

Power Purchase and Sale Agreement
For
CleanPowerSF Community Choice Aggregation
by and between
The Buyer and County of San Francisco, acting by and through its
Public Utilities Commission, CleanPowerSF
And

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EXHIBITS

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

- EXHIBIT A** **CONTRACT QUANTITIES**
 - EXHIBIT A-1** MONTHLY ENERGY QUANTITIES
 - EXHIBIT A-2** WEEKDAY HOURLY QUANTITIES
 - EXHIBIT A-3** WEEKEND HOURLY QUANTITIES
 - EXHIBIT A-4** RENEWABLE ENERGY QUANTITIES
 - EXHIBIT A-5** GENERATING RESOURCES

- EXHIBIT B** **CARBON CONTENT STANDARD**

- EXHIBIT C** **CONTRACT PRICE**

- EXHIBIT D** **FIRM RA CAPACITY REQUIREMENTS**

- EXHIBIT E** **INSURANCE**

- EXHIBIT F-1** **FORM OF LETTER OF CREDIT**

- EXHIBIT F-2** **SIGHT DRAFT**

POWER PURCHASE AND SALE 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, CleanPowerSF (“Buyer”) and **[insert name of Seller]**, a _____ **[include place of formation and business type]** (“Seller”), as of _____ (“Execution Date”). The Agreement shall include the exhibits, attachments, and any written supplements hereto, any designated collateral, credit support, or similar arrangement between the Parties.

A. Transaction

Product:

Contract Price:

Contract Quantity:

Delivery Point:

Delivery Term:

B. Collateral

Seller’s Collateral Requirement: \$ _____

- Cash,
- Letter of Credit, or
- Guaranty.

Buyer’s Collateral Requirement: \$ _____

- Cash,
- Letter of Credit, or
- Guaranty.

D. Notices

| | |
|---|--|
| <p>City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF (Buyer)</p> | <p>Seller:</p> |
| <p>All Notices: 525 Golden Gate Ave, 7th Floor San Francisco, CA, 94102 Attn: Contract Administration Phone: 415-554-4603 Facsimile: 415-554-3225</p> | <p>All Notices:</p> |
| <p>Federal Tax ID Number: 946000417</p> | <p>Federal Tax ID Number: DUNS Number:</p> |
| <p>Invoices: Attn: Phone: Facsimile:</p> | <p>Invoices: Attn: Phone: Facsimile:</p> |
| <p>Scheduling: Attn: Phone: Facsimile: Email: Scheduling Desk: PowerScheduler@sfwater.org</p> | <p>Scheduling: Attn: Phone: Facsimile: Email:</p> |
| <p>Payments: Attn: Phone: Facsimile:</p> | <p>Payments: Attn: Phone: Facsimile:</p> |
| <p>Wire Transfer: BNK: ABA (ACH): ACCT:</p> | <p>Wire Transfer: BNK: ABA: ACCT:</p> |
| <p>Credit and Collections: Attn: Phone: Facsimile:</p> <p>With additional Notices of an Event of Default or Potential Event of Default to:</p> | <p>Credit and Collections: Attn: Phone: Facsimile:</p> <p>With additional Notices of an Event of Default or Potential Event of Default to:</p> |

ARTICLE 1: DEFINITIONS

AC: Means alternating current.

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

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

Agreement Term: Has the meaning set forth in Section 2.2.

Applicable Law: Means 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 (“Governmental Authority”), 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.

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: Means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

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

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

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

Buyer’s Collateral Posting: Has the meaning set forth in Section 5.3(a).

Buyer’s Collateral Requirement: Has the meaning set forth in Section 5.3(a).

Buyer’s Obligations: Means the payment obligations of the Buyer under this Agreement and any Transactions entered into pursuant to this Master Agreement.

CAISO: Means the California Independent System Operator Corporation or its functional successor.

CAISO Energy: Means Energy delivered to Buyer under this Agreement without Ancillary Services (as defined the CAISO Tariff) that will be scheduled as inter-SC trade pursuant to the CAISO Tariff for which the only excuse for failure to deliver or receive is an “Uncontrollable Force” as defined in the CAISO Tariff.

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

Capacity Attributes: means 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, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other such attribute.

Carbon Content Standard: Has the meaning set forth in Exhibit B.

CARB: Means the California Air Resources Board or any successor agency.

CEC: Means the California Energy Commission or any successor agency.

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

CleanPowerSF: Means the Buyer’s Community Choice Aggregation Program.

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

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

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

Contract Price: Means the price in United States dollars to be paid by Buyer to Seller for the purchase of the Product as set forth in Exhibit C.

Contract Quantities: Means the quantities of Product set forth in Exhibit A.

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

Costs: Means, with respect to the 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 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: Means the California Public Utilities Commission or any successor government agency.

Credit Rating: Means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P and/or Moody's.

Defaulting Party: Has the meaning set forth in Section 9.1.

Delivery Term: Has the meaning set forth in Section 2.2.

Delivery Point: Means _____.

Downgrade Event: Means a Party's credit rating falls below BBB- from S&P or Baa3 from Moody's.

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

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

Eligible LC Bank: Means a U.S. commercial bank or a foreign bank with a U.S. branch, that has a credit rating of at least A3 from Moody's or A- from S&P.

Eligible Renewable Resource or ERR: Means an Eligible Renewable Energy Resource as such term is defined in California Public Utilities Code Section 399.12 or Section 399.16 and California Public Resources Code Section 25741, as these provisions may be amended or supplemented from time to time.

Energy: Means three-phase, 60-cycle alternating current electric energy measured in MWh.

Environmental Attributes: Means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from a facility and its avoided emission of pollutants. Environmental Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;
- (3) 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 Tags 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 a project,

- (ii) production tax credits associated with the construction or operation of a project and other financial incentives in the form of credits, reductions, or allowances associated with the project 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 project for compliance with local, state, or federal operating and/or air quality permits. If a project 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 a project.

