Maintenance of Coverage.** Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Buyer receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, Buyer may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

Certificates. Prior to commencement of the Term, Seller shall furnish to Buyer certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A- , VII or higher, that are authorized to do business in the State of California, and that are satisfactory to Buyer, in form evidencing all coverages set forth above. Approval of the insurance by Buyer shall not relieve or decrease Seller's liability hereunder.

EXHIBIT E

**CONSTRUCTION START
CERTIFICATION**

 (Date)

This certification (“Certification”) of the Construction Start Date is delivered by _____ (“Seller”) to the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer all of the following:

- a) the EPC Contract related to the Facility was executed on _____ with [EPC Contractor name];
- b) [permitting agency name] _ issued grading permits to the Seller on _____;
- c) the Notice to Proceed was issued on _____ (attached), and;
- d) mobilization at the Facility Site commenced on _____.

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

Seller:

[Licensed Professional Engineer]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

License Number and LPE Stamp: _____

EXHIBIT F

QUARTERLY PROGRESS REPORT

INSTRUCTIONS.

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Renewable Power Purchase Agreement by and between _____, (“Seller”) and the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, (“Buyer”) dated _____ (the “Agreement”).

Commencing in the calendar month of the effective date of the Agreement, and every three months thereafter (“Calendar Quarter”), Seller shall prepare and submit to Buyer a Progress Report containing the information set forth in this Exhibit F (“Progress Report”). The Progress Report shall review the status of each Milestone of the construction schedule for the Facility and Seller shall identify any issue which in Seller’s reasonable judgment are expected to adversely affect the schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

1. Any material matter or issue arising in connection with a Permit, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of an Applicable Law, actual or threatened opposition to the granting of a necessary Permit, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Facility, attaining any Milestone, or obtaining any contemplated agreements with other Persons which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Milestone.
2. Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Facility, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
3. A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
4. Any material change in the Seller’s schedule for initiating or completing any material aspect of the Facility;
5. The status of any matter or issue identified as outstanding in any prior Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

Each overview subsection shall include a summary of the status and progress of major activities associated with that section, whether planned, in progress, or completed, including relevant dates. Each “recent activities” subsection shall include details of activities during the previous month. Each “expected activities” subsection shall include a brief list of major activities planned for the current month.

Seller shall complete, certify, and deliver this form of Progress Report to _____, together with all attachments and exhibits.

A. Executive Summary.

Provide an overview of the Facility, including technology, size, location, and ownership, and a brief chronological cumulative summary of the major activities completed at the Facility. Include the date each item was added to the summary.

B. Financing Activities.

1. **Overview of financing activities.** Provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.
2. **Recent financing activities.** Describe in detail the financing activities that occurred during the previous Calendar Quarter.
3. **Expected financing activities.** List the financing activities that are expected to be performed during the current Calendar Quarter.

C. Major Equipment Procurement.

1. **Overview of major equipment procurement activities.** For each type of equipment, list the number of each major item to be procured, the manufacturer, model number (if applicable), and rating. List the delivery schedule (expected or actual as applicable), breaking out the number of each item to be procured or delivered in each Calendar Quarter.
2. **Recent major equipment procurement activities.** Describe in detail the major equipment procurement activities that occurred during the previous Calendar Quarter.
3. **Expected major equipment procurement activities.** List the major equipment procurement activities that are expected to be performed during the current Calendar Quarter.

D. Construction Activities. Include information on the status of any construction-related factors that may affect the ability of the Facility to deliver Product to the Buyer. Include information on the Facility infrastructure, generating equipment, and major auxiliary equipment. Also include information on the substations, switchyards, gen-ties, telecommunications equipment or other Interconnection Facilities that are the direct responsibility of the Facility.

1. **Overview of major construction activities.** Provide a summary of the status and progress of each major construction activity for all portions of the Facility, including a schedule showing expected or actual dates as applicable. Provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full Notice to Proceed (or equivalent). For each major type of equipment, break out the number of each item (to be) installed and/or commissioned in each Calendar Quarter.
2. **Look-ahead construction schedule.** Provide a look-ahead construction schedule covering the following Calendar Quarter.

E. Interconnection Activities. Include information on interconnection-related factors that may affect the ability of the Facility to deliver Product to the Buyer. Include information on the status of interconnection studies, Interconnection Agreements, design and construction of Interconnection Facilities (e.g., substations, switchyards, gen-ties, system protection schemes, telecommunications equipment to the extent not already covered in the Facility construction information), Network Upgrades, and grid outage and/or interconnection schedules.

1. **Overview of interconnection activities.** Provide a summary of the status and progress of each major interconnection activity including dates of completion of significant activities and expected timing of future activities.
2. **Recent interconnection activities.** Describe in detail the interconnection activities that occurred during the previous Calendar Quarter.
3. **Expected interconnection activities.** List the interconnection activities that are expected to be performed during the current Calendar Quarter.

F. Startup. Include information on the status of activities related to preparation for Commercial Operation, including progress towards the items set forth in Exhibit H-2, the requirements and notifications of the grid operator and PTO, and any other activities that must be conducted before the Facility may deliver Energy to the grid and/or declare Commercial Operation.

1. **Overview of startup activities.** Provide a summary of the status and progress of each major startup activity including dates of completion of significant activities and expected timing of future activities.
2. **Recent startup activities.** Describe in detail the startup activities that occurred during the previous Calendar Quarter.
3. **Expected startup activities.** List the startup activities that are expected to be performed during the current Calendar Quarter.

I, _____, on behalf of and as an authorized representative of _____, do hereby certify that the information contained in this Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT G-1
COMMERCIAL OPERATION CERTIFICATION PROCEDURE

In accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (the “Agreement”) by and between the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF (“Buyer”) and _____ (“Seller”) to declare and recognize the Commercial Operation Date of the Facility, Seller shall provide all of the documents set forth herein to Buyer as of the Commercial Operation Date. All terms not defined herein shall have the meaning set forth in the Agreement.

1. A certification from an authorized officer of Seller, substantially in the form of Exhibit G-2 dated as of the Commercial Operation Date; and
2. A certificate or report from a Licensed Professional Engineer containing all of the following:
 - (a) A statement that the Facility has achieved Mechanical Completion and the date on which it was achieved;
 - (b) A statement that the Facility has successfully completed Facility Testing and the dates on which Seller has accepted the test results; and
 - (c) A statement that the Facility has achieved Substantial Completion and the date on which it was achieved.
3. Seller has provided to Buyer all documents which demonstrate that Seller has satisfied all of the applicable requirements for the interconnection of the Facility to the CAISO Grid and delivery of Product to the Delivery Point.
4. Seller has provided final Site Drawings to Buyer.
5. Definitions.
 - (a) “Mechanical Completion” means that (i) all components and systems of the Facility have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; (ii) the Facility is ready for startup testing and commissioning; (iii) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC Contract.
 - (b) “Facility Testing Completion” means the written acceptance to the EPC Contractor of the completion of startup testing / commissioning, emissions testing (as applicable), and performance / acceptance / warranty testing (all such testing shall be collectively referred to as “Facility Testing”) as required under the EPC Contract. The objectives of the tests shall be generally (i) to verify that the Facility has been properly designed and constructed to meet the performance and operating requirements of the EPC Contract; (ii) to assure warranty coverage for equipment and systems over their warranty periods.

“Substantial Completion” means when the following has occurred: (i) the Facility is sufficiently complete, in accordance with the EPC Contract, that Seller has full and unrestricted use and benefit of the Facility in the use for which it is intended; (ii) the Facility has achieved Mechanical Completion; (iii) utilities are fully connected and operating normally; (iv) all necessary permits have been issued; (v) the Facility is fully and properly interconnected and synchronized with the electrical grid and is capable of producing electricity in accordance with the EPC Contract; (vi) the operating manual has been approved by Seller; (vii) all work other than incidental corrective and incidental punch list work is complete; and (viii) Seller has provided written acceptance to the EPC Contractor of substantial completion as that term is specifically defined in the EPC Contract.

EXHIBIT G-2
COMMERCIAL OPERATION CERTIFICATION

This certification (“Certification”) of Commercial Operation is delivered by _____ (“Seller”) to the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

1. Seller hereby certifies and represents to Buyer the following:
2. Mechanical Completion of the Facility was achieved on ____[DATE]_____.
3. Facility Testing Completion successfully occurred on: [Seller to indicate each type of Facility Testing and date completed]
 - a. NAME OF TEST [DATE]
 - b. NAME OF TEST [DATE]
 - c. NAME OF TEST [DATE]
4. Substantial Completion of the Facility was achieved on ____[DATE]_____.
5. Pre-parallel inspection of the Facility was successfully completed on __[DATE]__.
6. Authorization to parallel the Facility was obtained on ____[DATE]_____.
7. Telemetry / SCADA visibility with PTO and CAISO grid control and power dispatch centers was obtained for the Facility on ____[DATE]_____.
8. Reliability Network Upgrades (as defined in the CAISO Tariff) were completed on the Facility on ____[DATE]_____.
9. Power system stabilizer testing and calibration was obtained for the Facility on ____[DATE]_____ or, was not required.
10. Full Capacity Deliverability Status Finding from CAISO was obtained for the Facility on ____[DATE]_____ or, was not required because the Facility is Energy Only.
11. The Participating Transmission Provider or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on ____[DATE]_____.
12. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO tariff on ____[DATE]_____.

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Facility to provide Product and meet, at a minimum, the requirements indicated herein.

EXECUTED by SELLER this _____ day of _____, 20__.