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

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

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

FERC: Means the Federal Energy Regulatory Commission or any successor agency.

Firm RA Capacity: Means Capacity Attributes from the RA Units in the amount of the RA Contract Quantity. If the RA Units are not available to provide the full amount of the RA Contract Quantity for any reason other than Force Majeure, including without limitation any outage or any adjustment of the RA Capacity of any RA Unit, then, Seller shall provide Buyer with Replacement Capacity Attributes pursuant to Exhibit D.

Force Majeure: Means an event or circumstance, including a natural disaster, war, riot, 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 participating transmission owner and/or the CAISO in entering into, or performing under, any agreements with Seller contemplated by this Agreement except to the extent that such delay is solely caused by a Force Majeure;
- (b) a strike, work stoppage or labor dispute;
- (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) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure;
- (e) a Curtailment Order; or

- (f) 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 Product at a lower price, or Seller's ability to sell Product at a higher price).

Gains: Means, with respect to any Party, an amount, determined in a commercially reasonable manner, equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement. Factors used in determining economic benefit may include reference to information either available to the Party internally or supplied by one or more third parties, including quotations (either firm or indicative) 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, as applicable.

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, the CAISO or any corporation or other entity owned or controlled by any of the foregoing.

Guarantor: Means, with respect to a Party, any Person that (a) is reasonably acceptable to the other Party, (b) has a Credit Rating of A- or better from S&P or a Credit Rating of A3 or better from Moody's, (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes and delivers a Guaranty for the benefit of the other Party.

Guaranty: Means a guaranty from a Guarantor provided for the benefit of Buyer as reasonably acceptable to Buyer.

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

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

Investment Grade: Means a Credit Rating of BBB- or better by S&P and Baa3 or better by Moody's.

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

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

Losses: Means, with respect to any Party, an amount, determined in a commercially reasonable manner, equal to the present value of the economic loss to it (exclusive of Costs) resulting from termination of this Agreement. Factors used in determining the loss of economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) 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, as applicable. If the Non-Defaulting Party is the Seller, then in addition to lost payments for Product pursuant

to this Agreement, “Losses” shall exclude any associated loss of investment tax credits and other lost tax benefits.

Moody’s: Means Moody’s Investor Services, Inc. or its successor.

NERC: Means the North American Electricity Reliability Council.

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

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

Performance Assurance: Means collateral in the form of either cash, Letter(s) of Credit, a Guaranty from an entity with an Investment Grade Credit Rating, or other security acceptable to the requesting party.

Pledgor: Has the meaning set forth in Section 5.1.

Political Activity: Has the meaning set forth in Section 12.14.

Portfolio Content Category 1 or PCC1: Means Renewable Energy products that satisfy the requirements of Section 399.16(b)(1) of the California Public Utilities Code.

Portfolio Content Category 2 or PCC2: Means Renewable Energy products that satisfy the requirements of Section 399.16(b)(2) of the California Public Utilities Code.

Portfolio Content Category 3 or PCC3: Means Renewable Energy products that satisfy the requirements of Section 399.16(b)(3) of the California Public Utilities Code.

Potential Event of Default: Means an event which, with notice or passage of time or both, would constitute an Event of Default.

Product: Means _____.

Public Records Laws: Means the California Public Records Act, California Government Code Sections 6250, et seq., 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.

Renewable Energy: Means Energy generated from an ERR that is generated in the same calendar year that it is delivered to Buyer.

Renewable Energy Credits or RECs: 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.

Renewables Portfolio Standard or RPS: Means the California renewables portfolio standard, as set forth in California Public Utilities Code §§ 399.11 et seq. and California Public Resources Code §§ 25740-25751, as may be modified or supplemented from time to time.

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

Resource Adequacy Requirements or RAR: Means 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, 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.

RA Capacity: Means the qualifying and deliverable capacity of a designed RA Unit for Resource Adequacy Requirements, Local Resource Adequacy, and Flexible Capacity Requirements as determined by the CAISO, or other Governmental Authority under Applicable Law.

RA Contract Quantities: Means the quantities of RA Capacity set forth in Exhibit D that will be delivered to Buyer under this Agreement.

RA Units: Means the RA facilities set forth in Exhibit D. **S&P:** Means the Standard & Poor's Financial Services LLC (a subsidiary of the McGraw-Hill Companies, Inc.) or its successor.

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

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

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

Secured Party: Has the meaning set forth in Section 5.3.

Seller: Means _____.

Seller's Collateral Posting: Has the meaning set forth in Section 5.2(a).

Seller's Collateral Requirement: Has the meaning set forth in Section 5.2(a).

SFPUC: Means the San Francisco Public Utilities Commission or any successor government agency.

Termination Payment: Means, with respect to the Non-Defaulting Party, the sum of (a) the Losses or Gains, and Costs which such Party incurs as a result of the termination of this Agreement pursuant to Section 9.3, plus (b) the sum of all amounts then owed to the Non-Defaulting Party by the Defaulting Party determined as of the Early Termination Date.

WREGIS: Means 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: Means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the delivered Product 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: Means 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. The Term of this Agreement shall not commence until the occurrence of all of the following:

- (a) For Each Party: Each Party has received Collateral Assurance from the other Party as required under Article 5.
- (b) For Seller: A copy of each of:
 - (i) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller,
 - (ii) the by-laws or other similar document of Seller (collectively, "Charter Documents") as in effect, or anticipated to be in effect, on the Execution Date,
 - (iii) 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, and
 - (iv) Evidence of insurance as set forth in Exhibit XX.
- (c) For Buyer:

- (i) This Agreement has been approved, if required, by the San Francisco Public Utilities Commission and/or San Francisco Board of Supervisors; and
- (ii) The Controller has certified in accordance with the City Charter that sufficient unencumbered balances are available in the proper fund.
- (d) Effective Date. The Effective Date of this Agreement shall be the date that all of the Conditions Precedent set forth above have been satisfied or waived in writing by both Parties.
- (e) Failure to meet all Conditions Precedent. If the Conditions Precedent set forth in this Section 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.

2.2 Agreement Term and Delivery Term.

- (a) Agreement Term. The term of this Agreement shall commence and this Agreement shall be effective upon the Effective Date, unless earlier terminated pursuant to an express provision of this Agreement, and shall remain in effect until the delivery to Buyer of all of the Environmental Attributes under this Agreement (the “Term”).
- (b) Delivery Term. The Delivery Term shall commence from and including Hour Ending (“HE”) 0100 on XXXXXX and continue through and including HE 2400 on XXXXX (“Delivery Term”) unless terminated pursuant to Section 9 of this Agreement.

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 in the Contract Quantities set forth in Exhibit A.
- (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. Seller shall be responsible for any costs, fees, taxes, assessments, or charges associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs, or charges imposed on or associated with the Product or 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.
- (c) Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for

transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services to receive the Product at the Delivery Point.

3.2 Contract Price. Buyer shall pay Seller for Product delivered pursuant to this Agreement as set forth in Exhibit C.

3.3 Product Sources.

- (a) CAISO Energy Deliveries. The CAISO Energy provided under this Agreement may be procured from unit-specific resources, provided that such resources are not coal or nuclear. Seller is permitted to supply Energy quantities from the facilities identified in Appendix A-5. Seller may add or remove facilities from Appendix A-5 by providing written notice to Buyer within fifteen days (15) of the addition or removal. The notice shall include an amended Appendix A-5. To the extent unit specific resources have not been agreed to by the Parties, Seller may use system power to provide the required CAISO Energy so long as the Carbon Content Standard is met for the Contract Year.
- (b) Imports. To the extent Seller imports specified sources of Energy into a California balancing authority area (including the CAISO) for purposes of satisfying the Carbon Content Standard, the scheduling of such Energy shall be validated by NERC e-Tag, which shows the Energy is scheduled into a California balancing authority area (including the CAISO).
- (c) Renewable Energy. Seller shall supply Renewable Energy quantities delivered under this Agreement from the facilities identified in Appendix A-5. Seller may add or remove facilities from Appendix A-5 by providing written notice to Buyer within fifteen days (15) of the addition or removal. The notice shall include an amended Appendix A-5.
- (d) PCC 2. Incremental Energy deliveries for PCC 2 Energy shall not be sourced from coal or nuclear resources.
- (e) Carbon Content Standard. The carbon content for the Product shall not exceed the values set forth in Exhibit B as calculated in accordance with the Carbon Content Methodology.

OR

Additional Carbon Free Energy. Seller shall supply the Additional Carbon Free Energy quantities set forth in Appendix A-5 in accordance with Exhibit B.

3.4 Environmental Attributes.

- (a) Purchase and Sale of Environmental Attributes. During the Delivery 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 the Energy delivered under this Agreement, whether now existing or subsequently created by a Governmental Authority after the Execution Date during the Agreement Term. 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 Energy delivered to Buyer under this Agreement. 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.
- (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 (i.e., kWh) 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 ("the Deficient 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. 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 promptly shall modify this Agreement as reasonably required (i) 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 (ii) as may otherwise be reasonably appropriate to address such inconsistency.

3.5 Firm RA Capacity.

Capacity Attributes. During the Delivery Term, Seller shall provide to Buyer, pursuant to the terms of Exhibit D, the RA Capacity Quantities of Firm RA Capacity, including LAR Attributes, and FCR Attributes from the RA Units. The delivery of Firm RA Capacity pursuant to this Agreement does not confer on Buyer any right to the electrical output from the RA Unit, other than than the right to include the Firm RA Capacity in RAR, LAR, and FCR Showings, as applicable, and any other capacity or RA market proceedings. Specifically, Seller shall not be required to make available to Buyer any energy or ancillary services associated with any RA Unit as part of this Agreement, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Agreement. Seller retains the right to sell any Capacity Attributes from a RA Unit that is in excess of the RA Contract Quantities.

3.6 Compliance Cost Cap. If Seller establishes to Buyer's reasonable satisfaction that change in Applicable Law has occurred after the Effective Date that results in Compliance Costs as defined in Section 3.8(a), then Seller's Compliance Costs during the Delivery Term shall be capped annually at the greater of _____per MW or ___ percent of annual expected revenue from this Agreement ("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, and (iii) Capacity Attributes ("Compliance Costs"). Compliance Costs include 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) Compliance Cost Cap. 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 applicable Change in Law if it anticipates that its Compliance Costs will exceed the Compliance Cost Cap and provide Buyer with an estimate of the Compliance Costs. Buyer shall notify Seller within thirty (30) calendar days of receipt of the notice whether Buyer (i) agrees to reimburse Seller for the additional costs, or (ii) waive Seller's performance of such obligations.

3.7 Compliance Reporting. Upon the request of the other Party, each Party shall provide all information reasonably necessary for the other Party to timely comply with compliance reporting requirements to the appropriate Governmental Entities, and as otherwise required by Applicable Law with respect to any Product.

ARTICLE 4: BILLING AND PAYMENT

4.1 Billing and Payment.

- (a) Monthly Invoices. No sooner than ten (10) days after the end of each calendar month, Seller shall provide to Buyer an invoice for the Product delivered in the prior month based on _____. The invoice shall include:
- (b) Payment. All invoices shall be due and payable on or before the forty-fifth (45th) 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 subject to a late payment penalty equal to a daily rate of \$5.50 per \$100,000 ("Late Payment Penalty") for a maximum period of ninety (90) calendar days after such payment is due.