Seller:

[Licensed Professional Engineer]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

License Number and LPE Stamp: _____

EXHIBIT H

DELIVERY START DATE CONFIRMATION LETTER

In accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“Agreement”) by and between the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, (“Buyer”) and _____ (“Seller”), this letter (“Delivery Start Date Confirmation Letter”) serves to document Seller’s notice that (i) the requirements for the occurrence of the Delivery Start Date have been satisfied as specified in the Agreement, as of this _____ day of _____, _____ (the “Delivery Start Date”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Seller represents to Buyer that it has been granted status as an Exempt Wholesale Generator. In addition, Seller provides the following FERC Tariff information for reference purposes only.

Tariff:

Dated:

Docket Number:

IN WITNESS WHEREOF, Seller has caused this Delivery Start Date Confirmation Letter to be duly executed by its authorized representative as of the date provided below.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT I

INSTALLED CAPACITY CERTIFICATE

This certification of Installed Capacity is delivered by [licensed professional engineer] to the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, in accordance with the terms of the Renewable Power Purchase Agreement dated _____, (“Agreement”) by and between Buyer and Seller. All capitalized terms used in this Certification but not otherwise defined herein shall have the meanings set forth in the Agreement.

The initial Facility performance test under Seller’s EPC contract for the Facility demonstrated peak Facility electrical output of ____ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test. (“Installed Capacity”).

EXECUTED BY [LICENSED PROFESSIONAL ENGINEER]

This _____ day of _____, 20__.

[Licensed Professional Engineer]

Signature: _____

Name: _____

EXHIBIT J

[ISSUING BANK] IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUANCE:

[Date of issuance]

[BENEFICIARY] (“Beneficiary”)

[Address]

Attention: [Contact Person]

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No. _____

Sirs/Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “you”) this Irrevocable Standby Letter of Credit No. _____ (the “Letter of Credit”) for the account of [REDACTED] on behalf of [NextEra project entity], located at 700 Universe Boulevard, Juno Beach, Florida 33408 (“Account Parties”), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain [describe the underlying agreement which requires this LC].

- 1. Stated Amount.** The maximum amount available for drawing by you under this Letter of Credit shall be [written dollar amount] United States Dollars (US\$[dollar amount]) (such maximum amount referred to as the “Stated Amount”).
- 2. Drawings.** A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [ISSUING BANK], at any time during its business hours on such Business Day, at [bank address] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the “**Draw Certificate**”), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of Attachment B hereto (the “**Draft**”), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile to [insert fax number] or original documents sent by overnight delivery or courier to [ISSUING BANK] at our address set forth above, Attention: _____ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 below). If presentation is made by facsimile transmission, you must contact us at [insert phone number] to confirm our receipt of the transmission. In the event of a presentation by facsimile transmission, the original of such documents need not be sent to us.
- 3. Time and Method for Payment.** We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, [_____] time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, [_____] time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

4. **Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand.

5. **Expiration.** This Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of Attachment C hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any).

6. **Initial Period and Automatic Rollover.** The initial period of this Letter of Credit shall terminate on [one year from the issuance date] (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered *paragraph 9*) that we elect not to consider this Letter of Credit extended for any such additional one year period.

7. **Business Day.** As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of [New York], and inter-bank payments can be effected on the Fedwire system.

8. **Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AND, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, TO THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE “ISP98”), AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF NEW YORK WILL CONTROL, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

9. **Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

10. **Irrevocability.** This Letter of Credit is irrevocable.

11. **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP98 and Attachment A, Attachment B and Attachment C hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

* * *

Sincerely,
[ISSUING BANK]

By: _____
Title: _____
Address: _____

EXHIBIT J

ATTACHMENT A

FORM OF DRAW CERTIFICATE

The undersigned hereby certifies to [*ISSUING BANK*] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. _____ (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows:

The undersigned is the _____ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.

(2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary’s presentation of the draft accompanying this Certificate, for payment of _____ U.S. dollars (US\$_____), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).

The conditions for a drawing by Beneficiary are pursuant to [*describe the draw conditions from the underlying agreement*].

(4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

By: _____
Title: _____
Date: _____

(5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[*BENEFICIARY*]

By: _____

Title: _____

Date: _____

EXHIBIT J
ATTACHMENT B

DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO. _____

Date:

PAY TO: *[BENEFICIARY]*

U.S.\$ _____

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO.
_____.

[BENEFICIARY]

By: _____

Title: _____

Date: _____

EXHIBIT J
ATTACHMENT C
CANCELLATION CERTIFICATE

Irrevocable Letter of Credit No. _____

The undersigned, being authorized by the undersigned (“Beneficiary”), hereby certifies on behalf of Beneficiary to [*ISSUING BANK*] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. _____ issued by Issuer to Beneficiary (the “**Letter of Credit**”), that all obligations of [PROJECT ENTITY], under the [*describe the underlying agreement which requires this LC*] have been fulfilled.

Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer’s receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[*BENEFICIARY*]

By: _____

Title: _____

Date: _____

EXHIBIT K
FORM OF GUARANTY

GUARANTY

THIS GUARANTY (this “**Guaranty**”), dated as of _____, _____ (the “**Effective Date**”), is made by _____ (“**Guarantor**”), in favor of _____ (“**Counterparty**”).

RECITALS:

- A.** WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary _____ (“**Obligor**”) have entered into, or concurrently herewith are entering into, that certain [*Insert Name of Agreement*] [dated/made/entered into/effective as of _____, 20__ (the “**Agreement**”); and
- B.** WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. GUARANTY. Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement on or after the Effective Date (the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a)** Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ [*spell out the dollar amount*] U.S. Dollars (U.S. \$ _____) (the “**Maximum Recovery Amount**”).
- (b)** The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including attorney’s fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

- (a)** If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an “**Overdue Obligation**”), Counterparty may present a written demand to Guarantor calling for Guarantor’s payment of such Overdue Obligation pursuant to this Guaranty (a “**Payment Demand**”).
- (b)** Guarantor’s obligation hereunder to pay any particular Overdue Obligation(s) to Counterparty is conditioned upon Guarantor’s receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Overdue Obligation(s) became due and owing; (ii) such

Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "Business Day" shall mean all weekdays (i.e., Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Florida or the State of New York.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of Florida and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
- (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. RESERVATION OF CERTAIN DEFENSES. Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Subject to and in accordance with the terms and provisions of this Guaranty:

- (a) Except as required in Section 2 above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof.
- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release any person (other than Obligor or Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. **TERMINATION.** This Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement or (ii) 11:59:59 Eastern Prevailing Time [_____, ____]; *provided, however*, that no such termination shall affect Guarantor's liability with respect to any Obligation incurred prior to the time the termination is effective, which Obligation shall remain subject to this Guaranty.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

<i>TO GUARANTOR: *</i>	<i>TO COUNTERPARTY:</i>
[Redacted Address]	_____ _____ _____ Attn: _____
<i>[Tel: [Redacted] -- for use in connection with courier deliveries]</i>	<i>[Tel: (____) ____-____ -- for use in connection with courier deliveries]</i>

* (NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. [Redacted] and ATTN: Credit Department, Fax No. [Redacted]. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. **MISCELLANEOUS.**

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws thereunder (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor.

- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the Supreme Court of the State of New York, New York County (without prejudice to the right of any party to remove to the United States District Court for the Southern District of New York) for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.
- (g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

[REDACTED]

By: _____
 Name: _____
 Title: _____

EXHIBIT L
FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 20[], is executed by the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF (the “Contracting Party”), a municipal corporation, (the “Project Owner”), and [_____], as collateral agent (in such capacity, together with its successors and permitted assigns, the “Collateral Agent”) for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the “Secured Parties”).

A. The Project Owner owns, operates and maintains [_____] (the “Project”).

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Assigned Agreement”).

C. The Borrower, the Project Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders, [_____], as the Administrative Agent and Collateral Agent, have entered into a Credit Agreement, dated as of [_____] (as amended, modified or supplemented from time to time, the “Credit Agreement”), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Project Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Project Owner has assigned all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of [_____] between the Project Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Security Agreement”, and, together with the Credit Agreement and any other financing documents relating to the issuance of the Notes, the “Financing Documents”).

E. It is a requirement under the Credit Agreement that the Project Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. Consent to Assignment. The Contracting Party hereby acknowledges and consents to the pledge and assignment of all right, title and interest of the Project Owner in, to and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by the Project Owner to the Collateral Agent pursuant to the Security Agreement.

2. Representations and Warranties. The Contracting Party represents and warrants as follows:

(a) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(b) No Previous Assignments. The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the

Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.

(c) No Termination Event: No Disputes. After giving effect to the pledge and assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, there exists no event or condition (a "Termination Event") that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] there are no unresolved disputes between the parties under the Assigned Agreement. All amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. Right to Cure.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an "event of default" or "default" (or any other similar event however defined) by the Project Owner under the Assigned Agreement, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(b) The Contracting Party agrees that it will not (i) terminate the Assigned Agreement [(other than pursuant to Section ___ of the Assigned Agreement)] or (ii) suspend the performance of any of its obligations under the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent, except to the extent the Contracting Party may subcontract such obligations to other parties.