- (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 Buyer requirements for Buyer's 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, or any other current or future Buyer 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 Party receiving such overpayment from subsequent payments, with the Late Payment Penalty from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 4.1 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.
- (e) CAISO Adjustments. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 4.1, 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 CAISO provides to Seller such binding adjustment to the meter data.

4.2 Designated Fund

- (a) Auto-Appropriating Designated Fund. The Buyer's 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 Buyer's Obligations. Buyer agrees to set CleanPowerSF rates and charges that are sufficient to maintain revenues necessary to pay the Buyer Obligations 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 at all times during the Delivery Period of a Transaction.

- (b) Limited Obligations. The Buyer's Obligations are special limited obligations of Buyer payable solely from the revenues of CleanPowerSF. The Obligations are not a charge upon the revenues or general fund of the SFPUC or the Buyer or upon any nonCleanPowerSF moneys or other property of the SFPUC or the Buyer.

4.3 Guaranteed Maximum Cost.

- (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 the Buyer are not authorized to request, and the Buyer is not required to reimburse Seller for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the Buyer are not authorized to offer or promise, nor is the 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) Biannual Budget Process. For each City biannual 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 in its budget submitted to the Buyer's Board of Supervisors for that budget cycle.

ARTICLE 5: CREDIT AND COLLATERAL REQUIREMENTS

5.1 Grant of Security Interest/Remedies. To secure its obligations under this Agreement, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, the Pledgor's Collateral Posting and Performance Assurance posted with the other Party in the form of cash collateral, cash equivalent collateral, or Guaranty and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party. Within thirty (30) calendar day of the delivery of the Collateral Posting or Performance Assurance, each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following:

- (a) exercise any of the rights and remedies of a Secured Party with respect to all Collateral Posting and Performance Assurance, including any such rights and remedies under law then in effect;
- (b) draw on any outstanding Letter of Credit or Guaranty issued for its benefit, and;

- (c) liquidate any Collateral Posting or Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party.

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

5.2 Buyer Credit Protection. [TO BE NEGOTIATED]

5.3 Seller Credit Protection. [TO BE NEGOTIATED]

5.4 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 XXXX subject to the following provisions:

- (a) Renewal of Letter of Credit. If a Party has provided a Letter of Credit pursuant to any of the applicable provisions in this Article 5, then such Party shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis in accordance with this Agreement.
- (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 Buyer's properly documented request to draw on such Letter of Credit, Seller 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 five (5) Business Days after the date of Buyer's notice to Seller of an occurrence listed in this subsection (Seller's compliance with either (i) or (ii) 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 Buyer's notice to Seller in this section 6.3(b),
 - (ii) providing a Guaranty, or
 - (iii) posting cash.
- (c) Failure to Cure. If Seller fails to cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, 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 Seller shall have failed to meet the collateral requirements of Section 5.3 and Buyer may declare an Event of Default as set forth in Article 9.
- (d) Letter of Credit Costs. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

5.5 Guaranty. If at any time the Pledgor's Guarantor or Guaranty is no longer acceptable to the Secured Party, in its reasonable discretion, the Pledgor shall replace the Guaranty within five (5) Business Days following a written request for replacement of the Guaranty. The Pledgor 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 Pledgor fails to provide replacement collateral as required in this Section 5.5, then Buyer may declare an Event of Default as set forth in Article 9.

ARTICLE 6: FINANCIAL STATEMENTS

6.1 Seller's Obligations. If requested by Buyer, Seller shall deliver, or make available on its website, (i) within six (6) months following the end of each fiscal year, a copy of Seller'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 forty-five (45) days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles and shall be certified by the Chief Financial Officer or equivalent officer of Seller on behalf of Seller; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

6.2 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) and (ii) within forty-five (45) 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. In all cases, the statements shall be for the most recent accounting period and shall be prepared in accordance with GAAP, 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 Buyer diligently pursues the preparation, certification and delivery of the statements.

ARTICLE 7: FORCE MAJEURE

7.1 Remedial Action. 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.

7.2 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.

7.3 Termination Due To Force Majeure Event. 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, the unaffected 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. This Section 8.3 shall not affect the rights and remedies associated with any other termination rights set forth in this Agreement.

ARTICLE 8: REMEDIES FOR FAILURE TO DELIVER

8.1 Renewable Shortfalls.

- (a) If, in any calendar year, Seller fails to deliver the total quantity of Renewable Energy that it is required to deliver in that calendar year (as set forth in Exhibit A) then Seller shall pay Buyer:
 - (i) the positive difference between the Contract Price and the Replacement Price for Renewable Energy, and
 - (ii) an amount equal to ten percent (10%) of the contract price for the Renewable Energy, for each MWh of Renewable Energy that Seller failed to deliver during that calendar year.
 - (iii) the Parties agree that the damages sustained by Buyer associated with Seller's failure to achieve the Renewable Energy quantities 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 Seller shall pay the damages specified in this Section 8.1(b) to Buyer as liquidated damages.
- (b) No later than thirty (30) days following the Delivery Deadline for the relevant calendar year, Seller shall calculate whether it delivered the Renewable Energy quantities it was required to deliver in the prior calendar year, and, if not, shall credit the amounts required by this Section 8.1 in its next monthly invoice submitted to the City. The invoice shall include the basis for calculation of the credit and Seller shall provide to the City any information reasonably requested by the City to demonstrate Seller's compliance with this sub-section.

8.2 Failure to meet the Carbon Content Standard. If in any calendar year, the total carbon emissions of the CAISO Energy delivered under this Agreement (calculated pursuant to Exhibit B) exceeds the Carbon Content levels set forth in Exhibit B, Seller shall pay Buyer damages calculated as the REC Price set forth in Exhibit C multiplied by the amount of the additional deliveries of Renewable Energy necessary to reduce the total annual carbon emissions to the applicable Carbon Content Requirement by crediting the amounts required to be paid by Seller pursuant this subsection in its next monthly invoice submitted to Buyer.

8.3 Use of Buyer's Facilities to Replace Non-Delivered Products. In the event Seller fails to deliver Product as required by this Agreement, Buyer may utilize City-owned facilities to replace such shortfall. In the event Buyer utilizes City-owned facilities to replace undelivered Product, the Replacement Price for such Product shall be (1) if the undelivered Product is not reasonably available in the market, the sum of the Buyer's auditable costs of its use of the City facilities; or (2) in all other cases, the market price for such Product, as reasonably determined by Buyer.

ARTICLE 9: EVENTS OF DEFAULT; REMEDIES

9.1 Events of Default. The occurrence of any of the following shall constitute an Event of Default by a Party (a "Defaulting Party"):

- (a) the breach of any material covenant or obligation set forth in this Agreement and such Party fails to cure such breach within thirty (30) calendar days after written notification of default by the other Party; however, the Parties may mutually agree upon a longer period for cure if the Event of Default cannot reasonably be cured within such initial (30) day period;
- (b) subject to Section 4.3 the failure to make, when due, any payment required pursuant to a Transaction if such failure is not remedied within ten (10) Business Days after written notice that such payment is due;
- (c) 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 is not cured or remedied within thirty (30) days after written notice;
- (d) such Party becomes Bankrupt; the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 5;
- (e) 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;

9.2 **Termination for Default.**

- (a) **Declaration of an 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) designate a day, no earlier than ten (10) calendar days after such notice is deemed to be received, as an early termination date (“Early Termination Date”);
 - (ii) accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a “Terminated Transaction”) between the Parties and terminate this Agreement;
 - (iii) collect as of the Early Termination Date the Termination Payment;
 - (iv) withhold any payments due to the Defaulting Party under this Agreement, and;
 - (v) suspend performance;
 - (vi) exercise its rights pursuant to Article 5 of this Agreement to draw upon and retain any Collateral Posting or Performance Assurance;
 - (vii) exercise any other right of 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 Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable. Third parties supplying such information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, and other sources of market information.
 - (ii) The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 8, plus any or all other amounts due to the Defaulting Party under this Agreement against, (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “Termination Payment”).
 - (iii) Notwithstanding the foregoing, if the aggregation of Settlement Amounts results in a Termination Payment being owed to the Defaulting Party, the Termination Payment shall be deemed to be zero (\$0).
 - (iv) The Non-Defaulting Party shall not be required to enter into replacement transactions to establish a Termination Payment.
 - (v) The Termination Payment shall be the sole and exclusive remedy available to the Non-Defaulting Party and shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages.
- (c) Notice of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment, if any. 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 by the Defaulting Party within fifteen (15) Business Days after such notice is effective.
- (d) Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment. Disputes regarding the Termination Payment shall be resolved in accordance with Section 12.3.

9.3 LIMITATION OF LIABILITY AND 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. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION SET FORTH IN THIS AGREEMENT OR OTHERWISE; PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT RELATING TO REMEDIES FOR FAILURE TO DELIVER IN ARTICLE 8, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 9.2 AND 9.3. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS 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 THE AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED UNDER THIS CONTRACT, INCLUDING, BUT NOT LIMITED TO, THE COMPENSATION PROVIDED FOR IN ARTICLES 8 AND 9.**

ARTICLE 10: INDEMNIFICATION

10.1 Hold Harmless and Indemnification.

- (a) Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 3.2. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article 9.
- (b) If a Party determines that it is entitled to defense and indemnification under this Section 10.1 (“Indemnified Party”), such Party shall promptly notify the other Party (“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 Indemnifying Party shall be made without such Party’s prior written consent.
- (c) Notice. If an 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.

10.2 Debt Liability Disclaimer. Buyer shall not be liable for and shall be held harmless and indemnified by Seller for (a) any claims or damages arising out of any other contract to which Seller is a party, and (b) any tortious action or inaction, negligent error in judgment, act of negligence, intentional tort, negligent mistakes or other acts taken or not taken by the Seller, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the Seller.

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 _____ under the laws of _____, 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; 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).

11.2 Buyer 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 in this Agreement, each Party covenants that throughout the Delivery Term:

- (a) it shall continue to be duly organized, validly existing and in good standing under the Applicable 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) Consent. Except as provided in Sections 12.2(b) and (c), 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 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 be deemed an assignment and shall require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. At Buyer's request, Seller shall promptly deliver financial statements, information and other evidence satisfactory to Buyer regarding the proposed change of control of Seller.
- (c) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 12.1 is void.

12.2 Proprietary or Confidential Information.

- (a) Buyer Confidential Information. Seller understands and agrees that, in the performance of this Agreement or in contemplation thereof, Seller may have access to private or confidential information which may be owned or controlled by Buyer and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Buyer. Seller agrees that all private and confidential information disclosed by Buyer to Seller shall be held in confidence and used only in performance of the Agreement. Seller 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, and to each of such person's auditors, attorneys, advisors or lenders 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; Venue.