(c) If a Termination Event shall occur [(other than a termination pursuant to Section ___ of the Assigned Agreement)], and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall have a period of thirty (30) days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a "Non-monetary Event") the Collateral Agent shall have ninety (90) days to cure the Termination Event, or such longer period mutually agreed upon by the Collateral Agent and the Contracting Party; provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition; provided, however, that during such foreclosure or bankruptcy period, Collateral

Assignor shall continue to perform each of Collateral Assignor's other obligations under the Assigned Agreement.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

4. Replacement Agreements. Notwithstanding any provision in the Assigned Agreement to the contrary, in the event the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy, insolvency, reorganization or similar proceedings affecting the Project Owner, at the Collateral Agent's request, the Contracting Party will enter into a new agreement with the Collateral Agent or the Collateral Agent's designee for the remainder of the originally scheduled term of the Assigned Agreement, effective as of the date of such rejection, with the same covenants, agreements, terms, provisions and limitations as are contained in the Assigned Agreement and provided that the Collateral Agent's designee (i) assumes in writing all of Project Owner's obligations and agrees to be bound by the covenants and agreements of Project Owner under the Assigned Agreement, and (ii) such designee shall (A) have a tangible net worth that is equal to or in excess of \$30,000,000, (B) have at least five (5) years of experience owning or operating generating facilities of the same technology type of comparable size as the Project or has hired a manager or operator with such qualifications, (C) own, control or operate a minimum of five hundred (500) MWs of solar energy generation capacity or hired a manager or operator with such qualifications, (D) not be disbarred by the City from entering into contracts with the City, and (E) not be in litigation or a contractual dispute with the City at the time of the assignment or have engaged in litigation or a contractual dispute with the City within the five (5) years prior to the assignment ("Qualified Assignee").

5. Substitute Owner. The Contracting Party acknowledges that in connection with the exercise of remedies following a default under the Financing Documents, the Collateral Agent may (but shall not be obligated to) assume, or cause any purchaser at any foreclosure sale or any assignee or transferee under any instrument of assignment or transfer in lieu of foreclosure to assume, all of the interests, rights and obligations of the Project Owner thereafter arising under the Assigned Agreement. If the interest of the Project Owner in the Assigned Agreement shall be assumed, sold or transferred as provided above, the assuming party shall (i) execute an assignment agreement with Contracting Party agreeing in writing to be bound by and to assume the terms and conditions of the Assigned Agreement and any and all obligations to the Contracting Party arising or accruing thereunder from and after the date of such assumption and (ii) be a Qualified Assignee. Contracting Party shall continue to perform its obligations under the Assigned Agreement in favor of the assuming party as if such party had thereafter been named as the "Seller" under the Assigned Agreement; provided that if the Collateral Agent or its designee (or any entity acting on behalf of the Collateral Agent, the Collateral Agent's designee or any of the other Secured Parties) assumes the Assigned Agreement as provided above, it shall not be personally liable for the performance of the obligations thereunder except to the extent of all of its right, title and interest in and to the Project.

6. Payments. The Contracting Party shall make all payments due to the Project Owner under the Assigned Agreement directly into the account specified on Schedule II hereto, or to such other person or account as shall be specified from time to time by the Collateral Agent to the Contracting Party in writing. All parties hereto agree that each payment by the Contracting Party as specified in the preceding sentence of amounts due to the Project Owner from the Contracting Party under the Assigned Agreement shall satisfy the Contracting Party's corresponding payment obligation under the Assigned Agreement.

7. No Amendments. The Contracting Party acknowledges that the Financing Documents restrict the right of the Project Owner to amend or modify the Assigned Agreement, or to waive or provide consents with respect to certain provisions of the Assigned Agreement, unless certain conditions specified in the Financing Documents are met. The Contracting Party shall not, without the prior written

consent of the Collateral Agent, amend or modify the Assigned Agreement, or accept any waiver or consent with respect to certain provisions of the Assigned Agreement, unless the Contracting Party has received from the Project Owner a copy of a certificate delivered by the Project Owner to the Collateral Agent to the effect that such amendment, modification, waiver or consent has been made in accordance with the terms and conditions of the Financing Documents, which may in certain circumstances require the prior written consent of the Collateral Agent thereto.

8. Additional Provisions. [To be specified if necessary to clarify the Assigned Agreement.]

9. Notices. Notice to any party hereto shall be in writing and shall be deemed to be delivered on the earlier of: (a) the date of personal delivery, (b) postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by facsimile, the date when sent and facsimile confirmation is received; provided that any facsimile communication shall be followed promptly by a hard copy original thereof by express courier:

The Collateral Agent: [_____]
[_____]
Attn: [_____]
Telephone No.: [_____]
Facsimile No.: [_____]

The Project Owner: _____

The Contracting Party: _____

10. Successors and Assigns. This Consent shall be binding upon and shall inure to the benefit of the successors and assigns of the Contracting Party, and shall inure to the benefit of the Collateral Agent, the other Secured Parties, the Project Owner and their respective successors, transferees and assigns.

11. Counterparts. This Consent may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

12. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the State of [_____].

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By: _____
Name:
Title:

By: _____
Name:
Title:

Acknowledged and Agreed:

[_____]

[_____]

as Collateral Agent

Title:

By: _____
Name:

Assigned Agreement

Payment Instructions
(Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Schedule III]

[Amounts Due and Unpaid under the Assigned Agreement
(Section 2(c))]

EXHIBIT M
CAISO CHARGE CODES

The following table sets forth an initial allocation of Charge Codes, which may represent credits (expressed as a negative amount) as well as charges (expressed as a positive amount), between Buyer and Seller as they exist as of the Effective Date of this Agreement. The Parties shall mutually agree upon a final allocation in the Net Buyer Settlements Protocol. As of the Effective Date, the Parties do not anticipate that the Facility will provide Ancillary Services upon COD. To the extent Buyer elects to provide Ancillary Services to CAISO in the future, Seller’s liability in the associated Charge Codes shall be limited to items within Seller’s control, including but not limited to Forced Outage and compliance with ramp rates on file with CAISO. For the avoidance of doubt, any penalties due solely to decreases in solar irradiance shall be for the account of Buyer; penalties due to overlapping causes including decreases in solar irradiance and factors within Seller’s control shall be for the account of the Seller.

Charge Code	Charge Code Description	PPA Section	Net Buyer CAISO Settlements	Net Seller CAISO Settlements
701	Forecasting Service Fee	5.6(i)		
1487	Emergency Energy Exchange Program Neutrality Adjustment	5.6(e)(i)(B)		
1591	EP Penalty Charge due CAISO Trustee	5.6(e)(i)(B) or 5.6(e)(ii), as applicable		
1592	EP Penalty Allocation Payment	5.6(e)(ii)		
4515	GMC Bid Transaction Fee	5.6(e)(ii)		
4560	GMC Market Services Charge	5.6(e)(ii)		
4561	GMC System Operations Charge	5.6(e)(ii)		
4575	GMC – Scheduling Coordinator Identification Charge	5.6(e)(ii)		
6011	Day Ahead Energy, Congestion, Loss Settlement	5.6(e)(ii)		
6100	Day Ahead Spinning Reserve Capacity Settlement	5.6(e)(ii)		
6124	No Pay Spinning Reserve Settlement	5.6(e)(i)(B)		
6170	Real Time Spinning Reserve Capacity Settlement	5.6(e)(ii)		
6200	Day Ahead Non-Spinning Reserve Capacity Settlement	5.6(e)(ii)		
6224	No Pay Non-Spinning Reserve Settlement	5.6(e)(i)(B)		
6270	Real Time Non-Spinning Reserve Capacity Settlement	5.6(e)(ii)		
6460	FMM Instructed Imbalance Energy	5.6(e)(ii)		
6470	Real Time Instructed Imbalance Energy Settlement	5.6(e)(ii)		
6475	Real Time Uninstructed Imbalance Energy Settlement	5.6(e)(ii)		
6482	Real Time Excess Cost for Instructed Energy Settlement	5.6(e)(ii)		
6486	Real Time Excess Cost for Instructed Energy Allocation	5.6(e)(i)(B)		
6488	Exceptional Dispatch Uplift Settlement	5.6(e)(ii)		
6500	Day Ahead Regulation Up Capacity Settlement	5.6(e)(ii)		
6524	Non Compliance Regulation Up Settlement	5.6(e)(i)(B)		

6570	Real Time Regulation Up Capacity Settlement	5.6(e)(ii)	[REDACTED]	[REDACTED]
6600	Day Ahead Regulation Down Capacity Settlement	5.6(e)(ii)	[REDACTED]	[REDACTED]
6620	RUC and RTM Bid Cost Recovery Settlement	5.6(e)(ii)	[REDACTED]	[REDACTED]
6624	Non Compliance Regulation Down Settlement	5.6(e)(i)(B)	[REDACTED]	[REDACTED]
6630	IFM Bid Cost Recovery Settlement	5.6(e)(ii)	[REDACTED]	[REDACTED]
6636	IFM Bid Cost Recovery Tier 1 Allocation	5.6(e)(ii)	[REDACTED]	[REDACTED]
6670	Real Time Regulation Down Capacity Settlement	5.6(e)(ii)	[REDACTED]	[REDACTED]
6800	Day Ahead Residual Unit Commitment (RUC) Availability Settlement	5.6(e)(ii)	[REDACTED]	[REDACTED]
6824	No Pay Residual Unit Commitment (RUC) Settlement	5.6(e)(i)(B)	[REDACTED]	[REDACTED]
7070	Flexible Ramp Forecast Movement Settlement	5.6(e)(ii)	[REDACTED]	[REDACTED]
7071	Daily Flexible Ramp Up Uncertainty Capacity Settlement	5.6(e)(ii)	[REDACTED]	[REDACTED]
7077	Daily Flexible Ramp Up Uncertainty Award Allocation	5.6(e)(i)(B)	[REDACTED]	[REDACTED]
7078	Monthly Flexible Ramp Up Uncertainty Award Allocation	5.6(e)(i)(B)	[REDACTED]	[REDACTED]
7081	Daily Flexible Ramp Down Uncertainty Capacity Settlement	5.6(e)(ii)	[REDACTED]	[REDACTED]
7087	Daily Flexible Ramp Down Uncertainty Award Allocation	5.6(e)(i)(B)	[REDACTED]	[REDACTED]
7088	Monthly Flexible Ramp Down Uncertainty Award Allocation	5.6(e)(i)(B)	[REDACTED]	[REDACTED]
7251	Regulation Up Mileage Payment	5.6(e)(ii)	[REDACTED]	[REDACTED]
7261	Regulation Down Mileage Payment	5.6(e)(ii)	[REDACTED]	[REDACTED]
7891	Monthly CPM Settlement	5.6(e)(ii)	[REDACTED]	[REDACTED]
7989	Invoice Deviation Interest Distribution	5.6(e)(ii)	[REDACTED]	[REDACTED]
7999	Invoice Deviation Interest Allocation	5.6(e)(ii)	[REDACTED]	[REDACTED]
8526	GIP Forfeited Deposit Allocation	5.6(e)(ii)	[REDACTED]	[REDACTED]
8830	Monthly Resource Adequacy Availability Incentive Mechanism Settlement	3.6(c)	[REDACTED]	[REDACTED]
8831	Monthly Resource Adequacy Availability Incentive Mechanism Allocation	3.6(c)	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT N
BUYER AS SCHEDULING COORDINATOR