- (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) Choice of Law; Venue. This Agreement and the rights and duties of the Parties hereunder shall be construed, enforced and performed in accordance with the laws of the state of California, and/or the laws of the United States, as applicable, without regard to principles of conflicts of law which may direct the application of the laws of another jurisdiction. Venue shall be in the County of San Francisco, State of 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, and any designated collateral, credit support, or margin agreement 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. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.
- (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 permitted 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. This 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 any generating facility or any business related to a generating facility.
- (k) 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.
- (l) Survival. All rights pursuant to (i) Section 4.1(d) (Disputes and Adjustment of Invoices); Article 10 (Events of Default; Remedies; Limitations), (iii) Article 11 (Indemnification), (iv) Section 13.2 (Confidential Information); (v) Section 13.3 (Dispute Resolution/Choice of Law), and (vi) Section 13.4 (Audit); (vii) Section 13.6(c) (Prohibition of Political Use of City Funds); (viii) Section 13.6(e) (False Claims), and; (ix) Section 13.6(f) (City Opinion) shall survive termination of this Agreement.

12.6 City Contracting Requirements.

- (a) Compliance with Americans with Disabilities Act. Seller acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Seller shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable

federal, state and local disability rights legislation. Seller agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Seller, its employees, agents or assigns will constitute a material breach of this Agreement.

- (b) 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.
- (c) 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 (collectively, "Political Activity") 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.
- (d) Non-Discrimination 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.
- (e) Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the Buyer for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the Buyer if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the 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 the Buyer; (c) conspires to defraud the Buyer by getting a false claim allowed or paid by the 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 the Buyer; or (e) is a beneficiary of an inadvertent submission of a false claim to the Buyer, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Buyer within a reasonable time after discovery of the false claim.

- (f) Use of Buyer 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 SFPUC.
- (g) Compliance with Laws. Seller shall keep itself fully informed of the City Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of its obligations under this 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 provide notice to Seller of any such amendment to City's Charter, codes, ordinances and regulations of which it becomes aware
- (h) Conflict of Interest. Through its execution of this Master Agreement, Seller acknowledges that it is familiar with the provision of Section 15.103 of 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 the Buyer if it becomes aware of any such fact during the term of this Agreement.

12.7 Mobile Sierra. Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such 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).

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

12.9 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.

12.10 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 electronic

means shall be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by 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.

IN WITNESS WHEREOF, 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

By: _____
Harlan J. 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

[PORTFOLIO PRODUCT]

**EXHIBIT A
CONTRACT QUANTITIES
(Page 1 of 5)**

EXHIBIT A-1:

EXHIBIT A-2:

**WEEKDAY HOURLY QUANTITIES
(INCLUDING ANY RENEWABLE ENERGY DELIVERED DURING SUCH MONTH)**

[Table to be inserted]

EXHIBIT A-3:

**WEEKEND HOURLY QUANTITIES
(INCLUDING ANY RENEWABLE ENERGY DELIVERED DURING SUCH MONTH)**

[Table to be inserted]

EXHIBIT A4:
RENEWABLE ENERGY QUANTITIES

**EXHIBIT A-5
GENERATION RESOURCES**

| No. | Name of Facility: | Fuel Source: | Location: | CEC ID: | WREGIS ID: |
|------------|--------------------------|---------------------|------------------|----------------|-------------------|
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EXHIBIT B

CARBON CONTENT STANDARD AND CALCULATION METHODOLOGY

A. **Annual Portfolio Carbon Content Requirements.** During each calendar year of the Delivery Period, the carbon content of the Product supplied by Seller to Buyer shall be equal to or less than the following amounts:

2018:

2019:

2020:

2021:

B. Calculation Methodology

1. The carbon content of any Energy supplied by a specified non-renewable or non-carbon-free generator (e.g., a conventional generator, using a fuel source such as natural gas) will be assigned the most current actual, documented emission factor associated with such generator approved by CARB. The carbon content of any unspecified purchases shall be calculated in accordance with the most current emissions factors adopted by CARB as they may be amended from time to time.

2. The carbon content of the Product supplied by Seller to Buyer in each calendar year shall be calculated by aggregating the pounds of CO₂ associated with all Energy supplied to Buyer in such calendar year and dividing same by the aggregate amount of Energy supplied in such calendar year (in MWhs and including any Additional Low Carbon Energy supplied by Seller during such calendar year). For purposes of aggregating the pounds of CO₂ associated with all Energy supplied to Buyer in such calendar year across generating units, the pounds of CO₂ associated with each generating unit from which Energy is supplied by Seller to Buyer in such calendar year shall be obtained by multiplying (a) the amount of Energy (in MWhs) provided by such unit and delivered to Buyer pursuant to this Confirmation in such calendar year by (b) the carbon content assigned to such Energy pursuant to Section 3.2. The following formula illustrates the agreed methodology for calculation of the carbon content of the Product:

$$\frac{\sum_{i=1}^U (A * B)}{C}$$

Where:

U = all generating units from which Energy is supplied by Seller to Buyer in such calendar year

A = the carbon content of Energy supplied by a generating unit from which Energy was supplied by Seller to Buyer in such calendar year (expressed in pounds of CO₂/MWh as provided in Section 3.2)

B = the total number of MWhs of Energy supplied from such generating unit by Seller to Buyer in such calendar year

C = the total number of MWhs of Energy supplied by Seller as part of the Product (including but not limited to PCC1 Energy and Additional Low Carbon Energy) in such calendar year.

In order to provide evidence of the amount of Energy supplied by individual generating units for purposes of calculating the carbon content of the Product, Seller may provide (i) Associated RECs, (ii) NERC e-Tags and/or (iii) records of metered data.

3. No PCC 3 RECs. Seller shall not satisfy the carbon content requirement through the delivery of PCC 3 RECs.

OR

[ALTERNATIVE CARBON-FREE PORTFOLIO REQUIREMENT]

If the Parties agree to substitute deliveries of Additional Carbon Free Energy in lieu of the Carbon Content Standard, the Agreement will be modified as follows:

1. The following definitions shall be added to Article 1 of the Agreement:

Additional Carbon Free Energy: Means the quantity of Carbon Free Energy that is in excess of the PCC 1 Energy Quantity to be delivered by Seller to Buyer in this Transaction. During the Delivery Period, Seller shall provide the Additional Carbon Free Energy Quantity to Buyer such that the Additional Carbon Free Energy Quantity can be represented on the Buyer Power Content Label as being supplied from Carbon Free Source(s), based on the guidelines for the Power Content Label in place as of the Effective Date hereof. The Additional Carbon Free Energy Quantity shall not include any PCC 3 Energy.