A. Transfer of SC Obligations.

- (1) Upon transfer of Scheduling Coordinator obligations from Seller to Buyer pursuant to Section 5.6(a)(ii) of the Agreement, Seller shall not (i) authorize or designate any other party to act as Scheduling Coordinator for the Facility, or (ii) revoke Buyer's authorization to act as Seller's Scheduling Coordinator for the Facility unless agreed to in writing by Buyer.
- (2) At least ninety (90) days prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or Buyer's designee as Seller's SC. These actions shall include (i) submission of a designation of a new SC for Seller to the CAISO, (ii) causing the newly designated SC to submit a letter to the CAISO accepting the designation, and (iii) informing Buyer and/or its designee of the last date on which Buyer or its designee will be Seller's SC.

B. Amendments to the Agreement. As of the date that Buyer or its designee assumes Scheduling Coordinator responsibilities, the following amendments to the Agreement shall take effect.

- (1) Amendments to Article 1 – Definitions.
 - (i) The following definitions shall be deleted from Article 1:
 - Buyer DAM Bid Price**
 - Customer Market Results Interface**
 - DA Percentage**
 - Net Buyer CAISO Settlements**
 - Net Buyer CAISO Settlements Protocol**
 - Scheduling Infrastructure Business Rules**
 - Seller SC Fee**
 - (ii) The following definitions shall be added to Article 1:
 - Net Seller CAISO Settlements: Has the meaning set forth in Section 5.6(e)(iii).**
 - Net Seller CAISO Settlements Protocol: Has the meaning set forth in Section 5.6(e)(iv).**
- (2) Section 4.1(a), Monthly Invoices, shall read as follows:

Seller shall provide to Buyer no sooner than the tenth (10th) calendar day of each month an invoice for the Product and Deemed Delivered Energy for the prior month based upon meter data for Energy delivered in such calendar month, and for other amounts due to or from Seller hereunder. Buyer or its Scheduling Coordinator, shall provide Seller with all necessary CAISO settlement data and the CAISO Charges Invoice no later than five (5) Business Days following receipt of the settlement statements from CAISO in a form mutually agreed upon by Buyer and Seller. Except for Deemed Delivered Energy and Replacement Product, all Energy purchased under this Agreement must be measured by the Facility's CAISO revenue meter to be eligible for payment under this Agreement.

- (i) The “Monthly Payment” for each month will be an amount equal to the summation of the following for each Settlement Interval in such month:
 - (A) the product of (I) the Energy delivered pursuant to this Agreement as measured by CAISO metering and settlement data (“Delivered Energy”) for such Settlement Interval, multiplied by (II) the Contract Price, plus
 - (B) the product of (I) the Deemed Delivered Energy for such Settlement Interval, times (II) the Contract Price, minus
 - (C) the Net Seller CAISO Settlements for such Settlement Interval, minus
 - (D) the Positive Uninstructed Deviation Credit.

$$\begin{aligned}
 \text{Monthly Payment} = & \sum_{i=1}^n \{ [\text{Delivered Energy MWh}_i] \times [\text{Contract Price}_i \$] \} \\
 & + ([\text{Deemed Delivered Energy MWh}_i] \times [\text{Contract Price}_i \$]) - [\text{Net Seller CAISO Settlements}_i] - [\text{Positive Uninstructed Deviation Credit}]
 \end{aligned}$$

- (ii) The Invoice shall include:
 - (A) the hourly quantities of Delivered Energy delivered in the prior month;
 - (B) a calculation of the Monthly Payment as set forth in Section 4.1(a)(i);
 - (C) credits for WREGIS Certificate Deficits pursuant to Section 3.5(c)(iii), if any;
 - (D) A calculation of the Deemed Delivered Energy for such month; and
 - (E) any other amounts due to or from Seller hereunder.

- (3) Section 5.5(d) Metering, is deleted in its entirety and replaced with the following:

Metering. All Energy from the Facility must be delivered through a CAISO revenue meter dedicated solely to the Facility. The meter data will account for transformer losses and will be programmed to reflect losses to the Delivery Point, consistent with CAISO requirements. Seller shall (subject to Section 4.1(f)) bear all costs relating to all metering equipment installed to accommodate the Facility. Seller shall grant to the Scheduling Coordinator (whether Buyer or Buyer’s designee) rights to retrieve the meter reads directly from the CAISO meter at the Facility site through both (i) physical access and (ii) remote electronic access as necessary for the Scheduling Coordinator to meet its obligations under the CAISO Tariff and other applicable rules. Seller shall maintain an updated record of programmed meter parameters (such as channel configuration and other relevant settings) that is accessible and reasonably acceptable to Buyer. In addition, Seller shall provide all meter data in a form reasonably acceptable to Buyer.

- (4) Section 5.5(e) Facility Data, is deleted in its entirety.

- (5) Section 5.6, Scheduling, Forecasts, and Outages, shall be deleted in its entirety and replaced with the following:

- (a) Scheduling Coordinator Services.

- (i) Buyer shall provide (or cause to be provided) all required Scheduling Coordinator services for the Facility. Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents reasonably necessary to authorize, designate, or re-designate Buyer or Buyer’s designee as Scheduling Coordinator for the Facility.

- (ii) Seller shall not (A) authorize or designate any other party to act as Scheduling Coordinator for the Facility, or (B) revoke Buyer's authorization to act as Seller's Scheduling Coordinator for the Facility unless agreed to in writing by Buyer.
 - (iii) At least ninety (90) days prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or Buyer's designee as Scheduling Coordinator for the Facility. These actions shall include (A) submitting a designation of a new Scheduling Coordinator for Seller to the CAISO, (B) causing the newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation, and (C) informing Buyer and/or its designee of the last date on which Buyer or its designee will be Scheduling Coordinator for the Facility.
 - (iv) Each Party shall use commercially reasonable efforts to facilitate the other Party to meet its respective obligations under applicable CAISO, PTO, FERC, CEC, or other requirements of a Governmental Authority.
- (b) CAISO Notices and Data.
- (i) Buyer shall provide Seller with access to a remotely-accessible system through which Seller shall submit to Buyer all notices and updates required under the CAISO Tariff regarding the Facility's status including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the system is not accessible, Seller shall promptly submit such information to Buyer telephonically or electronically to the personnel designated in the Cover Sheet to receive such information.
 - (ii) Seller shall provide information to Buyer that is required for the CAISO's Master Data File and Resource Data Template (or successor systems) for the Facility consistent with this Agreement and the CAISO Tariff. Neither Party shall change such data without the other Party's prior written consent.
- (c) Real-Time Market Scheduling. Buyer will submit Economic Bids or Self-Schedules at the CAISO Settlement Point into the Real-Time Market (including both the FMM and the RTD).
- (d) [reserved]
- (e) CAISO Costs and Revenues.
- (i) Seller shall be responsible for:
 - (A) The CAISO Resource Adequacy Costs associated with providing Buyer with replacement Resource Adequacy in the event that Seller is deficient meeting its Resource Adequacy obligations due to Facility outages or derates or fails to comply with its obligations under Section 3.6(b).
 - (B) CAISO charges, costs, and penalties resulting from (1) the unavailability of the Facility, (2) Seller's failure to notify CAISO of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), (3) any other failure by Seller to

abide by the CAISO Tariff, this Agreement, or with any CAISO dispatch instruction or Curtailment Order, or the Forced Outages notice provision in Section 5.6(k), (4) any Seller actions or inactions that cause Buyer or Buyer's SC to fail to comply with the CAISO Tariff, including any notice requirement for outages or Forced Outages, or any CAISO dispatch instruction or Curtailment Order, or (5) penalties related to non-performance with respect to an Ancillary Services and Residual Unit Commitment awards due to conditions within Seller's control. Notwithstanding the foregoing, Buyer shall be responsible for any non-performance penalties due solely to decreases in solar irradiance.

- (C) If during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon Seller or the Facility due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be Seller's responsibility.
 - (D) Seller shall be responsible for all CAISO fees, charges, and penalties imposed as a result of deviations between RTD Scheduled Energy and Delivered Energy during any Settlement Interval, except for those charges due solely to real-time uninstructed Energy caused by decreases in solar irradiance.
 - (ii) Buyer shall receive all CAISO net revenues, credits, and other payments (such as Bid Cost Recovery) associated with the Facility for each Settlement Period and shall be responsible for all other CAISO costs, fees, and charges, including the Scheduling Coordinator ID Charge, with the exception of those specified in Section 5.6(e)(i).
 - (iii) Seller shall credit Buyer for Seller's responsibility for net charges (or net credits) pursuant Section 5.6(e)(i), ("Net Seller CAISO Settlements"), as identified in Exhibit M.
 - (iv) Exhibit M sets forth an initial allocation of responsibility for Charge Codes consistent with this Section 5.6(e). Following the Execution Date, the Parties shall cooperate to prepare and mutually agree upon a written protocol (the "Net Seller CAISO Settlements Protocol") to set forth appropriate administrative details to carry out the calculation and allocation of CAISO costs and CAISO revenues described in this Section 5.6(e). In the event that the Charge Codes agreed to by the Parties in the Net Seller CAISO Settlements Protocol are amended or deleted or new CAISO charges, costs, revenues, penalties, or fees are implemented, the Party who is the SC at the time that Charge Codes are amended, deleted, or added shall promptly notify the other Party and the Parties shall mutually agree upon adjustments to the Net Seller CAISO Settlements Protocol as necessary to allocate the new or amended CAISO costs and revenues in a manner that is consistent with the intent of this Section 5.6(e).
- (f) Positive Uninstructed Deviations. If the RTD Price is lower than the Buyer RTM Bid Price in any Settlement Interval, Seller shall credit Buyer on the monthly invoice for the product of (1) Buyer RTM Bid Price minus the RTD Price, and (2) the quantity of Energy produced by the Facility in excess of the CAISO dispatch instruction (positive deviations) for that Settlement Interval ("Positive Uninstructed Deviation Credit").

- (g) CAISO Charges. Each Party shall use commercially reasonable efforts to cooperate with the other Party to allow that Party to comply with any obligations, and minimize any potential liability, it may have under the CAISO Tariff in relation to Product under this Agreement.
- (h) [reserved].
- (i) Forecasts. Seller shall use generally accepted industry standards to produce the forecasts described hereunder. Upon Buyer's written request, Seller shall also retain, at Seller's expense, a third-party forecasting service reasonably acceptable to Buyer to produce such forecasts, in addition to those forecasts produced by Seller. Seller shall provide identical input data to such third-party service provider as are used to produce Seller's own forecast. Such forecast(s) shall be provided to Buyer in a manner reasonably acceptable to Buyer. If, during any given calendar month, the forecast error of such third-party service is larger than the forecast error of the forecasts produced by the Seller, determined as the sum of squared errors between the Seller Day-Ahead Forecast, for each respective forecast, and actual hourly production, then Buyer shall reimburse Seller for such third-party forecasting service costs.
- (i) No later than thirty (30) calendar days prior to the end of each Contract Year, Seller will provide a forecast of available capacity and production ("Annual Forecast") detailing hourly expected available generation and monthly capacity and all proposed Planned Outages for the next Contract Year. Within five (5) Business Days following any change to the Planned Outage schedule for such Contract Year, Seller will provide notice to Buyer with an updated Annual Forecast reflecting the updated Planned Outage schedule, which will automatically supersede the prior Annual Forecast for such Contract Year. During the Delivery Term of this Agreement, Seller shall not schedule Planned Outages of more than twenty-four (24) hours during the period of reliability accounting (initially the period between June 1st and September 30th but subject to changes at Buyer's discretion in order to conform to the CAISO's Availability Assessment procedures).
- (ii) No later than ten (10) calendar days prior to the first day of each month of the Delivery Term, Seller shall provide an electronic update, in a format specified by Buyer, to the Annual Forecast for that calendar month ("Monthly Forecast"). The Monthly Forecast shall include hourly available capacity and expected generation and all Planned Outages.
- (iii) No later than seven (7) calendar days prior to the first day of each week of the Delivery Term, Seller shall provide a weekly forecast of available capacity and production and any changes in Planned Outages ("Weekly Forecast"). The Weekly Forecast shall include hourly available capacity and generation and all Planned Outages.
- (iv) By 5:30 PM Pacific Time on the Business Day immediately preceding the date of delivery, Seller shall provide a forecast of available capacity and production for each hour of the date of delivery ("Seller Day-Ahead Forecast"). The Seller Day-Ahead Forecast shall include hourly available capacity and generation and all Planned Outages.
- (j) Planned Outages. If Buyer requests a change to the scheduled date of any Planned Outage, Seller shall consider such request in good faith and notify Buyer of its decision within seven (7) calendar days of receipt of Buyer's request.

- (k) Forced Outages. Forced Outages shall be reported by Seller to Buyer verbally as soon as practicable and in writing in accordance with the timelines and format required by the CAISO Tariff and business rules, but no later than twenty-four (24) hours thereafter. Written notice of a Forced Outage lasting longer than one (1) hour shall include the type of outage, start date and start time of outage, estimated or actual end date and end time of the outage, a text description of the cause of the outage and any other information the Seller deems necessary for the Buyer to understand the causes and impact of the outage. Seller shall notify Buyer as soon as practicable, whenever the Facility is returned to service.
- (l) Curtailment.
- (i) **Mandatory Curtailment Periods.** Seller shall reduce delivery amounts as directed by the Reliability Coordinator, CAISO, PTO, or any successor thereto pursuant to a Curtailment Order. Except as set forth in Section 5.6(l)(ii)(C), Buyer shall not be required to pay Seller for the Product that Seller could have delivered to Buyer but for such Curtailment Order.
- (ii) **Deemed Delivered Energy.**
- (A) If a Bid Curtailment occurs, in Seller's monthly invoice Seller will reasonably calculate consistent with Good Utility Practices the difference in MWh between the Final Output Estimate and actual Delivered Energy attributable to such Bid Curtailment ("Deemed Delivered Energy"). The Parties shall share any documentation necessary to create or support such calculation. Seller shall include supporting documentation and calculations for the determination of Deemed Delivered Energy with the monthly invoice.
- (B) If either Party believes that the Final Output Estimate is an inaccurate estimate of the quantity of Energy the Facility reasonably could have generated based on Facility availability, insolation, and other relevant meteorological conditions, the Parties will mutually agree upon the use of (1) the Day-Ahead Forecast, (2) the Seller Day-Ahead Forecast, (3) the third-party version of the Seller Day-Ahead Forecast (as defined in section 5.6(i)), or (4) another mutually agreed upon methodology to determine the Final Output Estimate.
- (C) In the event of an overlapping Bid Curtailment and a Curtailment Order, Seller shall exclude Energy curtailed during such Curtailment Order time period from the calculation of Deemed Delivered Energy. Notwithstanding the foregoing, if a Bid Curtailment and a CAISO system-wide Overgeneration Curtailment Order occur in the same settlement interval, the curtailment shall be treated as a Bid Curtailment for the purpose of the calculation of Deemed Delivered Energy.
- (D) In addition to paying Seller for all Delivered Energy hereunder, Buyer shall pay Seller the Contract Price for Deemed Delivered Energy.

EXHIBIT O
COMMUNITY BENEFITS

Terms and Conditions

The Community Benefits Commitments (“CB Commitments”) provided by Seller pursuant to this Exhibit O are independent of the obligations of the Parties under this Agreement. Any failure to perform all or part of the Seller’s CB Commitments shall not affect or excuse either Party’s performance under this Agreement.

Providing community benefits is a deliverable, zero-dollar task. No hours or dollars should be allocated or included in Seller’s costs for the services under this Agreement in order to perform or deliver the voluntarily proposed CB Commitments. Seller shall fund the CB Commitments independently and such funding shall neither be tied to, nor dependent upon, SFPUC funds or sources of funding receivable from SFPUC. This requirement of independent funding includes direct financial contributions and any costs related to the performance or delivery of the CB Commitments. The provision of CB Commitments does not entitle Seller to additional costs or benefits beyond the scope specified within the Agreement.

Seller shall commence performance of the CB Commitments after the Execution Date but prior to the Commercial Operation Date. CB Commitments performed as part of previous contracts or prior to the Execution Date cannot count towards Seller’s CB Commitments for this Agreement. If Seller or its Affiliate(s) have established programs or plans that are consistent with the CB Commitments, Seller or its Affiliate(s) may continue those programs as part of its CB Commitments and will be given credit for activities that are performed following the Execution Date.

Project Team

The CB Commitments plan to be developed by Seller will specify the Executive in Charge and Community Benefits Coordinator. The Executive in Charge shall manage the Seller’s CB Commitments, provide fiduciary oversight, and ensure that the CB Commitments listed in the Community Benefits Summary Table below are delivered to the communities that they are intended to benefit in a transparent and accountable manner. The Executive in Charge shall work with the Community Benefits Coordinator to organize, plan, track, measure, and report to the Buyer on Seller’s CB Commitments. If the Seller replaces the Executive in Charge and the Community Benefits Coordinator, the Seller must inform the SFPUC Community Benefits and Social Responsibility Manager in writing.

Community Benefits Commitments

Seller commits to a contribution of [REDACTED] as further described in the Community Benefits Summary Table below. Seller plans to direct the CB Commitments within Riverside County/City of Blythe and/or the City and County of San Francisco. The Community Benefit Priority Areas and the distribution of Direct Financial Contributions shown below are preliminary as of the Execution Date and may be modified by Seller in its Community Benefits Plan (described below), as may be updated from time to time. CB Commitments must support non-profit, charitable, or school-related activities. CB Commitments shall not go to, nor benefit, any City department or employee.