Carbon Free Energy: Means Energy generated by a Carbon Free Source. If the Carbon Free Source is not located in California, the Energy shall be scheduled into a California balancing authority area, including the CAISO. Delivery of Carbon Free Energy generated by a facility located outside of California shall be validated by NERC e-Tag, which shows the Energy was scheduled into a California balancing authority area, including the CAISO.

Carbon Free Source: Means any Energy source, except for nuclear-powered generation assets, that is located within the Western Energy Coordinating Council area and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency (“CARB”) pursuant to the California Global Warming Solutions Act of 2006.

2. Additional Carbon Free Energy quantities will be set forth in Exhibit A.

3. Section 8.2 of the Agreement will read as follows:

Failure to Deliver Additional Carbon Free Energy. If in any calendar year Seller fails to deliver the quantities of Additional Carbon Free Energy set forth in Exhibit A, Seller shall pay Buyer damages calculated as \$XXXX/MWh (the “REC Price”) multiplied by the shortfall in deliveries of Additional Carbon Free Energy by crediting the amounts required to be paid by Seller pursuant this subsection in its next monthly invoice submitted to Buyer

EXHIBIT C
CONTRACT PRICE

EXHIBIT D

FIRM RA CAPACITY REQUIREMENTS

1. **Additional Definitions.** The following definitions shall apply to the purchase and sale of Firm RA Capacity under this Agreement:

Alternate Capacity: Means replacement Firm RA Capacity which Seller is required provide to Buyer in accordance with the terms of Section 4.2 of this Exhibit D.

CPUC Decisions: Means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and subsequent decisions related to resource adequacy issued from time to time by the CPUC, including CPUC Decisions 13-06-024, 14-06-050, 15-06-063, and 16-06-045.

Effective Flexible Capacity: Means the flexible capacity of a resource that can be counted towards an LSE's FCR obligation, as identified from time to time by the CAISO Tariff, the CPUC Decisions, LRA, or other Governmental Authority having jurisdiction.

FCR Attributes: Means, with respect to a RA Unit, any and all FCR attributes that can be counted toward an LSE's FCR, as they are identified from time to time by the CPUC Decisions, the CAISO Tariff, an LRA, or other Governmental Authority having jurisdiction that can be counted toward FCR and are consistent with the operational limitations of such RA Unit.

FCR Showing: Means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the CAISO Tariff, or to an LRA having jurisdiction over the LSE.

Flexible Capacity Requirements or FCR: Means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Authority having jurisdiction.

LAR: Means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO Tariff, or by another LRA having jurisdiction over the LSE, as implemented in the CAISO Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

LAR Attributes: Means, with respect to a RA Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Execution Date by the CPUC Decisions, CAISO, LRA, or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the RA Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations of such Unit, but exclusive of any Capacity Attributes which are not associated with the location in the CAISO Control Area where the RA Unit is physically located or electrically interconnected. If the CAISO, LRA, or other Governmental Authority, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.

LAR Showings: Means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

LRA: Means Local Regulatory Authority, as defined in the CAISO Tariff.

LSE: Means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

RAR Showings: Means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CAISO Tariff, the CPUC Decisions or LRA having jurisdiction.

Replacement Capacity: has the meaning specified in Section 4.7 hereof.

Replacement Unit: Means a generating unit providing Replacement Capacity in accordance with Section 4.2.

Showing Month: Means the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.

Supply Plan: Means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Authority, pursuant to Applicable Law, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.

RA Unit or RA Units: Means the generation assets described in Section 2 of Exhibit D (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

2. RA Unit Information.

Name:

Location:

CAISO Resource ID:

Unit SCID:

Resource Type:

Resource Category:

Point of Interconnection with the CAISO Grid:

Path 26 (North, South):

Local Capacity Area:

Deliverability Restrictions, if any:

Run Hour Restrictions:

Product Type:

Unit NQC/EFC:

FCR Category:

Delivery Point:

3. RA Contract Quantities and Price

| Month/year | RA Contract Quantity (MWs) | FCR Contract Quantity (MWs) | LAR Contract Quantity (MWs) | Firm RA Contract Price (\$kW-month) |
|------------|----------------------------|-----------------------------|-----------------------------|-------------------------------------|
| | | | | |
| | | | | |
| | | | | |

4. Resource Adequacy Capacity Product

4.1 Delivery. Seller shall provide Buyer with the RAR Capacity Attributes, LAR Attributes, and FCR Attributes from the RA Unit in the amount of the RA Contract Quantities.

4.2 Alternate Capacity and Replacement Units. If Seller is unable to provide the full RA Contract Quantities for any Showing Month for any reason other than Force Majeure, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the RA Unit, then Seller shall, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Firm RA Capacity provided to Buyer from the RA Unit and Replacement Units up to an amount equal to the RA Contract Quantity for the applicable Showing Month. Seller shall notify Buyer of its intent to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than ten (10) Business Days before that Showing Month's applicable deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.2 then such Replacement Units shall be automatically deemed a RA Unit for purposes of this Agreement for that Showing Month.