Community Benefits Summary Table

Community	Community	Expected Outcomes	Timetable &	Direct Financial	Total
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Benefit Priority Area	Benefit Program Area or Partner		Duration	Contribution	Contributions
1. Education	Non-profits or schools	Support nonprofit or school-based programs that advance engineering and science education and provide mentorship, tutoring, and scholarship opportunities.	5 years	██████████	██████████
2. Economic Development	Non-profits or schools	Support nonprofit programs that develop small, local business and provide economic assistance.	5 years	██████████	██████████
TOTAL				██████████	██████████

* Total Contributions shown are based on annual contributions, but the amount may be lower if made in one or more lump sums that provide the equivalent present value of the annual contributions

Accountability and Deliverables

Seller shall provide a description of the accountability methods to ensure that the proposed CB Commitments will be delivered in a transparent and accountable manner. To maximize transparency and accountability, a process must be proposed that will assist in independently verifying that such funds and resources were delivered to the intended beneficiaries.

Seller must provide the following deliverables during performance of the Agreement:

1. Community Benefits Plan and Timeline
 - Seller shall develop a Community Benefits Plan within six (6) months of the Execution Date. The Community Benefits Plan will provide details regarding community partnerships, expenditures, a schedule, and timelines.
 - Seller is invited to meet once a year thereafter or as needed with the SFPUC External Affairs Community Benefits and Social Responsibility Manager during the term of the Agreement to discuss the work plan, timelines, partners, strategic delivery, scale, and performance necessary to ensure the commitments maximize collective resources and positive impact.

2. Community Benefits Commitments and Reporting
 - Seller shall deliver the proposed CB Commitments described herein and specified further in the Community Benefits Plan. Any proposed changes to the CB Commitments as set forth herein shall be submitted in writing for review by the SFPUC External Affairs Community Benefits and Social Responsibility Manager.
 - Seller shall submit biannual progress reports to the SFPUC External Affairs Community Benefits and Social Responsibility Manager, which detail the geographic scope of commitment, activities and outcomes, key metrics, and the total number of hours, dollars, etc. contributed to-date. Progress reports must be submitted on the last business day of the month following the close of 2nd and 4th business quarters and are only required if there were activities completed in the reporting period. As part of the progress reports, Seller also must submit documents to substantiate that the CB Commitments and any funds associated therewith were delivered to the communities they were intended to benefit. These reporting requirements may be adjusted over the duration of the program due to system improvements.

Seller shall also submit an annual newsletter documenting the culmination of their CB Commitments, beneficiaries, and outcomes for the year and is only required if there were activities completed in that year.

1 [Authorizing Agreements - Purchase of Electricity and Related Products and Services for
2 CleanPowerSF - Public Utilities Commission]

3 **Ordinance delegating authority under Charter, Section 9.118, to the General Manager of**
4 **the Public Utilities Commission to enter into agreements with terms in excess of ten**
5 **years or requiring expenditures of \$10,000,000 or more for power and related products**
6 **and services required to supply San Francisco's community choice aggregation**
7 **program, CleanPowerSF, subject to specified conditions, as defined herein; and**
8 **authorizing deviations from certain otherwise applicable contract requirements in the**
9 **Administrative Code and the Environment Code.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
13 **Board amendment additions** are in double-underlined Arial font.
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.
15 **Asterisks (* * * *)** indicate the omission of unchanged Code
16 subsections or parts of tables.

17 Be it ordained by the People of the City and County of San Francisco:

18 **Section 1. Background.**

19 (a) State law allows cities and counties to develop Community Choice Aggregation
20 (CCA) programs, through which local governments supply electricity to serve the needs of
21 participating customers within their jurisdictions while the existing utility continues to provide
22 services such as customer billing, transmission, and distribution.

23 (b) The City elected to implement a CCA program to provide San Francisco
24 residents and businesses the option to receive cleaner, more sustainable electricity at rates
25 comparable to PG&E's rates. See Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12 and
78-14; and Resolution Nos. 348-12, 331-13 and 75-15.

1 (c) In May 2016, the San Francisco Public Utilities Commission (PUC) launched
2 San Francisco's CCA program, CleanPowerSF, with initial service to almost 8,000 accounts.
3 In November 2016, PUC expanded its service and CleanPowerSF now serves about 80,000
4 accounts. As required by State law for all CCAs, customers are given several opportunities to
5 opt out of CleanPowerSF service.

6 (d) CleanPowerSF currently offers two levels of supply service: Green, the default
7 service taken by most customers, which contains 40% renewable energy; and SuperGreen, a
8 premium option selected by 3.94% of customers, which offers 100% renewable energy.

9 (e) The goals of CleanPowerSF are to provide affordable and reliable electricity
10 services, cleaner energy alternatives advancing the City's Greenhouse Gas reduction goals,
11 investment in local renewable energy projects and jobs, and long-term rate and financial
12 stability.

13 (f) Public and private utilities and energy suppliers use industry-standard pro forma
14 contracts to ensure the availability of essential services in a timely and cost-effective manner.
15 Using these agreements can help facilitate negotiations by focusing the parties on the
16 elements that are most likely to differ from one transaction to another: price, quantity, location,
17 and duration. These contracts provide standard terms and conditions that address common
18 issues, but allow parties to determine which provisions to include in a particular contract.

19 (g) City law requires standard contract provisions to protect the City's interests,
20 ensure accountability, and promote important social values. For the initial phase of
21 CleanPowerSF service, in Ordinance Nos. 75-15 and 223-15, the Board of Supervisors
22 authorized the PUC to use certain pro forma contracts and deviate from certain otherwise
23 applicable contracting requirements, subject to specified conditions. The Board also
24 delegated authority to the PUC General Manager to enter agreements with terms in excess of
25 ten years or requiring expenditures of \$10,000,000 or more, subject to specified conditions.

1 **Section 2. Expansion of CleanPowerSF Service to San Francisco Customers.**

2 State law requires cities that offer CCA service to offer service to all residential
3 customers; many CCA programs, including CleanPowerSF, have added customers in phases
4 to mitigate financial and operational risk. The CleanPowerSF Phasing Policy (adopted in the
5 CleanPowerSF Business Practice Policies on December 8, 2015, by PUC Resolution 15-
6 0267) provides that service will be offered to additional customers throughout San Francisco
7 in a manner that is financially prudent and operationally feasible. The PUC expects additional
8 phases of service to meet the following conditions: program rates are sufficient to cover
9 program costs and rates are projected to be at or below PG&E rates at the launch of each
10 phase; supply commitments are sufficient to meet new projected customer demand; staffing
11 and systems and/or qualified third party service providers can handle additional transactions
12 and customer account volumes; sufficient and reasonably priced credit, collateral and working
13 capital support is available; and required approvals have been obtained.

14 In May 2017 the PUC completed a study of the options for expanding CleanPowerSF
15 to offer service to all customers in San Francisco. On May 9, 2017, the PUC Commission
16 adopted in a public meeting the goal of completing City-wide enrollment into CleanPowerSF
17 by July 2019. The CleanPowerSF Growth Plan, Final Report, is on file with the Clerk of the
18 Board of Supervisors in File No. 171172.

19 The PUC anticipates launching a large program expansion in 2018, with further
20 expansion to all customers in the City in 2019, although exact expansion dates will depend on
21 available power supply and program costs. To meet these aggressive implementation date
22 targets and secure the best possible prices and terms, PUC will need to negotiate a mix of
23 electricity contracts with multiple suppliers simultaneously in an expedited time frame.
24
25

1 **Section 3. Contracts Needed for CleanPowerSF Expansion.**

2 (a) The electricity supplies needed to expand CleanPowerSF service throughout the
3 City will be obtained through a mix of long-term (10 to 25 years) and shorter term contracts.
4 To acquire the electricity products necessary to supply this program expansion and meet the
5 program’s portfolio content goals and regulatory obligations, the PUC issued two Requests for
6 Offers (“RFO”), one in June 2017 (described in subsection (1) below) and one in September
7 2017 (described in subsection (2) below). To ensure it had adequate credit support for these
8 purchases and other program requirements, the PUC also issued an RFP for a bank credit
9 facility in July 2017 (described in subsection (3) below).

10 (1) On June 22, 2017, the PUC issued an RFO seeking bids for energy,
11 environmental attributes, and capacity from new or existing eligible renewable resources, for
12 contracts of up to 25 years in duration. A copy of the renewable energy RFO is on file with
13 the Clerk of the Board of Supervisors in File No. 171172, and is incorporated herein by
14 reference as though fully set forth. The PUC received more than 300 bids from 32 different
15 companies, for supplies from more than 70 different projects, 83% of which are located in
16 California. Over 90% of the bids offered energy from new renewable resources. After the
17 evaluation team reviewed the bids to determine compliance with minimum qualifications and
18 criteria specified in the RFO, the PUC shortlisted two subsets of bidders for further
19 consideration and possible negotiations. For projects with initial contract delivery dates in
20 2018 or 2019, the selected bidders are 8minutenergy Renewable LLC; Avangrid Renewables
21 LLC; Calpine Energy Services L.P.; E.ON Climate & Renewables North America LLC; First
22 Solar; Frontier Renewable; FTP Power LLC, dba Sustainable Power Group (sPower); Morgan
23 Stanley Capital Group Inc.; NextEra Energy Resources Acquisitions LLC; Shell Energy North
24 America (US) L.P.; SunPower Corporation Systems; Terra-Gen LLC; Wadham Energy L.P.;
25 and Wind Wall Development LLC. For projects with initial contract delivery dates in 2020 or

1 2021, the selected bidders are 8minutenergy Renewable LLC; E.ON Climate & Renewables
2 North America, LLC; EDF Renewable Development, LLC; EDP Renewables North America
3 LLC; First Solar; Lendlease Energy Development LLC; NextEra Energy Resources
4 Acquisitions, LLC; NRG Renew, LLC; Sempra Renewables, LLC; and SunPower Corporation,
5 Systems.

6 The RFO invited Respondents to submit proposals for community benefits to be
7 invested in San Francisco County and/or the county in which the renewable project is or will
8 be located. Community Benefits are firm commitments on the part of the bidder to be
9 delivered to the community during the term of the contract in accordance with the SFPUC's
10 2011 Community Benefits Policy and 2009 Environmental Justice Policy, which directs the
11 SFPUC and its partner firms to be a good neighbor to all who are directly impacted by its
12 activities and investments. Community benefits must support non-profit or charitable activities
13 and may not go to, nor benefit, any employee of the SFPUC. The contractor may provide
14 community benefits in the form of a direct financial contribution, volunteer hours, in-kind
15 contributions, or a combination thereof. Community benefits are a "zero-dollar task," meaning
16 no hours or dollars are allocated in the selected contractor's costs under the contract.

17 (2) On September 12, 2017, the PUC issued an RFO seeking bids for
18 shaped energy, renewable energy, carbon-free energy, and capacity for contracts of up to
19 three years in length, with start dates as early as 2018 and as late as 2021. A copy of the
20 shaped energy RFO is on file with the Clerk of the Board of Supervisors in File No. 171172,
21 and is incorporated herein by reference as though fully set forth. These bids are not for
22 electricity produced by pre-specified projects; instead, the bidder provides a portfolio of
23 electricity supply from a variety of available sources responsive to the need the PUC
24 identified. The RFO excluded bids containing power purchased from coal or nuclear plants.
25 PUC received bids from five companies. After the evaluation team reviewed the bids to

1 determine compliance with minimum qualifications and criteria specified in the RFO, the PUC
2 shortlisted five bidders for further consideration and possible negotiations. The selected
3 bidders are Calpine Energy Services L.P.; Constellation; Direct Energy Business Marketing
4 LLC; Morgan Stanley Capital Group Inc.; and Shell Energy North America (U.S.) L.P.

5 (3) On July 18, 2017, the PUC issued an RFP for a bank credit facility. A
6 copy of the bank RFO is on file with the Clerk of the Board of Supervisors in File No. 171172,
7 and is incorporated herein by reference as though fully set forth. After evaluating the
8 responses, PUC selected JPMorgan Chase Bank, N.A. (JPMorgan) for further discussions
9 and negotiations. PUC anticipates negotiating a credit agreement to provide liquidity support,
10 as needed, for power purchases, regulatory requirements, and other financial obligations of
11 the program through letters of credit or loans. The credit agreement will have a maximum
12 term of six years and a maximum credit commitment of \$150 million.

13 (b) Negotiation and Execution of Contracts. PUC expects to negotiate contracts
14 with one or more bidders for power and to make purchases under one or more of the
15 contracts after approvals and after final pricing. PUC anticipates that some purchases will be
16 made in early 2018, and additional purchases will be made over the next few years, through
17 2021. ~~The PUC Commission in public meetings will consider authorizing one or more of these~~
18 ~~contracts. PUC expects the Commission to review and consider approvals related to the~~
19 ~~RFOs for power supply in its regular Commission meeting on November 14, 2017. PUC also~~
20 ~~expects to successfully conclude negotiations with JPMorgan for the bank credit facility, which~~
21 ~~will is expected to be considered by the PUC Commission in a public meeting in January 2018~~
22 ~~2017.~~ The General Manager will not execute any contracts unless conditions specified by the
23 PUC Commission have been satisfied, including requirements for program rates. Final
24 program rates will provide for program cost recovery including energy procurement and
25 administrative and financial costs of program implementation.

1 (c) In a public meeting on November 14, 2017, the PUC Commission approved the
2 pool of qualified bidders for energy supply contracts and authorized the General Manager to
3 negotiate energy supply contracts with one or more of those bidders, and to execute one or
4 more contracts, subject to the following conditions:

5 (1) the total cost of the executed contracts is consistent with the rate setting
6 methodology adopted by the Commission in Resolution 15-0112;

7 (2) the renewable energy supplied is from resources eligible to be counted as
8 California Renewables Portfolio Standard Portfolio Content Category 1 or Portfolio Content
9 Category 2 resources;

10 (3) the counterparties to any contract must be creditworthy;

11 (4) the total combined volume of power procured under contracts from the
12 two competitive solicitations shall not exceed 435 MW per year;

13 (5) the duration of any contract under the renewable energy RFO shall not
14 exceed 25 years, and the duration of any contract under the shaped energy RFO shall not
15 exceed three years;

16 (6) the total quantity of Resource Adequacy Capacity procured shall not
17 exceed the expected quantity established by state law and regulation for load of 435 MW per
18 year; and

19 (7) the total cost of all energy supply contracts shall not exceed \$175 million
20 per year.

21 The Commission further determined it would review the expected costs of CCA service
22 and consider authorizing the General Manager to finalize the schedule of rates and charges
23 for the next expansion to additional customers; the contracts would not be effective until the
24 PUC has reviewed the CleanPowerSF risk assessment for the proposed portfolio of contracts
25 to be executed; and the General Manager would report to the SFPUC on the final schedule of

1 rates and charges prior to commencement of the opt-out process. See Resolution No. 17-
2 0226, which is on file with the Clerk of the Board of Supervisors in File No. 171172, and is
3 incorporated herein by reference as though fully set forth.
4

5 **Section 4. Grant of Authority to Use Standard Power Contracts.**

6 As approved in Ordinances 75-15 and 223-15, and for the reasons stated there in
7 addition to the reasons stated above, for purchases of power and related products and
8 services necessary to provide CleanPowerSF service, the Board of Supervisors authorizes
9 the use of the following standardized contracts that deviate from the City's contract forms.

10 (a) Western System Power Pool ("WSPP") Agreement. The WSPP is a group of
11 more than 300 publicly-owned and private utilities, including Alameda Municipal Power, the
12 City of Palo Alto, the City of Roseville, the Sacramento Municipal Utility District, and Silicon
13 Valley Power, all of which operate publicly-owned utilities. The City, through PUC, is a
14 member of the WSPP. The WSPP has developed an agreement that sets forth standard
15 terms and conditions for the purchase and sale of power and related products and services.
16 A copy of the current WSPP agreement is on file with the Clerk of the Board of Supervisors in
17 File No. 171172, and is incorporated herein by reference as though fully set forth. The WSPP
18 agreement has been approved by the Federal Energy Regulatory Commission ("FERC").
19 The WSPP agreement is periodically updated and modified subject to the approval of FERC.
20 The Board of Supervisors authorized the use of the WSPP agreement for CleanPowerSF
21 purchases in Ordinance No. 75-15.

22 (b) The Edison Electric Institute (EEI) Master Agreement. The EEI, in collaboration
23 with more than 80 member utilities, power marketers, power generators, and customer
24 representatives, developed an agreement that sets forth standard terms and conditions for the
25 purchase and sale of power and related products and services. The EEI agreement is

1 updated as needed to reflect market changes. A copy of the current EEI agreement is on file
2 with the Clerk of the Board of Supervisors in File No. 171172 and is incorporated herein by
3 reference as though fully set forth. The Board of Supervisors authorized the use of the EEI
4 agreement for CleanPowerSF purchases in Ordinance No. 75-15.

5 (c) City Pro forma Agreements. In connection with the recent RFOs for power
6 supplies, the PUC has developed its own standardized contract forms for three different types
7 of energy supply, combining standard industry terms with key City requirements. Ordinance
8 No. 75-15 authorized the use of form agreements developed by PUC for CleanPowerSF
9 purchases. Each of these form agreements is on file with the Clerk of the Board of
10 Supervisors in File No. 171172 and is incorporated herein by reference as though fully set
11 forth:

- 12 (1) Renewable Power Purchase Agreement (New Facility);
- 13 (2) Renewable Power Purchase Agreement (Existing Facility); and
- 14 (3) Power Purchase and Sale Agreement.

15 (d) The Board of Supervisors authorizes the use of the WSPP agreement and the
16 EEI agreement for the PUC's purchase of power and related products and services,
17 notwithstanding that the terms of those agreements may deviate from the City's standard
18 contract terms; the Board of Supervisors authorizes modifications to the form agreements so
19 long as such modifications, in the judgment of the General Manager and the City Attorney, do
20 not materially decrease the City's rights or materially increase its liabilities.

21 (e) The Board of Supervisors approves the pro forma contracts developed by PUC
22 for the purchase of power and related products and services, notwithstanding that the terms of
23 those agreements may deviate from the City's standard contract terms; the Board of
24 Supervisors authorizes modifications to the form agreements so long as such modifications, in
25

1 the judgment of the General Manager and the City Attorney, do not materially decrease the
2 City's rights or materially increase its liabilities.

3
4 **Section 5. Agreement for a Bank Credit Facility.**

5 The Board of Supervisors authorizes the General Manager, subject to the conditions in
6 Section 7, to enter an agreement for liquidity support with JPMorgan, or with another entity if
7 negotiations with JPMorgan do not result in an acceptable agreement. The General Manager
8 may utilize the waivers in Section 6 below and may make modifications to the standard City
9 agreements so long as such modifications, in the judgment of the General Manager and the
10 City Attorney, do not materially decrease the City's rights or materially increase its liabilities.

11
12 **Section 6. Waiver of Certain Contract-Related Requirements in the**
13 **Administrative Code and the Environment Code.**

14 (a) Where the General Manager finds and documents in writing both that the
15 transaction represents the best opportunity available to the City to obtain essential services
16 and products in a manner beneficial to the City, and that it is not feasible to add all standard
17 City contract provisions to the agreement, the Board of Supervisors hereby grants waivers of
18 the following standard contract provisions to the extent found necessary by the General
19 Manager, and finds such waivers to be reasonable and in the public interest:

- 20 (1) Implementing the MacBride Principles (Admin. Code Chapter 12F);
21 (2) Increased participation by small and micro local businesses in City
22 contracts (Admin. Code Chapter 14B);
23 (3) The competitive bidding requirement (Admin. Code Section 21.1);
24 (4) First source hiring requirements (Admin. Code Chapter 83); and
25

1 (5) The tropical hardwood and virgin redwood ban (Environ. Code
2 Chapter 8).

3 (b) Where the General Manager finds and documents in writing both that the
4 agreement represents the best opportunity available to the City to obtain essential services
5 and products in a manner beneficial to the City, and that it is not feasible to add all standard
6 City contract provisions to the agreement, the Board of Supervisors waives the requirement to
7 include in the agreement references to the following City Code provisions to the extent found
8 necessary by the General Manager, and finds such waivers to be reasonable and in the public
9 interest:

10 (1) Public access to meeting and records of non-profit organizations (Admin.
11 Code Section 12L);

12 (2) Sweatfree Contracting (Admin. Code Section 12U.4);

13 (3) Food service waste reduction (Environ. Code Section 1605).

14 (c) The waivers specified in this Section 6 shall apply only to contracts which
15 include language requiring compliance with all applicable federal, state, and local laws.
16

17 **Section 7. Conditions on Contract Authority Granted in this Ordinance.**

18 (a) The City's payment obligations under these contracts for CleanPowerSF power
19 supply and bank credit facility to support CleanPowerSF expansion to offer service throughout
20 San Francisco shall be special limited obligations of the City payable solely from the revenues
21 of CleanPowerSF.

22 (b) The total cost of the power supply contracts authorized by this ordinance, with
23 terms from one to twenty-five years, shall not exceed \$175 million per year.

24 (c) The total credit commitment under the bank credit facility agreement shall not
25 exceed \$150 million over the term of the agreement, which shall not exceed six years.

1 (d) The contracts shall be approved by the PUC acting through its Commission in a
2 public meeting. The Commission may delegate approval authority to the General Manager,
3 subject to conditions specified by the Commission in a public meeting.

4 (e) All conditions established by the PUC shall be met, including but not limited to
5 requirements regarding program rates, program expansion, and electricity portfolio content.

6 (f) The PUC shall submit annual reports to the Board of Supervisors that include
7 annual program costs, the rates charged by the PUC to CleanPowerSF customers to recover
8 costs, and a comparison of CleanPowerSF rates to PG&E rates.

9
10 **Section 8. Community Benefits in Renewable Power RFO.**

11 The Board of Supervisors finds that the community benefits component of the RFO for
12 renewable energy supplies is reasonable and beneficial to the City and authorizes its inclusion
13 in contracts, where the General Manager deems feasible and appropriate, so long as the PUC
14 Commission finds, in a public meeting, that the community benefits component is reasonable
15 and serves a utility purpose.

16
17 **Section 9. Delegation of Authority Under Charter Section 9.118 to the PUC**
18 **General Manager.**

19 Pursuant to its authority under Charter Section 9.118, the Board of Supervisors
20 delegates to the PUC General Manager authority to purchase renewable and shaped energy
21 supplies and credit support for CleanPowerSF from bidders selected by competitive
22 solicitation as described above in Section 3 of this ordinance, using contracts with terms in
23 excess of ten years or requiring expenditures of ten million dollars or more including
24 amendments to such agreements with an impact of greater than \$500,000, so long as the
25

1 contract term does not exceed 25 years, and subject to the conditions specified above in
2 Section 7.

3
4 **Section 10. Effective Date.**

5 This ordinance shall become effective 30 days after enactment. Enactment occurs
6 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
7 sign the ordinance within 10 days of receiving it, or the Board of Supervisors overrides the
8 Mayor's veto of the ordinance.

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: 
13 THERESA L. MUELLER
14 Deputy City Attorney

15 n:\legana\as2017\1800213\01239891.docx



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails
Ordinance

File Number: 171172

Date Passed: January 23, 2018

Ordinance delegating authority under Charter, Section 9.118, to the General Manager of the Public Utilities Commission to enter into agreements with terms in excess of ten years or requiring expenditures of \$10,000,000 or more for power and related products and services required to supply San Francisco's community choice aggregation program, CleanPowerSF, subject to specified conditions, as defined herein; and authorizing deviations from certain otherwise applicable contract requirements in the Administrative Code and the Environment Code.

December 13, 2017 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

December 13, 2017 Budget and Finance Committee - RECOMMENDED AS AMENDED

January 09, 2018 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

January 23, 2018 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

File No. 171172

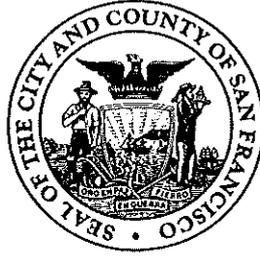
I hereby certify that the foregoing Ordinance was FINALLY PASSED on 1/23/2018 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mark E. Farrell
Mayor

Date Approved

President, District 10
BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. 554-6516
Fax No. 554-7674
TDD/TTY No. 544-6546

Shamann Walton

PRESIDENTIAL ACTION

Date: 10/26/2021

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,
Pursuant to Board Rules, I am hereby:

- Waiving 30-Day Rule (Board Rule No. 3.23)

File No. _____ (Primary Sponsor)

Title. _____

- Transferring (Board Rule No 3.3)

File No. _____ (Primary Sponsor)

Title. _____

From: _____ Committee

To: _____ Committee

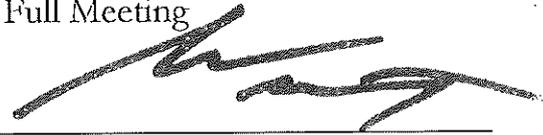
- Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor: Melgar Replacing Supervisor: Mar

For: 10/27/2021 Budget & Finance Meeting
(Date) (Committee)

Start Time: 10:30AM End Time: 12:30PM

Temporary Assignment: Partial Full Meeting



Shamann Walton, President
Board of Supervisors

TO: Angela Calvillo, Clerk of the Board

FROM: Edith Castorena, Policy and Government Affairs

DATE: September 10, 2021

**SUBJECT: Amendment to CleanPowerSF Power Purchase Agreement
– Public Utilities Commission**

Please see attached a proposed resolution approving amendments to CleanPowerSF's power purchase agreement with Blythe Solar IV, LLC, to add energy storage capability to the existing solar energy facility and increase the contract amount by \$83,096,000 for a total not to exceed cost of \$220,280,744.

The following is a list of accompanying documents:

- Draft BOS Resolution (Word Doc Version)
- Executed Original Agreement (PDF)
- BOS Ordinance 8-18 (PDF)

Please contact Edith Castorena at ecastorena@sfwater.org if you need any additional information on these items.

London N. Breed
Mayor

Sophie Maxwell
President

Anson Moran
Vice President

Tim Paulson
Commissioner

Ed Harrington
Commissioner

Newsha Ajami
Commissioner

Michael Carlin
Acting
General Manager



San Francisco Ethics Commission

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

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 210959

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Erin Mulberg	415-264-8409
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
PUC Public Utilities Commission	EMulberg@swater.org

5. CONTRACTOR	
NAME OF CONTRACTOR Blythe Solar IV, LLA	TELEPHONE NUMBER 561-691-7171
STREET ADDRESS (including City, State and Zip Code) 700 Universe Blvd, Juno Beach, FL 33408	EMAIL

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 210959
DESCRIPTION OF AMOUNT OF CONTRACT \$220,280,744		
NATURE OF THE CONTRACT (Please describe) <p>The proposed contract amendment for the CleanPowerSF program, between the San Francisco Public Utilities Commission and NextEra Energy Resources Development, will add battery storage to the operating Blythe IV Solar facility through an existing long-term renewable energy contract; increasing the original contract amount by \$83,096,000 for a total not to exceed cost of \$220,280,744 over the remaining 19 years of the agreement.</p> <p>The amendment to the existing contract for renewable energy from the Blythe IV Solar project to add storage would provide additional value to CleanPowerSF through the provision of cost-effective Resource Adequacy capacity, the ability to store the solar energy produced during periods when there is excess, and will support the implementation of CleanPowerSF's 2020 Integrated Resource Plan.</p>		

7. COMMENTS
Blythe Solar IV, LLC, is a subsidiary of NextEra Energy Resources Acquisitions, LLC.

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Robo/NextEra Energy	James L.	CEO
2	Silagy/NextEra Energy	Eric	Other Principal Officer
3	Ketchum/NextEra Energy	John W.	Other Principal Officer
4	Kujawa/NextEra Energy	Rebecca J.	CFO
5	Sieving/NextEra Energy	Charles E.	Other Principal Officer
6	Caplan/NextEra Energy	Deborah H.	Other Principal Officer
7	Hickson/NextEra Energy	Mark E.	Other Principal Officer
8	Arechabala/NextEra Energy	Miguel	Other Principal Officer
9	Reagan/NextEra Energy	Ron	Other Principal Officer
10	Coffey/NextEra Energy	Bob	Other Principal Officer
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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50			
<input type="checkbox"/>	Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.		

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
---	---------------------------