4.3 Delivery of Firm RA Capacity. Seller shall provide Buyer with the Firm RA Capacity for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the RA Unit's SC to submit Supply Plans to identify and confirm the Firm RAR Capacity provided to Buyer for each Showing Month so that the total amount of Firm RAR Capacity identified and confirmed for such Showing Month equals the Firm RAR Capacity, unless specifically requested not to do so by the Buyer.
- (b) Seller shall cause the RA Unit's Scheduling Coordinator to submit written notification to Buyer, no later than ten (10) Business Days before the applicable RAR Showings, LAR Showings and/or FCR Showings deadlines for each Showing Month, that Buyer will be credited with the Firm RAR Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Firm RAR Capacity credited equals the Firm RAR Capacity for such Showing Month.

4.4 Damages for Failure to Deliver. If Seller fails to provide Buyer with the Firm RA Capacity for any Showing Month then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Firm RA Capacity not provided by Seller with Capacity Attributes having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Firm RA Capacity not provided by Seller, provided, that, if any portion of the Firm RA Capacity that Buyer is seeking to replace is Firm RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Firm RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Buyer may enter into purchase transactions with one or more parties to replace any portion of Firm RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the

procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Firm RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.4(a) of Exhibit D, and (ii) the Firm RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Agreement.

4.5 Indemnities for Failure to Delivery RA Contract Quantities. In addition to the Indemnities set forth in Article 10, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Firm RA Capacity;
- (b) Seller's failure to provide notice of the non-availability of any portion of Firm RA Capacity as required under Section 4.6;
- (c) A RA Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Firm RA Capacity purchased hereunder; or
- (d) A RA Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Firm RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Agreement.

4.6 Payment. Buyer shall make monthly payments for Firm RA Capacity in accordance with Article 4 of the Agreement. Each RA Unit's monthly payment shall be equal to the product of (a) the applicable Firm RA Contract Price for that Monthly Delivery Period, (b) the Firm RA Capacity for the Monthly Delivery Period, and (c) 1,000. The final product of this Firm RA Capacity payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

4.7 Allocation of Other Payments and Costs. Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any RA Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the Firm RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues

associated with the Firm RA Capacity of any RA Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any RA Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.5 of this Exhibit D all such revenues received by Seller, or a RA Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the RA Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Agreement. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Firm RA Capacity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues.

5. CAISO Offer Requirements. During the Delivery Period, except to the extent any RA Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the RA Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each RA Unit's RA Capacity in compliance with the CAISO Tariff, and shall perform all, or cause the RA Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the CAISO Tariff that are associated with the sale of Firm RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any RA Unit's Scheduling Coordinator, owner, or operator to comply with such CAISO Tariff provisions, including any penalties or fines imposed on Seller or the RA Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

6. Other Buyer and Seller Covenants.

6.1 In addition to the representations and covenants set forth in the Agreement, Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the RA Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing, each RA Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Authority responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the RA Contract Quantity as Capacity Attributes and Firm RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the RA Contract Quantity from each RA Unit to the CAISO Controlled Grid for the minimum hours required to qualify as Capacity Attributes, and providing information requested by the CPUC, the CAISO or other Governmental Authority having jurisdiction to administer RAR, LAR or FCR to demonstrate that the RA Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Authority having jurisdiction to administer RAR, LAR and/or FCR; and
- (b) Negotiating in good faith to make necessary amendments, if any, to this Exhibit to conform this Agreement to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Authority having jurisdiction to administer RAR, LAR and FCR, so as to maintain the purpose of the benefits of the bargain struck by the Parties on the Execution Date.

- 6.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:
- (a) Seller owns or has the exclusive right to the Firm RA Capacity sold under this Agreement from each RA Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Authority with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
 - (b) No portion of the RA Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the RA Unit's owner or operator;
 - (c) No portion of the RA Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;
 - (d) Each RA Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
 - (e) The owner or operator of each RA Unit is obligated to comply with Applicable Laws, including the CAISO Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;
 - (f) With respect to the Firm RA Capacity provided under this Agreement, Seller shall, and each RA Unit's SC is obligated to, comply with Applicable Laws, including the CAISO Tariff, relating to RA Capacity, and RAR, LAR and FCR;
 - (g) Seller has notified the SC of each RA Unit that Seller has transferred the Firm RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the CAISO Tariff;
 - (h) Seller has notified the SC of each RA Unit that Seller is obligated to cause each RA Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Firm RA Capacity of each Unit that is to be submitted in the Supply Plan associated with the Agreement for the applicable period; and
 - (i) Seller has notified each RA Unit's SC that Buyer is entitled to the revenues set forth in Section 4.6 of this Exhibit D, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

EXHIBIT E

INSURANCE REQUIREMENTS

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, 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
- (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.

3. Endorsements.

- (a) Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:
 - (i) Name as Additional Insured, the Buyer and County of San Francisco, its Officers, Agents, and Employees.
 - (ii) 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 be endorsed to provide thirty (30) days' advance written notice to Buyer of cancellation for any reason, intended non-renewal, or reduction in coverages.

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-, VIII 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 F-1

FORM OF LETTER OF CREDIT
[Issuing Bank Letterhead and Address]
STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: [Insert issue date]

Beneficiary:

Applicant: [Insert name and address of Applicant]

Letter of Credit Amount: [insert Amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

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

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

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. Pursuant to the terms of that certain **[insert name of the agreement]** (the “Agreement”), dated **[insert date of the Agreement]**, between Beneficiary and **[insert name of Seller under the Agreement]**, Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the Agreement]** under the Agreement; or
 - B. “Letter of Credit No. **[insert number]** shall expire in thirty (30) days or less and **[insert name of Seller under the Agreement]** has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the

then current Expiry Date, we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

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

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

Our payments against complying presentations under this Letter of Credit shall be made no later than on the sixth (6th) banking day following a complying presentation.

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

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we shall honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly. The law of the State of New York shall apply to any matters not covered by the UCP 600.

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

EXHIBIT F-2

SIGHT DRAFT

TO: [INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$

DATE:

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF _____ THE

AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

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

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE