



AGENDA

Regular Meeting of the Board of Directors of San Diego Community Power (SDCP)

September 28, 2023
5:00 p.m.

City of San Diego Metropolitan Operations Complex (MOC II) Auditorium
9192 Topaz Way, San Diego, CA 92123

Alternate Location:
7001 South Tucson Boulevard, Tucson, Arizona 85706

The meeting will be held in person at the above date, time and location. Board of Directors Members and members of the public may attend in person. Under certain circumstances, Directors may also attend and participate in the meeting virtually pursuant to the Brown Act (Gov. Code § 54953). As a convenience to the public, SDCP provides a call-in option and internet-based option for members of the public to virtually observe and provide public comments at its meetings. Additional details on in-person and virtual public participation are below. Please note that, in the event of a technical issue causing a disruption in the call-in option or internet-based option, the meeting will continue unless otherwise required by law, such as when a Board Member is attending the meeting virtually pursuant to certain provisions of the Brown Act.

Note: Any member of the public may provide comments to the Board of Directors on any agenda item. When providing comments to the Board, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the Board of Directors as a whole through the Chair. Comments may be provided in one of the following manners:

1. Providing Oral Comments During Meeting. Anyone attending in person desiring to address the Board of Directors is asked to fill out a speaker's slip and present it to the Clerk of the Board or the Secretary. To provide remote comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. On Zoom video conference by computer or mobile phone, use the "Raise Hand" feature. This will notify the moderator that you wish to speak during a specific item on the agenda or during non-agenda Public Comment. Members of the public will not be shown on video but will be able to speak when called upon. If joining the meeting using the Zoom dial-in number, you can raise your hand by pressing *9. Comments will be limited to three (3) minutes.
2. Written Comments. Written public comments must be submitted prior to the start of the meeting by using this [Web Comment Form](#). Please indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided

AGENDA – BOARD OF DIRECTORS – SAN DIEGO COMMUNITY POWER

to the Board members in writing. In the discretion of the Chair, the first ten (10) submitted comments shall be stated into the record of the meeting. Comments read at the meeting will be limited to the first 400 words. Comments received after the start of the meeting will be collected, sent to the Board members in writing, and be part of the public record.

If you have anything that you wish to be distributed to the Board, please provide it via info@sdcommunitypower.org and it will be distributed to the Members.

The public may participate using the following remote options:

Teleconference Meeting Webinar <https://zoom.us/j/94794075133>

Telephone (Audio Only) (669) 900-6833 or (346) 248-7799 | Webinar ID: 947 9407 5133

WELCOME

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

SPECIAL PRESENTATIONS AND INTRODUCTIONS

ITEMS TO BE ADDED, WITHDRAWN, OR REORDERED ON THE AGENDA

PUBLIC COMMENTS

Opportunity for members of the public to address the Board on any items not on the agenda but within the jurisdiction of the Board. Members of the public may provide a comment in either manner described above.

CONSENT CALENDAR

All matters are approved by one motion without discussion unless a member of the Board of Directors requests a specific item to be removed from the Consent Calendar for discussion. A member of the public may comment on any item on the Consent Calendar in either manner described above.

- 1. Approval of August 24, 2023 Meeting Minutes**
- 2. Receive and File Treasurer's Report for Period Ending June 30, 2023**
- 3. Receive and File Treasurer's Report for Period Ending July 31, 2023**
- 4. Receive and File Update on Programs**
- 5. Receive and File Update on Power Services**
- 6. Receive and File Update on Human Resources**
- 7. Receive and File Update on Customer Operations**
- 8. Receive and File Update on Marketing and Public Relations**
- 9. Receive and File Update on Community Advisory Committee**
- 10. Receive and File Update on Legislative and Regulatory Affairs**
- 11. Approve Resolution 2023-XX Adopting the 2024 Board Meeting Schedule**

- 12. Approval of Updated Letter of Intent with SDEEC LLC (dba San Diego Energy Equity Campus at Valencia Park) for Potential Lease Agreement**
- 13. Approval of Sublease Agreement with Corelation, Inc.**
- 14. Approval of Third Amendment to Professional Services Agreement with Brentech Inc. for up to \$112,360 for Computer and Information Technology Services through June 30, 2024.**
- 15. Approval of the Professional Services Agreement with San Diego Foundation for up to \$450,000 for Program Administration Services for the Community Grant Program through July 30, 2027.**

REGULAR AGENDA

The following items call for discussion or action by the Board of Directors. The Board may discuss and/or take action on any item listed below if the Board is so inclined.

16. Approval of Recommendation of In-House General Counsel

Recommendation:

1. Approve General Counsel job description
2. Amend the salary schedule to include the General Counsel and approve a salary range
3. Discuss Recruitment Process and Consider Appointing an Ad-Hoc Recruitment Committee

17. Approval of Resource Adequacy Agreements with EnerSmart

Recommendation:

Approve the five proposed 10-year Resource Adequacy Agreements with EnerSmart's subsidiaries, set up as LLCs for each project, for a total purchase of 13.5 MW of Resource Adequacy and authorize the CEO to execute the agreements (EnerSmart Alpine BESS LLC 3 MW, EnerSmart El Cajon BESS LLC 4.5 MW, EnerSmart Imperial Beach BESS LLC 3 MW, EnerSmart Los Coches BESS LLC 1.5 MW, EnerSmart Mesa Heights BESS LLC 1.5 MW).

REPORTS BY CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL

SDCP Management and General Counsel may briefly provide information to the Board and the public. The Board may engage in discussion if the specific subject matter of the report is identified below, but the Board may not take any action other than to place the matter on a future agenda. Otherwise, there is to be no discussion or action taken unless authorized by law.

DIRECTOR COMMENTS

Board Members may briefly provide information to other members of the Board and the public, ask questions of staff, request an item to be placed on a future agenda, or report on conferences, events, or activities related to SDCP business. There is to be no discussion or action taken on comments made by Directors unless authorized by law.

ADJOURNMENT

Compliance with the Americans with Disabilities Act

SDCP Board of Directors meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may contact (888) 382-0169 or info@sdcommunitypower.org. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

Availability of Board Documents

Copies of the agenda and agenda packet are available at <https://sdcommunitypower.org/resources/meeting-notes/>. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Members prior to or during the Board meeting are available for public review as required by law. Public records, including agenda-related documents, can be requested electronically at info@sdcommunitypower.org or by mail to SDCP, PO BOX 12716, San Diego, CA 92112. The documents may also be posted at the above website. Such public records are also available for inspection, by appointment, at San Diego Community Power, 2488 Historic Decatur Road, Suite 250, San Diego, CA 92106. Please contact info@sdcommunitypower.org to arrange an appointment.



**SAN DIEGO COMMUNITY POWER (SDCP)
BOARD OF DIRECTORS**

City of San Diego Metropolitan Operations Complex (MOC II) Auditorium
9192 Topaz Way, San Diego, CA 92123

MINUTES

August 24, 2023

The Board minutes are prepared and ordered to correspond to the Board Agenda. Agenda Items can be taken out of order during the meeting.

The Agenda Items were considered in the order presented.

WELCOME

CALL TO ORDER

Chair LaCava (City of San Diego) called the SDCP Board of Directors meeting to order at 5:01 p.m.

ROLL CALL

PRESENT: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Parent (La Mesa), and Director Yamane (National City)

ABSENT: Vice Chair Lawson-Remer (County of San Diego), Director Aguirre (Imperial Beach)

Also Present: Chief Executive Officer ("CEO") Burns, General Counsel Norvell, Executive Assistant to the Chief Executive Officer/ Board Clerk Isley

PLEDGE OF ALLEGIANCE

Chair LaCava (City of San Diego) led the Pledge of Allegiance followed by a Land Acknowledgment honoring the original inhabitants of this land—the Kumeyaay.

SPECIAL PRESENTATIONS AND INTRODUCTIONS

Chair LaCava (San Diego) introduced the following new SDCP staff members:

Bria Betz, HR Coordinator

Julissa Mercedes, Financial Analyst

Alyson Smith, Digital Media Coordinator

Kevin Bateman, Financial Analyst

ITEMS TO BE ADDED, WITHDRAWN, OR REORDERED ON THE AGENDA

There were no items added, withdrawn, or reordered on the agenda.

PUBLIC COMMENTS

There were no public comments.

CONSENT CALENDAR

(Items 1 through 4)

1. Approval of July 27, 2023, Meeting Minutes

Approved.

2. Approval of Member Agency Grant Program Policy

Approved.

3. Approval of First Amended and Restated Professional Services Agreement for a contingency fee of 19% with Financial Credit Network (FCN) for debt collection services for residential customers through April 30, 2024.

Approved.

4. Approval of First Amendment to the Professional Services Agreement Between San Diego Community Power and Tenaska Power Services Co for Scheduling Coordinator Services.

Approved.

Director Aguirre (Imperial Beach) arrived at the meeting at 5:07 p.m.

Director Yamane (National City) initially pulled item 4 from the consent calendar, later approved after Byron Vosburg's presentation on 2022 Power Source Disclosure Program Annual Reports and Power Content Label. The vote below accurately reflects the outcome.

ACTION: Motioned by Director Yamane (National City) and seconded by Director Parent (La Mesa) to approve Consent Calendar Items 1 through 4. The motion carried by the following vote:

Vote: 6-0

Yes: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)
No: None
Abstained: None
Absent: Vice Chair Lawson-Remer (County of San Diego)

REGULAR AGENDA

5. 2022 Power Source Disclosure Program Annual Reports and Power Content Label

Byron Vosburg, Managing Director Power Services gave a PowerPoint presentation and gave a staff recommendation to adopt Resolution 2023-05 approving the submission and attesting to the accuracy of SDCP's 2022 Power Source Disclosure annual reports for PowerOn and Power100 and the 2022 Power Content Label.

ACTION: Motioned by Director Hinze (Encinitas) and seconded by Director Aguirre (Imperial Beach) to adopt Resolution 2023-05. The motion carried by the following vote:

Vote: 6-0

Yes: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)
No: None
Abstained: None
Absent: Vice Chair Lawson-Remer (County of San Diego)

6. Approval of Resource Adequacy Agreement with EnerSmart Chula Vista BESS, LLC

Senior Contract Manager, Kenny Key provided a PowerPoint presentation on EnerSmart Chula Vista BESS and gave an overview on the workforce development and community benefits, including a staff analysis.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Yamane (National City) to approve the proposed Resource Adequacy Agreement with EnerSmart Chula Vista BESS, LLC for purchase of 10 years of 3 MW of Resource Adequacy and authorize the CEO to execute the agreement. The motion carried by the following vote:

Vote: 6-0

Yes: Chair LaCava (City of San Diego), Director McCann (Chula Vista) , Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)
No: None
Abstained: None
Absent: Vice Chair Lawson-Remer (County of San Diego)

DIRECTOR INITIATED ITEM

(Consideration of a Request by Chair LaCava)

7. Discussion on Outsourcing General Counsel versus Options for In-House General Counsel

Chair LaCava (City of San Diego) provided a brief history of SDGP's experience with hiring outsourced General Counsel. He spoke on the pros and cons of both in-house and outsourced general counsel and asked board members for their recommendation and feedback on whether the Board of Directors should continue outsourcing General Counsel or move to pursue in-house General Counsel.

Director Aguirre (Imperial Beach) spoke in support of hiring In-House General Counsel.

Director Hinze (Encinitas) spoke in support of hiring In-House General Counsel.

Director Yamane (National City) requested additional time and information for consideration. She also emphasized that there are no issues with the current outsourced general counsel from BBK, and commended their excellent performance. The Chair expressed gratitude for her acknowledgment.

Director Parent (La Mesa) spoke in support of hiring In-House General Counsel.

Public Comment:

There were no public comments.

REPORTS BY CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL

CEO Burns reported on SDCP's ongoing efforts, open positions at SDCP, and shared about recent activities and events. There were no reports from general counsel.

DIRECTOR COMMENTS

There were no director comments.

ADJOURNMENT

Chair LaCava (City of San Diego) adjourned the meeting at 5:33 p.m.

Kimberly Isley, Clerk of the Board

Prepared by:
Sandra Vences, Deputy Clerk



SAN DIEGO COMMUNITY POWER Staff Report – Item 2

To: San Diego Community Power Board of Directors

From: Eric W. Washington, Chief Financial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Treasurer's Report – For Fiscal Year End Period ended 06/30/23

Date: September 28, 2023

RECOMMENDATION

Receive and File Report.

BACKGROUND

San Diego Community Power (SDCP) maintains its accounting records on a full accrual basis in accordance with Generally Accepted Accounting Principles (GAAP) as applicable to governmental enterprise funds.

SDCP has prepared its unaudited year – end for the period ended June 30, 2023, along with budgetary comparisons. Preparation of the 6/30/23 audited financial statements are in progress and are expected to be available during the October/November timeframe.

ANALYSIS AND DISCUSSION

Actual financial results for the fiscal year end (FYE) period ended 06/30/23: \$891.18 million in net operating revenues were reported compared to \$929.79 million budgeted for the period. \$747.74 million in total expenses were reported (including \$720.33 million in energy costs) compared to \$772.08 million budgeted for the period (including \$738.80 million budgeted for energy costs). After expenses, SDCP's change in net position of \$143.44 million was reported for Fiscal Year 2023. The following is a summary of the actual results compared to the Fiscal Year 2023 Budget.

Table 1: Budget Comparison Versus Actual Results

Budget Comparison					
	YTD FY23 as of 06/30/23 (12 mos)	FY23 YTD Budget	Budget Variance (\$)	Budget (%)	
Net Operating Revenues	\$ 891,178,064	\$ 929,791,929	\$ (38,613,865)	96%	
Total Expenses	\$ 747,742,888	\$ 772,078,709	\$ (24,335,821)	97%	
Change in Net Position	\$ 143,435,176	\$ 157,713,220	\$ (14,278,044)	-9%	

- Net operating revenues finished \$38.61 million (or 4.0 percentage points) under the budget primarily due to lower than expected customer demand attributed to cooler weather.
- Operating expenses finished \$24.34 million (or 3.0 percentage points) lower than expected when compared to the FY 2023 budget. Although savings were experienced across all expense categories, savings in the cost of energy was the key driver as a results of credits received from California Independent Systems Operator (CAISO) and cooler than expected weather.

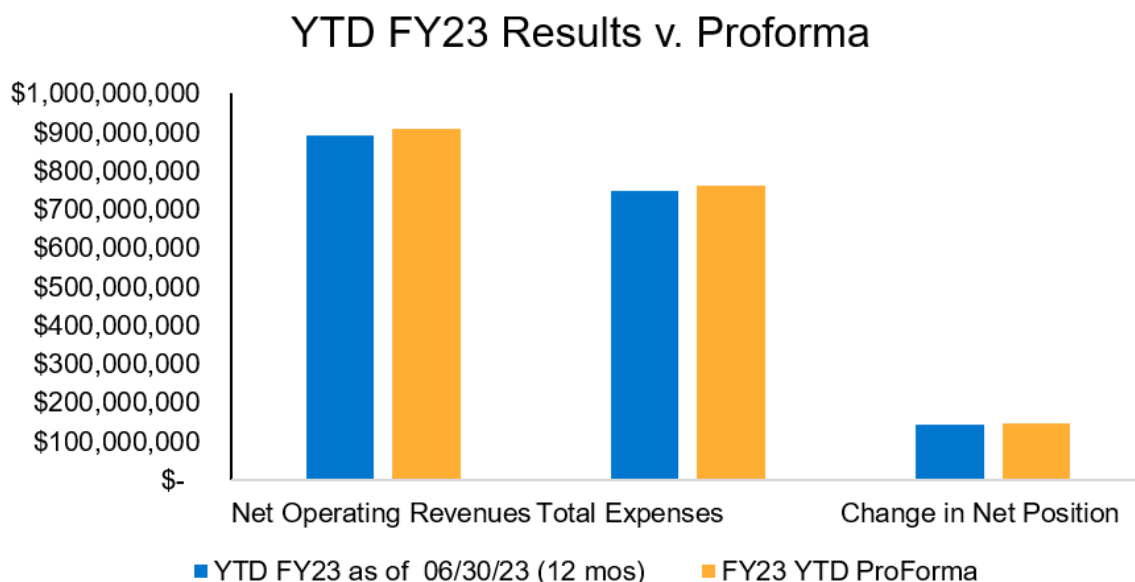
When compared to the proforma, the FYE 2023 financial results were lower than what was projected. SDCP's change in net position was 3% under the projections primarily due to revenues coming in lower than expected due to lower demand caused by cooler weather which was somewhat offset by reduced expenses.

The following is a summary to actual results compared to the fiscal year-to-date proforma.

Table 2: Proforma Comparison Versus Actual Results

Proforma Comparison					
	YTD FY23 as of 06/30/23 (12 mos)	FY23 YTD ProForma	ProForma Variance (\$)	Proforma (%)	
Net Operating Revenues	\$ 891,178,064	\$ 909,999,155	\$ (18,821,091)	-2%	
Total Expenses	\$ 747,742,888	\$ 761,751,150	\$ (14,008,262)	-2%	
Change in Net Position	\$ 143,435,176	\$ 148,248,005	\$ (4,812,829)	-3%	

Figure 1: Proforma versus Actual Results



For the period ending 06/30/23, SDCP contributed \$143,435,176 to reserves compared to the \$157,713,220 included in the FY 2022-23 amended budget. Total SDCP reserves at the end of the period were \$183,660,045 and total available liquidity (including lines of credit availability) was \$297,930,045. SDCP has a total FY 2022-23 year-end reserve target of \$190,058,650, which is equivalent to 90-days of total operating expenses as set in SDCP's Reserve Policy

COMMITTEE REVIEW

The report was reviewed by the Finance and Risk Management Committee (FRMC) on September 14, 2023.

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: 2023 Year-to-Date Period Ended 06/30/23 Financial Statements





ACCOUNTANTS' COMPILATION REPORT

Management
San Diego Community Power

Management is responsible for the accompanying financial statements of San Diego Community Power (a California Joint Powers Authority) which comprise the statement of net position as of June 30, 2023, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. San Diego Community Power's annual audited financial statements include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
August 16, 2023

SAN DIEGO COMMUNITY POWER
STATEMENT OF NET POSITION
As of June 30, 2023

ASSETS

Current assets	
Cash and cash equivalents - unrestricted	\$ 65,683,880
Accounts receivable, net of allowance	110,513,731
Accrued revenue	78,792,784
Prepaid expenses	30,527,498
Other receivables	233,715
Deposits	14,771,350
Total current assets	<u>300,522,958</u>
Noncurrent assets	
Capital assets, net of depreciation	159,083
Lease asset, net of amortization	873,251
Cash and cash equivalents - restricted	2,147,000
Deposits	2,885,000
Total noncurrent assets	<u>6,064,334</u>
Total assets	<u>306,587,292</u>

LIABILITIES

Current liabilities	
Accrued cost of electricity	77,345,343
Accounts payable	510,812
Other accrued liabilities	3,794,647
State surcharges payable	500,589
Security deposits	630,000
Interest payable	612,522
Lease liability	366,323
Total current liabilities	<u>83,760,236</u>
Noncurrent liabilities	
Bank note payable	35,730,000
Supplier security deposits	624,000
Lease liability	521,193
Total noncurrent liabilities	<u>36,875,193</u>
Total liabilities	<u>120,635,429</u>

NET POSITION

Net investment in capital assets	144,818
Restricted for collateral	2,147,000
Unrestricted	183,660,045
Total net position	<u>\$ 185,951,863</u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
Year Ended June 30, 2023

OPERATING REVENUES

Electricity sales, net	\$ 891,178,064
Total operating revenues	<u>891,178,064</u>

OPERATING EXPENSES

Cost of energy	720,327,704
Contract services	15,957,376
Staff compensation	6,726,270
Other operating expenses	2,866,222
Depreciation and amortization	<u>253,553</u>
Total operating expenses	<u>746,131,125</u>
Operating income (loss)	<u>145,046,939</u>

NON-OPERATING REVENUES (EXPENSES)

Investment income	433,366
Interest and financing expense	<u>(2,059,394)</u>
Nonoperating revenues (expenses)	<u>(1,626,028)</u>

CHANGE IN NET POSITION

	143,420,911
Net position at beginning of period	<u>42,530,952</u>
Net position at end of period	<u><u>\$ 185,951,863</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS
Year Ended June 30, 2023

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 801,265,394
Receipts of security deposits	47,431,731
Other operating receipts	10,964,074
Payments to suppliers for electricity	(753,820,919)
Payments for goods and services	(16,551,190)
Payments to employees for services	(6,302,492)
Payments for deposits and collateral	(80,254,418)
Payments of state surcharges	(1,899,237)
Net cash provided (used) by operating activities	<u>832,943</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Proceeds from bank note payable	55,910,000
Principal payments - loans	(5,514,511)
Principal payments - bank note payable	(51,520,082)
Interest and related expense payments	(1,560,734)
Net cash provided (used) by non-capital financing activities	<u>(2,685,327)</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Payments of lease liability	(235,232)
Payments to acquire capital assets	(91,588)
Net cash provided (used) by capital and related financing activities	<u>(326,820)</u>

CASH FLOWS FROM INVESTING ACTIVITIES

Investment income received	<u>433,366</u>
Net change in cash and cash equivalents	(1,745,838)
Cash and cash equivalents at beginning of period	69,576,718
Cash and cash equivalents at end of period	<u><u>\$ 67,830,880</u></u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	\$ 65,683,880
Restricted cash	2,147,000
Cash and cash equivalents	<u><u>\$ 67,830,880</u></u>

SUPPLEMENTAL CASH FLOW INFORMATION:

Capital acquisitions included in accounts payable	\$ 71,550
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SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS (continued)
Year Ended June 30, 2023

**RECONCILIATION OF OPERATING INCOME TO NET
CASH PROVIDED (USED) BY OPERATING ACTIVITIES**

Operating income	\$ 145,046,939
Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities	
Depreciation and amortization expense	253,553
Provision for uncollectible accounts	18,187,308
(Increase) decrease in:	
Accounts receivable	(78,314,049)
Accrued revenue	(31,853,169)
Other receivables	(233,715)
Prepaid expenses	(26,066,190)
Deposits	(7,965,293)
Increase (decrease) in:	
Accrued cost of electricity	20,113,838
Accounts payable	(185,693)
Other accrued liabilities	3,051,411
State surcharges payable	168,003
Supplier security deposits	(41,370,000)
Net cash provided (used) by operating activities	<u><u>\$ 832,943</u></u>



ACCOUNTANTS' COMPILATION REPORT

Board of Directors
San Diego Community Power

Management is responsible for the accompanying special purpose budgetary comparison schedule of San Diego Community Power (SDCP), a California Joint Powers Authority, for the period ended June 30, 2023, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of SDCP.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. SDCP's annual audited financial statements will include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to SDCP because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
August 16, 2023

SAN DIEGO COMMUNITY POWER
BUDGETARY COMPARISON SCHEDULE
Year Ended June 30, 2023

	2022/23 YTD Amended Budget	2022/23 YTD Actual	2022/23 YTD Amended Budget Variance (Under) Over	2022/23 YTD Actual/ Amended Budget %	2022/23 Annual Amended Budget	2022/23 Amended Budget Remaining
REVENUES AND OTHER SOURCES						
Gross Ratepayer Revenues	939,183,767	\$ 909,365,372	(29,818,395)	97%	\$ 939,183,767	\$ 29,818,395
Less Uncollectible Customer Accounts	(9,391,838)	(18,187,308)	(8,795,470)	194%	(9,391,838)	8,795,470
Total Revenues and Other Sources	<u>929,791,929</u>	<u>891,178,064</u>	<u>(38,613,865)</u>		<u>929,791,929</u>	<u>38,613,865</u>
OPERATING EXPENSES						
Cost of Energy	738,800,294	720,327,704	(18,472,590)	97%	738,800,294	18,472,590
Professional Services and Consultants	17,271,121	15,137,517	(2,133,604)	88%	17,271,121	2,133,604
Personnel Costs	7,362,226	6,726,270	(635,956)	91%	7,362,227	635,957
Marketing and Outreach	4,194,490	2,107,105	(2,087,385)	50%	4,194,489	2,087,384
General and Administrative	1,890,283	1,548,877	(341,406)	82%	1,890,283	341,406
Programs	1,275,000	300,000	(975,000)	24%	1,275,000	975,000
Total Operating Expenses	<u>770,793,414</u>	<u>746,147,473</u>	<u>(24,645,941)</u>		<u>770,793,414</u>	<u>24,645,941</u>
Operating Income (Loss)	<u>158,998,515</u>	<u>145,030,591</u>	<u>(13,967,924)</u>		<u>158,998,515</u>	<u>13,967,924</u>
NON-OPERATING REVENUES (EXPENSES)						
Investment income	-	433,366	433,366		-	(433,366)
Debt Service and Bank Fees	(1,285,295)	(2,028,781)	(743,486)	158%	(1,285,295)	743,486
Total Non-Operating Revenues (Expenses)	<u>(1,285,295)</u>	<u>(1,595,415)</u>	<u>(310,120)</u>		<u>(1,285,295)</u>	<u>310,120</u>
NET INCREASE (DECREASE)	<u>\$ 157,713,220</u>	<u>\$ 143,435,176</u>	<u>\$ (14,278,044)</u>		<u>\$ 157,713,220</u>	<u>\$ 14,278,044</u>



SAN DIEGO COMMUNITY POWER Staff Report – Item 3

To: San Diego Community Power Board of Directors

From: Eric W. Washington, Chief Financial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Treasurer's Report –Presentation of Financial Results for Fiscal Year to Date 2024 Period ended 07/31/23

Date: September 28, 2023

RECOMMENDATION

Receive and File Report.

BACKGROUND

San Diego Community Power (SDCP) maintains its accounting records on a full accrual basis in accordance with Generally Accepted Accounting Principles (GAAP) as applicable to governmental enterprise funds.

SDCP has prepared its year-to-date financial statements for the period ended July 31, 2023, along with budgetary comparisons.

SDCP additionally reports monthly metrics during its Board meetings as part of its Update on Back-Office Operations. As part of the Treasurer's Report, certain key metrics related to risk are to be presented during Financial and Risk Management Committee (FRMC) meetings.

ANALYSIS AND DISCUSSION

Actual financial results for the period ended 07/31/23: \$162.85 million in net operating revenues were reported compared to \$162.7 million budgeted for the period. \$98.88 million in total expenses were reported (including \$96.2 million in energy costs) compared to \$99.04 million budgeted for the period (including \$92.36 million budgeted for energy costs). After expenses, SDCP's change in net position of \$63.97 million was reported for Fiscal Year 2024. The following is a summary of the actual results compared to the Fiscal Year 2024 Budget.

Table 1: Budget Comparison Versus Actual Results

Budget Comparison					
	YTD FY24 as of 07/31/23 (1 mo)	FY24 YTD Budget	Budget Variance (\$)	Budget (%)	
Net Operating Revenues	\$ 162,851,417	\$ 162,702,375	\$ 149,042	100%	
Total Expenses	\$ 98,884,860	\$ 99,042,975	\$ (158,115)	100%	
Change in Net Position	\$ 63,966,557	\$ 63,659,400	\$ 307,157	0%	

- Net operating revenues finished \$149,042 (or less than 1.0 percentage point) over the budget and largely in line with expectations.
- Operating expenses finished \$158,115 (or less than 1.0 percentage point) under the budget primarily due to savings from all operating non-energy expenses negating slightly higher than expected energy costs which were due to large resource adequacy purchases to ensure compliance.

Financial results for the period underperformed the projections presented in the year-to-date proforma. SDCP's change in net position was 7% under the projection primarily due to higher-than-expected cost of energy

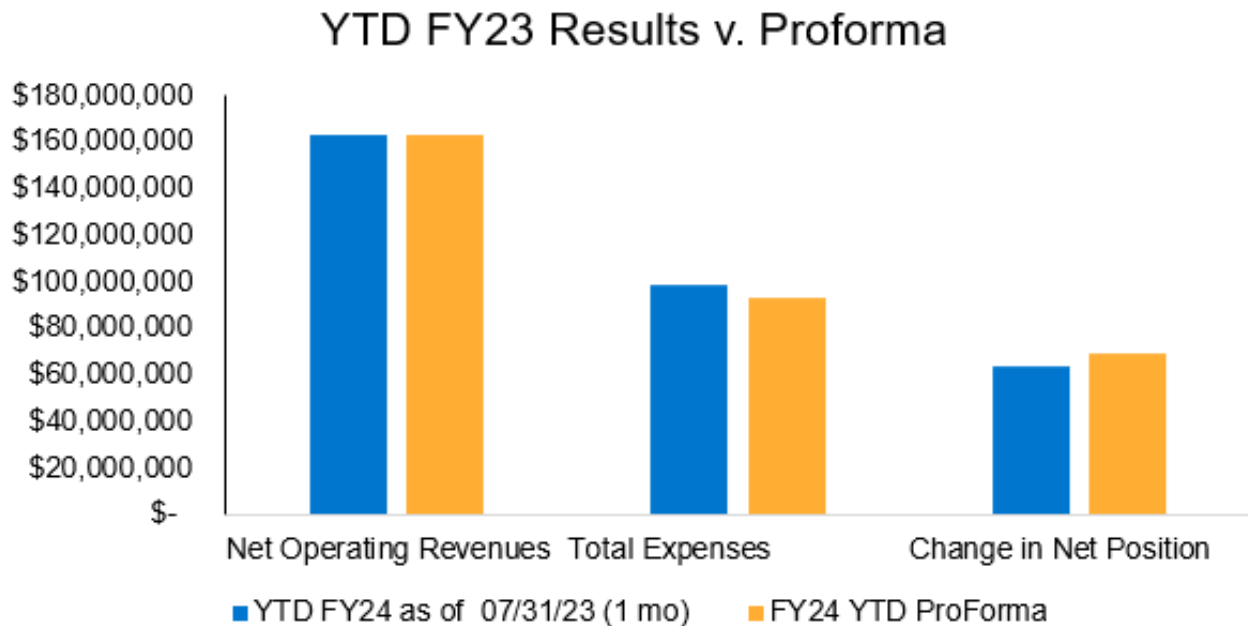
The following is a summary to actual results compared to the fiscal year-to-date proforma.

Table 2: Proforma Comparison Versus Actual Results

Proforma Comparison					
	YTD FY24 as of 07/31/23 (1 mo)	FY24 YTD ProForma	ProForma Variance (\$)	Proforma (%)	
Net Operating Revenues	\$ 162,851,417	\$ 162,702,375	\$ 149,042	0%	
Total Expenses	\$ 98,884,860	\$ 93,619,750	\$ 5,265,110	6%	
Change in Net Position	\$ 63,966,557	\$ 69,082,625	\$ (5,116,068)	-7%	



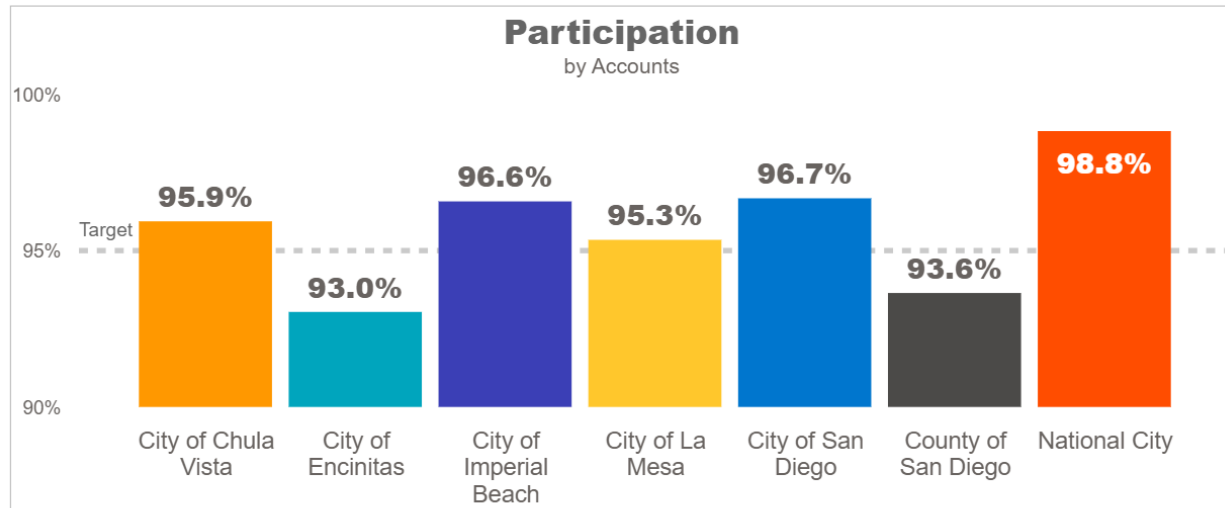
Figure 1: Proforma versus Actual Results



For the period ending 07/31/23, SDCP contributed \$63,966,557 to its reserves but was expected to gain \$63,659,400 per the FY 2023-24 adopted budget. Total SDCP reserves at the end of the period were \$247,761,561 and total available liquidity (including lines of credit) was \$362,031,561. SDCP has a total FY 2023-24 year-end reserve target of \$245,539,726 which is equivalent to 90-days of total operating expenses as set in SDCP's Reserve Policy. SDCP is pursuing a strategic goal of \$491,079,452 in reserves, which is equivalent to 180-days of total operating expenses.

Figure 2: Participation Rates

Participation by Jurisdiction



Jurisdiction	Active	Eligible	Opt Outs	Participation
City of Chula Vista	93,347	97,301	3,954	95.9%
City of Encinitas	26,477	28,458	1,981	93.0%
City of Imperial Beach	10,567	10,942	375	96.6%
City of La Mesa	28,054	29,424	1,370	95.3%
City of San Diego	598,968	619,587	20,619	96.7%
County of San Diego	140,457	168,435	10,705	93.6%
National City	18,256	18,928	223	98.8%
Total	916,126	973,075	39,227	96.0%

Phase 4 mass enrollment process in National City and Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers is officially completed as of May, 2023. The participation rate for this new phase is fluid and will change as we continue with our enrollment of Net Energy Metering (NEM) customers from April 2023 through March 2024. In the interim, we are reporting on the opt outs and eligible accounts associated with the phase based on those accounts that we have noticed for enrollment on a rolling basis as of the reporting month.

Staff are also presenting State of SDCP Arrearages directly related to financial risk for FRMC consideration and for regular review moving forward. Additional metrics can be added by request. Below arrearage data is SDCP's Receivables aged 120+ Days as of 8/28/2023.

Figure 3: State of SDCP Arrearages

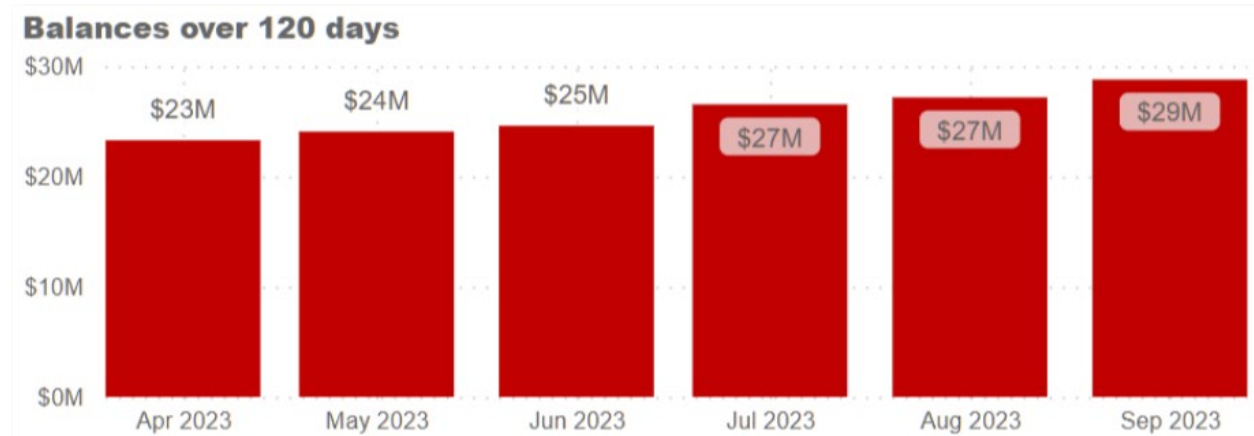
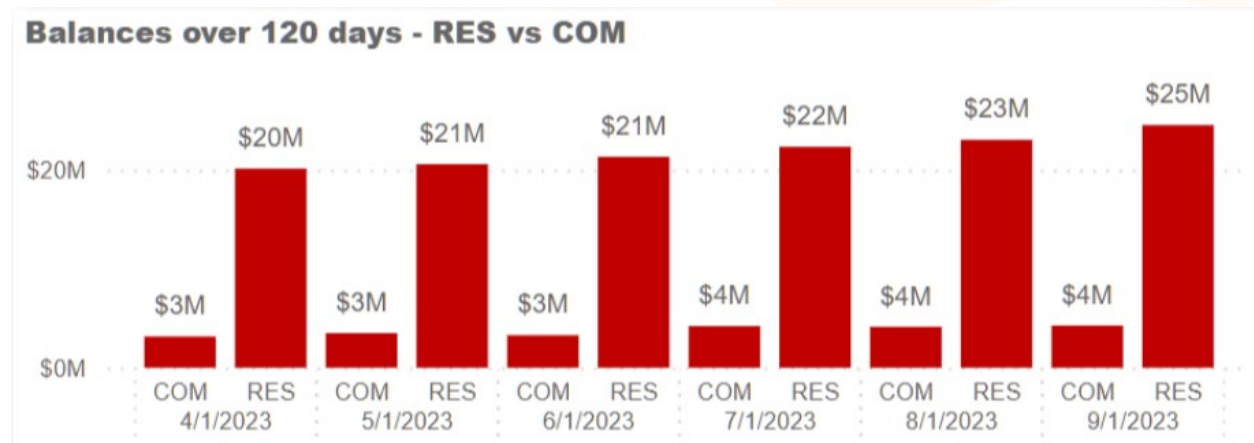


Figure 4: State of SDCP Arrearages Residential vs Commercial



COMMITTEE REVIEW

The report was reviewed by the Finance and Risk Management Committee (FRMC) on September 14, 2023.

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: 2024 Year-to-Date Period Ended 07/31/23 Financial Statements



ACCOUNTANTS' COMPILATION REPORT

Management
San Diego Community Power

Management is responsible for the accompanying financial statements of San Diego Community Power (a California Joint Powers Authority) which comprise the statement of net position as of July 31, 2023, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. San Diego Community Power's annual audited financial statements include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
August 31, 2023

SAN DIEGO COMMUNITY POWER
STATEMENT OF NET POSITION
As of July 31, 2023

ASSETS

Current assets	
Cash and cash equivalents - unrestricted	\$ 122,783,778
Cash and cash equivalents - restricted	500,000
Accounts receivable, net of allowance	135,245,975
Accrued revenue	108,469,439
Prepaid expenses	29,270,098
Other receivables	37,320
Deposits	14,296,704
Total current assets	<u>410,603,314</u>
Noncurrent assets	
Capital assets, net of depreciation	156,142
Lease asset, net of amortization	842,064
Cash and cash equivalents - restricted	1,647,000
Deposits	2,330,000
Total noncurrent assets	<u>4,975,206</u>
Total assets	<u>415,578,520</u>

LIABILITIES

Current liabilities	
Accrued cost of electricity	122,763,498
Accounts payable	546,684
Other accrued liabilities	3,942,225
State surcharges payable	184,450
Security deposits	525,000
Interest payable	427,447
Lease liability	367,697
Total current liabilities	<u>128,757,000</u>
Noncurrent liabilities	
Bank note payable	35,730,000
Supplier security deposits	624,000
Lease liability	489,917
Total noncurrent liabilities	<u>36,843,917</u>
Total liabilities	<u>165,600,917</u>

NET POSITION

Net investment in capital assets	69,042
Restricted for collateral	2,147,000
Unrestricted	247,761,561
Total net position	<u>\$ 249,977,603</u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
One Month Ended July 31, 2023

OPERATING REVENUES

Electricity sales, net	\$ 162,378,167
Grant revenue	473,250
Total operating revenues	<u>162,851,417</u>

OPERATING EXPENSES

Cost of energy	96,203,705
Contract services	1,525,992
Staff compensation	702,526
Other operating expenses	256,546
Depreciation and amortization	34,129
Total operating expenses	<u>98,722,898</u>
Operating income (loss)	<u>64,128,519</u>

NON-OPERATING REVENUES (EXPENSES)

Investment income	110,772
Interest and financing expense	(274,019)
Nonoperating revenues (expenses)	<u>(163,247)</u>

CHANGE IN NET POSITION

	63,965,272
Net position at beginning of period	186,012,331
Net position at end of period	<u><u>\$ 249,977,603</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS
One Month Ended July 31, 2023

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 108,153,718
Receipts of security deposits	1,835,863
Other operating receipts	1,423,540
Payments to suppliers for electricity	(51,025,748)
Payments for goods and services	(1,513,354)
Payments to employees for services	(750,776)
Payments for deposits and collateral	(205,000)
Payments of state surcharges	(500,589)
Net cash provided (used) by operating activities	<u>57,417,654</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Interest and related expense payments	(398,626)
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**CASH FLOWS FROM CAPITAL AND RELATED
FINANCING ACTIVITIES**

Payments of lease liability	(29,902)
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CASH FLOWS FROM INVESTING ACTIVITIES

Investment income received	<u>110,772</u>
Net change in cash and cash equivalents	57,099,898
Cash and cash equivalents at beginning of period	<u>67,830,880</u>
Cash and cash equivalents at end of period	<u><u>\$ 124,930,778</u></u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	\$ 122,783,778
Restricted cash - current	\$ 500,000
Restricted cash - noncurrent	1,647,000
Cash and cash equivalents	<u><u>\$ 124,930,778</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS (continued)
One Month Ended July 31, 2023

**RECONCILIATION OF OPERATING INCOME TO NET
CASH PROVIDED (USED) BY OPERATING ACTIVITIES**

Operating income	\$ 64,128,519
Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities	
Depreciation and amortization expense	34,129
Provision for uncollectible accounts	6,765,757
(Increase) decrease in:	
Accounts receivable	(31,498,001)
Accrued revenue	(29,676,655)
Other receivables	196,395
Prepaid expenses	1,257,400
Deposits	1,029,646
Increase (decrease) in:	
Accrued cost of electricity	45,418,155
Accounts payable	35,870
Other accrued liabilities	147,578
State surcharges payable	(316,139)
Supplier security deposits	(105,000)
Net cash provided (used) by operating activities	<u><u>\$ 57,417,654</u></u>



ACCOUNTANTS' COMPILATION REPORT

Board of Directors
San Diego Community Power

Management is responsible for the accompanying special purpose budgetary comparison schedule of San Diego Community Power (SDCP), a California Joint Powers Authority, for the period ended July 31, 2023, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of SDCP.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. SDCP's annual audited financial statements will include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to SDCP because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
August 31, 2023

**SAN DIEGO COMMUNITY POWER
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
One Month Ended July 31, 2023**

	2023/24 YTD Budget	2023/24 YTD Actual	2023/24 YTD Budget Variance (Under) Over	2023/24 YTD Actual/ Budget %	2023/24 Annual Budget	2023/24 Budget Remaining
REVENUES AND OTHER SOURCES						
Gross Ratepayer Revenues	169,481,641	\$ 169,143,924	(337,717)	100%	\$ 1,346,325,552	\$ 1,177,181,628
Less Uncollectible Customer Accounts	(6,779,266)	(6,765,757)	13,509	100%	(53,853,022)	(47,087,265)
Grant revenue	-	473,250	473,250		-	(473,250)
Total Revenues and Other Sources	<u>162,702,375</u>	<u>162,851,417</u>	<u>149,042</u>		<u>1,292,472,530</u>	<u>1,129,621,113</u>
OPERATING EXPENSES						
Cost of Energy	92,359,121	96,203,705	3,844,584	104%	948,529,425	852,325,720
Professional Services and Consultants	2,918,560	1,491,770	(1,426,790)	51%	22,939,626	21,447,856
Personnel Costs	1,547,125	702,526	(844,599)	45%	13,178,031	12,475,505
Marketing and Outreach	377,629	168,772	(208,857)	45%	2,973,829	2,805,057
General and Administration	1,282,076	158,169	(1,123,907)	12%	7,861,973	7,703,804
Programs	35,333	-	(35,333)	0%	278,250	278,250
Total Operating Expenses	<u>98,519,844</u>	<u>98,724,942</u>	<u>205,098</u>		<u>995,761,134</u>	<u>897,036,192</u>
Operating Income (Loss)	<u>64,182,531</u>	<u>64,126,475</u>	<u>(56,056)</u>		<u>296,711,396</u>	<u>232,584,921</u>
NON-OPERATING REVENUES (EXPENSES)						
Investment income	-	110,772	110,772		-	(110,772)
Interest and related expenses	(203,131)	(270,690)	(67,559)	133%	(2,437,574)	(2,166,884)
Transfer to Capital Investment Program	<u>(320,000)</u>	<u>-</u>	<u>320,000</u>	0%	<u>(3,840,002)</u>	<u>(3,840,002)</u>
Total Non-Operating Revenues (Expenses)	<u>(523,131)</u>	<u>(159,918)</u>	<u>363,213</u>		<u>(6,277,576)</u>	<u>(6,117,658)</u>
NET INCREASE (DECREASE)	<u>\$ 63,659,400</u>	<u>\$ 63,966,557</u>	<u>\$ 307,157</u>		<u>\$ 290,433,820</u>	<u>\$ 226,467,263</u>

See accountants' compilation report.



SAN DIEGO COMMUNITY POWER Staff Report – Item 4

To: San Diego Community Power Board of Directors
From: Colin Santulli, Director of Programs
Via: Jack Clark, Chief Operating Officer
Subject: Update on Programs
Date: September 28, 2023

RECOMMENDATIONS

Receive and file update on customer energy programs.

BACKGROUND

Staff will provide regular updates to the Board of Directors (Board) regarding SDCP's customer energy programs.

ANALYSIS AND DISCUSSION

Program Updates

Regional Energy Network (REN) Formation

Status: Staff provided an update on REN Formation progress at the February Board meeting. Since that time, Staff have undertaken several activities including researching and developing a draft governance structure and program types, completing a market assessment to identify sectors in most need of energy efficiency programs, and presenting draft REN elements to regional stakeholders for feedback. Additionally, Staff have initiated regular engagement with both the California Public Utilities Commission (CPUC) and SDG&E on the status of the REN formation progress. Staff presented draft programs at the September Community Advisory Committee (CAC) meeting.

Next Steps: Staff plan to provide an overview of the proposed governance structure, core values, and programs at the October Board meeting. Staff plan to submit a final Business Plan Application to the CPUC by the end of this calendar year.

Grant Programs

Status: Staff are currently working on administering/launching two grant programs—one for community-based organizations/nonprofits and another for SDCP's member agencies. SDCP's Community Grant Program aims to support clean energy projects that

provide economic, environmental, and health benefits to SDCP's communities. Staff launched the inaugural FY 2022-23 program in March 2023 and provided grant awards to 10 organizations in June 2023. Now that the inaugural program is underway, Staff are beginning to plan for the FY 2023-24 program. Staff recently completed a competitive procurement process to establish program administration support and are seeking approval of the contract for a potential Program Administrator at the September Board meeting.

SDCP's Member Agency Grant Program will aim to support SDCP member agencies' climate action goals and initiatives such as projects or programs that promote clean energy, reduce carbon emissions, support climate equity, and advance local economic development. SDCP's FY 2023-24 budget included funds to create a member agency grant program as a component of the Programs Department budget. The Member Agency Grant Program Policy was approved at the August Board meeting and Staff are currently undergoing a procurement process to establish program administration support.

Next Steps: Staff plan on launching the FY 2023-24 Community Grant Program in Q1 2024 and the inaugural Member Agency Grant Program in Q4 2023.

Energy Education Website

Status: Customer Energy Awareness and Education is one of the program types identified in the Community Power Plan to be deployed in the short term (i.e., FY 2023-24 – FY 2024-25). In early 2023, Staff developed a work plan to establish program goals and milestones. The goals of the program include establishing SDCP as a trusted source of information on renewable energy, electrification, and greenhouse gas emissions reduction actions. To achieve this goal, Staff designed a webpage to provide education on electrification, various technologies, and an option for customers to take action through an online marketplace.

Next Steps: Staff will provide an overview of the energy education webpage at the October CAC Programs Ad-Hoc Committee meeting. Staff have engaged with two online marketplace vendors to integrate with the webpage. The initial marketplace will be made available in November to include rooftop solar, battery storage, and water heaters. This marketplace will allow customers to obtain competitive bids from reputable installers and be connected to an energy advisor to receive support and assistance to complete a project. In Q1 2024, Staff plan to deploy the second online marketplace to include additional household appliances.

CPUC Green Tariff Programs

Status: Staff provided an update on the Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) programs progress at the June Board meeting. SDCP has since released the first Request for Offer (RFO) to solicit bids to fulfill the Green Tariff allocation for both programs. Staff have hosted two webinars prior to the solicitation's release to engage local stakeholders and notify developers of the



opportunity. Additionally, Staff have launched a dedicated webpage for both Green Tariff programs, referred to as the “Solar for Our Communities” programs. All relevant information for both programs, including timelines, program requirements, webinar recordings, and presentations are captured and updated regularly on the Solar for Our Communities program webpage.

Next Steps: On October 2023, Staff will be hosting a dedicated RFO webinar for potential bidders to learn more about the technical elements and submittal requirements. Staff will continue to engage in targeted outreach to key stakeholders, particularly in CPUC-defined disadvantaged communities to increase overall program awareness among residents, enrollment in CARE and FERA rates, and stimulate a healthy bid response prior to the RFO response deadline of February 24, 2024.

New Hires

Status: The Programs Department welcomed two new staff members in September. Emily Fisher and Tim Treadwell joined the Programs Department as Senior Program Managers. Tim will primarily be focused on grid-integrated/grid-interactive programs and Emily will be focused on battery storage programs. However, both will be involved in other elements of various programs.

Emily joins us most recently from Sunnova Energy, a national solar plus storage service provider, where she introduced and supported in designing and managing battery emergency demand response programs to the business markets team, among other efforts. Prior to Sunnova, Emily was a Senior Manager of Utility Solutions for GridPoint, an energy management technology company where she developed and managed energy efficiency and demand response programs. Before that, she was a Program Manager at Willdan for 8 years, where Emily led a cross-functional team that developed innovative program designs to increase the adoption of energy efficiency, demand response, electrification, and renewable energy for commercial, public, and multifamily customers.

Tim joins us most recently from Portland General Electric (PGE) where he designed, implemented, and managed a portfolio of flexible load demonstration projects. Tim oversaw PGE’s Smart Grid Testbed, a multi-year field research project focused on identifying pathways to rapidly develop flexible load resources, as well as the Department of Energy-funded Connected Communities research grant to demonstrate the use of distributed energy resources as an operational resource. Tim has roots in San Diego, having previously served here in the Navy and then returning to lead the Engineering, Research, and Analysis Department for the local non-profit Center for Sustainable Energy.

Next Steps: The Programs Department does not anticipate any further hiring this Fiscal Year.



AD-HOC COMMITTEE AND/OR SUBCOMMITTEE REVIEW

Staff meet monthly with the CAC Ad-Hoc Programs Committee to discuss ongoing Programs Department activities.

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 5

To: San Diego Community Power Board of Directors
From: Byron Vosburg, Managing Director of Power Services
Via: Karin Burns, Chief Executive Officer
Subject: Update on Power Resources
Date: September 28, 2023

RECOMMENDATION

Recommendation: Receive and file update on Power Resources

BACKGROUND

Staff provides the updates below to the Board of Directors regarding SDCP's power energy procurement activities.

ANALYSIS AND DISCUSSION

Power Services Staffing

Building out a team of experienced, knowledgeable energy professionals has long been a top priority and allows SDCP not only to solicit, negotiate, and administer contracts for energy supply effectively, but also to monitor market activity, manage risk, bring in-house a number of activities that have historically been completed by consultants, and to dedicate additional resources to local and distributed energy procurement and development efforts. The SDCP Power Services team is now 8 people strong. Recently, SDCP posted two additional roles for the Power Services team, for a compliance analyst and a contract management analyst.

Long-term Renewable Energy RFPs

As SDCP strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) are becoming integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term PPAs lock in renewable energy supply around which SDCP can build its power supply portfolio while also providing power supply cost certainty around which SDCP can

develop its pro forma financial model. Moreover, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that SDCP provide 65% of its RPS-required renewable energy from contracts of at least ten years in length. Finally, in D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, incremental generation facilities that will achieve commercial operation during 2023 through 2026 for purposes of “Mid Term Reliability” (MTR). These requirements have been augmented and extended into 2026 and 2027 via D.23-02-040.

In pursuit of long-term contracts for renewable energy, staff have released two RFPs for eligible Renewable Energy resources in the past 12 months. Staff are deep in negotiations with several respondents for resources that are expected to be online between 2025 and 2028. Staff and the Energy Contracts Working Group (ECWG) evaluate all RFP submissions prior to entering negotiations with selected participants. Assuming that Staff and shortlisted developer(s) are able to agree to mutually agreeable contracts consistent with terms authorized by the ECWG, Staff then review draft agreements with the SDCP Board for approval and authorization to execute the relevant documents.

In addition to RFPs issued by SDCP, the power service team also closely monitors market offers from the IOUs in California to secure contracts for short-term and long-term renewable projects.

Stand-Alone Energy Storage RFP

In addition to the two aforementioned Renewable Energy RFPs, staff have also launched an RFP for stand-alone energy storage resources, which will allow SDCP to meet resource adequacy requirements and protect against market price volatility with clean, reliable storage capacity that can be contracted for 10-20 years. SDCP is pursuing stand-alone energy storage resources of at least 10 MW in capacity, at least 4-hours of duration, and which are expected to be online between 2024 and 2028. Staff have shortlisted and waitlisted select projects after review with the ECWG. Staff are now in negotiations with several respondents for resources that are expected to be online between 2025 and 2028.

Local Development

SDCP continues to engage with local developers that have submitted project proposals and hopes to present a handful of resulting PPAs to the Board in the coming months. As outlined in the Strategic Planning session on April 21, 2023, SDCP is currently developing its local infill development plan, which will outline a first phase of potential local, distribution-level renewable energy resource development opportunities and is expected to be presented to the Board for review in October. In addition to the work that SDCP has done meeting with staff from each member agency to identify potential member owned property to assess as part of this infill plan, additional resources have been allocated to private industry opportunities, including preparation of a DER wholesale solicitation to



launch this Fall, as well as consideration of a Feed-in-Tariff Program revamp and expansion.

As Program Administrators of the CPUC's Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) programs, SDCP launched the RFP solicitation for respective program resources on August 26th, proposals for which will be due in late February 2024.

SDCP's Local RFI and Feed-in Tariff remain open. More information is available about each at the links below.

- <https://sdcommunitypower.org/resources/solicitations/>
- <https://sdcommunitypower.org/programs/feed-in-tariff/>

RPS Procurement

SDCP staff continues to actively manage its environmental portfolios and to closely monitor the market for renewable and carbon-free energy sources, including the release of an RFO in July for short-term renewable and carbon-free energy, procuring RPS in the bi-lateral market, and continuing procurement efforts as market opportunities become available. These procurement efforts will serve to help meet SDCP's near-term environmental goals as long-term projects in development come online.

Market Update

Due to lingering effects of the COVID-19 pandemic, namely inflation and heavily impacted commodity supply chains that have delayed development of new-build energy resources expected to be online over the last two years, the market for renewable energy and resource adequacy (RA) resources continues to be exceptionally tight and expensive. Staff are working with developers, industry groups, the CPUC, and CA Governor's Office and legislators to brainstorm near-term solutions while also actively procuring short-term energy and capacity products and long-term energy resources i) to meet SDCP's portfolio needs practically and cost-effectively and ii) to establish a portfolio of resources that will provide value to SDCP and California's clean, reliable energy needs into the future.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 6

To: San Diego Community Power Board of Directors
From: Chandra Pugh, Director of People
Via: Karin Burns, Chief Executive Officer
Subject: Update on Human Resources
Date: September 28, 2023

RECOMMENDATION

Receive and File the Update on Human Resources.

BACKGROUND

Human Resources (HR) has been working on the following priorities:

Hiring: This month, SDCP welcomes several new employees:

Emily Fisher, Senior Program Manager
Jushaun Jamieson, Public Outreach Coordinator
Adana Martinez, Public Outreach Coordinator
Timothy Treadwell, Senior Program Manager
Christopher Stephens, Procurement Manager

We have developed an Internal Mobility Policy which outlines our process for internal promotions and internal career opportunities. The policy was reviewed with staff and is posted on our HR website.

Implementation of our Applicant Tracking System (ATS) is well underway. This tool will assist HR with automating and optimizing our hiring process to ensure a seamless candidate experience.

We are also currently reviewing our Employee Handbook to ensure it remains up-to-date and complies with current federal, state, and local employment laws. Once changes are made to the handbook, we will be notifying the employees for review and acknowledgement.



DISCUSSION AND ANALYSIS

N/A

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS:

N/A



SAN DIEGO COMMUNITY POWER

Staff Report – Item 7

To: San Diego Community Power Board of Directors

From: Lucas Utouh, Director of Data Analytics and Account Services

Via: Karin Burns, Chief Executive Officer

Subject: Update on Customer Operations

Date: September 28, 2023

RECOMMENDATION

Receive and file update on various customer operations.

BACKGROUND

Staff will provide regular updates to the Board of Directors regarding San Diego Community Power's (SDCP) back-office activities centered around tracking opt actions (i.e., opt outs, opt ups and opt downs) as well as customer engagement metrics. The following is a brief overview of items pertaining to back-office operations.

ANALYSIS AND DISCUSSION

A) Mass Enrollment Update

Phase 4:

Mass enrollment for our Non-Net Energy Metering (NEM) customers in National City and Unincorporated County of San Diego is officially complete as of May 3, 2023. As of Sept. 7, 2023, SDCP is serving a cumulative total count of **917,593** active accounts correlating to **1,049,507** meters. There are **142,167** active accounts already enrolled in County of San Diego and **18,254** in National City.

For those accounts on Net Energy Metering (NEM) in Phase 4 in National City and County of San Diego, their enrollment into SDCP started in April 2023 and will continue for the next twelve months, coinciding with their true up month through March 2024. Enrolled customers will receive 2 post enrollment notices through the mail at their mailing address on file within 60 days of their account switching over to SDCP service.

Power Content Label Reflects 2022 verified electric resources for SDCEP

This information is required by the California Energy Commission to be mailed to active SDCEP customers.

The generation data represents energy procured during 2022 and is provided in the Annual Report to the California Energy Commission: Power Source Disclosure Program.

A portion of SDCEP's energy comes from clean, large hydroelectric power stations. Under California law, large hydroelectric power stations do not qualify as eligible renewable resources.

2022 Power Content Label

2022 POWER CONTENT LABEL
San Diego Community Power
<https://www.sdcep.com/energy-resources/documents>

Greenhouse Gas Emissions Intensity (lbs CO₂/MWh)

Renewable Power	Non-Renewable Power	2022 SDCEP Power Mix	2022 SDCEP Power Mix	2022 CA Power Mix
375	422			

Energy Resources

Energy Resource	2022 SDCEP Power Mix	2022 SDCEP Power Mix	2022 CA Power Mix
Eighties Renewable	14.2%	0.0%	3.7%
Biomass & Biomethane	2.3%	0.0%	1.1%
Coal	0.0%	0.0%	4.2%
Eligible Hydroelectric	1.1%	0.0%	1.1%
Geothermal	0.0%	0.0%	0.0%
Wind	22.0%	50.0%	10.8%
Large Hydroelectric	23.9%	0.0%	2.1%
Natural Gas	14.8%	0.0%	3.8%
Nuclear	0.0%	0.0%	38.4%
Oil	0.0%	0.0%	0.1%
Other	0.0%	0.0%	0.1%
Unspecified Power ¹	33.1%	0.0%	2.5%
TOTAL	100.0%	100.0%	100.0%

Percentage of Total Sales Covered by Net-metered RECs²

Renewable Resource	Percentage of Total Sales Covered by Net-metered RECs ²
Wind	0%
Solar	0%
Geothermal	0%
Biomass	0%
Hydro	0%
Other	0%
Total	0%

¹The eligible renewable percentage above does not reflect SDCEP compliance, which is determined using a different methodology.
²Unspecified power is electricity that has been purchased through power transactions and is not traceable to a specific generation source.

³Non-eligible energy credits (RECs) are tracking instruments created for renewable generation. Unspecified renewable energy credits (RECs) represent renewable generation that was not sold to or used by SDCEP. Unspecified RECs are not reflected in the power mix for specific information about this electricity.

San Diego Community Power
1.982.842-4199
<https://www.sdcep.com/energy-resources/documents>

For specific information about the Power Content Label, visit: <https://www.sdcep.com/energy-resources/documents>

Powering a clean, affordable energy future

San Diego Community Power is your local provider of cleaner electricity at competitive rates. We are a locally run, not-for-profit public agency that invests in our customers to create an equitable and sustainable future for the San Diego region.

How It Works

We purchase renewable power, like solar and wind, then feed it to the electricity grid. We work with SDG&E to deliver that power to you at competitive rates.

SDCEP
Buys electricity from renewable energy sources

SDG&E
Delivers power and maintains the grid

You
Cleaner power, local control and competitive rates

At SDCEP we put our communities first through programs and customer education to help you take a giant step toward a more sustainable energy future

C) Customer Participation Tracking

Staff and Calpine have worked together to create a reporting summary of customer actions to opt out of SDCP service, opt up to Power100, or opt down from Power100 to PowerOn. The below charts summarize these actions accordingly as of September 3rd, 2023:

I. Total Opt Outs - Including Active and Inactive

- **Active** - accounts still active at same premise
- **Inactive** - accounts that have moved out, or premise is terminated

Opt Outs by Jurisdiction	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	Total
City of San Diego	1,077	19,278	1,042	543	221	237	22,397
County of San Diego			6,920	2,667	645	462	10,693
City of Chula Vista	266	3,472	244	102	50	51	4,185
City of Encinitas	66	1,886	94	31	17	19	2,113
City of La Mesa	85	1,272	77	30	18	15	1,497
City of Imperial Beach	32	345	27	6	2	3	415
National City			137	69	14	13	233
Total	1,526	26,253	8,541	3,448	967	800	41,533

Opt Outs by Class Code	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	Total
Residential	36	25,717	7,717	3,091	894	754	38,207
Commercial/Industrial	1,490	536	824	357	73	46	3,326
Total	1,526	26,253	8,541	3,448	967	800	41,533

Opt Outs by Reason	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	Total
Dislike being automatically enrolled	203	7,214	2,754	1,056	259	202	11,688
Rate or additional cost concerns	6	7,754	1,693	792	334	324	10,903
Decline to provide	227	3,596	1,397	435	96	63	5,814
Other	818	2,653	706	393	59	71	4,700
Existing relationship with the utility	2	2,394	1,005	393	104	81	3,979
Concerns about government-run power agency	24	1,496	503	213	53	25	2,314
Service or billing concerns	6	724	262	108	50	27	1,177
Have grid reliability concerns	1	292	169	46	10	3	521
Rate or Cost Concerns	233						233
Concerns about lack of equivalent CCA programs		132	53	12	2	4	203
Have renewable Energy Reliability Concerns	6						6
Total	1,526	26,253	8,541	3,448	967	800	41,533

Opt Outs by Method	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	Total
Web	327	14,353	5,202	1,837	462	341	22,521
Customer Service Rep (CSR)	1,098	7,002	1,846	876	261	235	11,318
Interactive Voice Response (IVR)	101	4,899	1,493	735	244	224	7,696
Total	1,526	26,253	8,541	3,448	967	800	41,533

*Historical opt outs including inactive accounts as of 08/28/2023.

II. Opt Ups to Power 100

Opt Ups by Jurisdiction	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	Total
City of San Diego	3,163	2,888	181	114	50	16	6,379
City of Chula Vista	701	168	18	15	5	4	911
City of La Mesa	148	118	6	5	1		278
County of San Diego			48	91	17	10	166
City of Imperial Beach	60	29		1	1	8	99
City of Encinitas	18	1	1				20
National City			1	9			10
Total	4,090	3,184	255	235	74	38	7,862

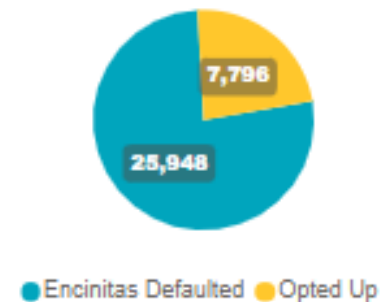
Opt Ups by Class Code	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	Total
Commercial/Industrial	4,087	290	74	99	15	14	4,567
Residential	3	2,895	181	136	59	24	3,296
Total	4,090	3,184	255	235	74	38	7,862

Opt Ups by Method	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	Total
Customer Service Rep (CSR)	4,059	1,369	97	118	22	17	5,670
Web	27	1,738	137	100	44	17	2,061
Interactive Voice Response (IVR)	4	81	21	17	8	4	135
Total	4,090	3,184	255	235	74	38	7,862

Cumulative Power100 Accounts

Opt Ups by Jurisdiction	Active
City of Encinitas	25,948
City of San Diego	6,342
City of Chula Vista	907
City of La Mesa	276
County of San Diego	163
City of Imperial Beach	98
City of National City	10
Total	33,744

Power100 Opt vs Defaulted



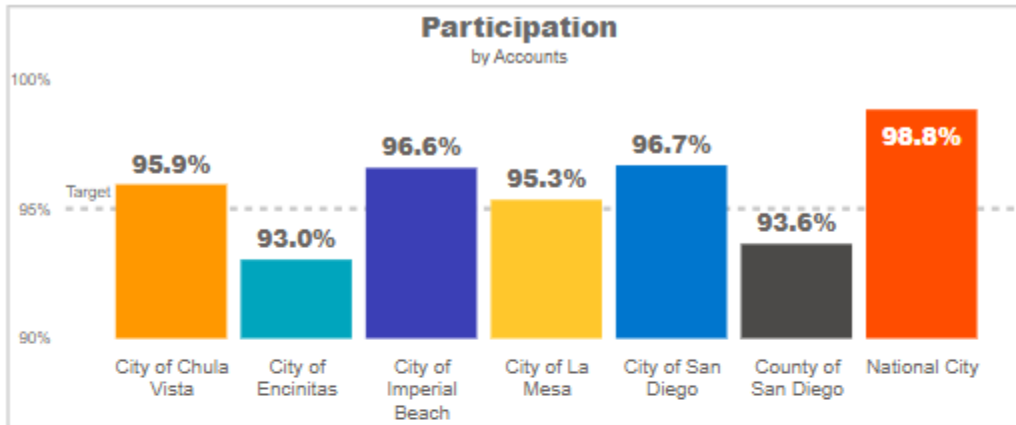
III. Opt Downs from Power100

Opt Downs by Jurisdiction	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	Total
City of Encinitas	35	425	27	17	3	6	513
City of San Diego		26	5	5		1	37
City of Chula Vista		1	3				4
County of San Diego			1	1	1		3
City of La Mesa		2					2
City of Imperial Beach		1					1
Total	35	455	36	23	4	7	560

Opt Downs by Class Code	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	Total
Residential		433	36	15	4	6	494
Commercial/Industrial	35	22		8		1	66
Total	35	455	36	23	4	7	560

Opt Downs by Method	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	Total
Customer Service Rep (CSR)	31	305	21	19	2	5	383
Web		124	13	4	2	2	145
Interactive Voice Response (IVR)	4	26	2				32
Total	35	455	36	23	4	7	560





Jurisdiction	Active	Eligible	Opt Outs	Participation
City of Chula Vista	93,347	97,301	3,954	95.9%
City of Encinitas	26,477	28,458	1,981	93.0%
City of Imperial Beach	10,567	10,942	375	96.6%
City of La Mesa	28,054	29,424	1,370	95.3%
City of San Diego	598,968	619,587	20,619	96.7%
County of San Diego	140,457	168,435	10,705	93.6%
National City	18,256	18,928	223	98.8%
Total	916,126	973,075	39,227	96.0%

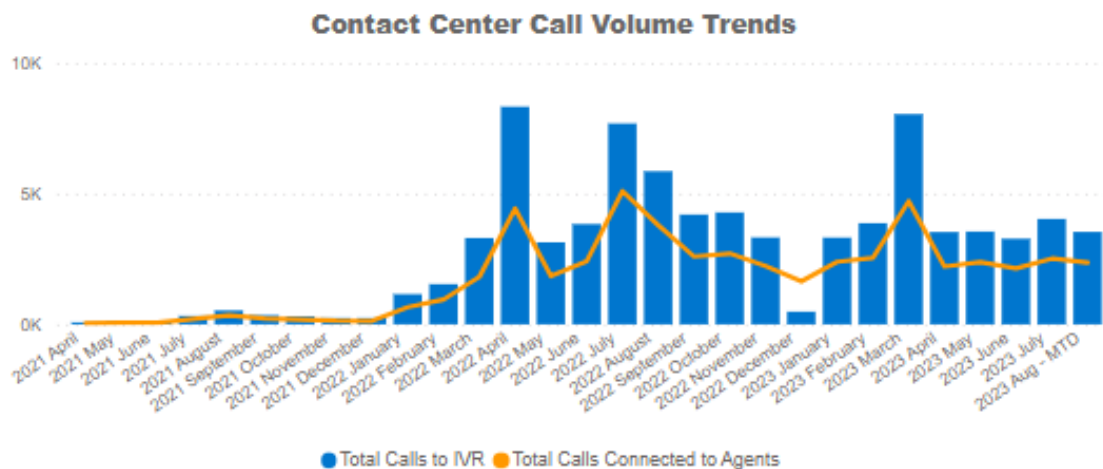
Phase 4 mass enrollment process in National City and Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers is officially completed as of May 2023. The participation rate for this new phase is fluid and will change as we continue with our enrollment of Net Energy Metering (NEM) customers from April 2023 through March 2024. In the interim, we are reporting on the opt outs and eligible accounts associated with the phase based on those accounts that we have noticed for enrollment on a rolling basis as of the reporting month.

D) Contact Center Metrics

August call volumes dropped by **12.3%** compared to July which was expected due to the fact that customer bills with summer rates started getting to customers in July and so a noticeable increase in calls was fielded to the Contact Center accordingly. Consistent with the seasonal transition to summer rates as of June 1 where generation rates are generally higher than those in Winter, more customer inquiries around higher bills are expected and possibly an uptick in opt outs as a result.

The chart below summarizes contact made by customers into our Contact Center broken down by month through September 3, 2023:

V. Contact Center Metrics



Interactive Voice Response (IVR) and Service Level Agreement (SLA) Metrics

	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	Total
Total Calls to IVR	2,289	47,118	15,229	10,356	4,031	3,536	82,559
Total Calls Connected to Agents	1,401	30,174	9,641	6,735	2,515	2,361	52,827
Avg Seconds to Answer	20	12	8	3	4	11	13
Avg Call Duration (Minutes)	8.5	9.8	9.4	9.5	10.3	10.1	9.4
Calls Answered within 60 Seconds (75% SLA)	96.23%	95.50%	96.80%	99.69%	99.01%	94.35%	96.37%
Abandon Rate	0.57%	0.36%	0.26%	0.00%	0.08%	0.46%	0.37%

Similar to other CCAs' service territories, we are anticipating the trend of our customers calling into our Contact Center's Interactive Voice Response (IVR) system tree and being able to self-serve their opt actions using the recorded prompts as well as utilizing our website for processing opt actions to continue accounting for over 65% of all instances. The remaining portion of customer calls are connected to our Customer Service Representatives to answer additional questions, assist with account support, or submit opt actions.

Customer Service Email Trends



Customer Service Emails

	2021	2022	2023 Q1	2023 Q2	2023-07	2023-08	Total
Emails Received	272	2,894	795	453	127	108	4,649
Emails answered or escalated within 24 hours	257	2,821	790	452	127	107	4,554
Completion (%)	94%	98%	99%	100%	100%	99%	97%

As of this latest reporting month, we still have a total of 13 Dedicated Customer Service Representatives staffed at our Contact Center and 2 Supervisors. Our robust Quality Assurance (QA) procedures are firmly in place to ensure that our customers are getting a world-class customer experience when they contact us.

COMMITTEE REVIEW

This report was received by the Community Advisory Committee (CAC) and unanimously approved under the consent agenda on September 7, 2023

FISCAL IMPACT

N/A

ATTACHMENTS

N/A

SAN DIEGO COMMUNITY POWER

Staff Report – Item 8

To: San Diego Community Power Board of Directors

From: Jen Lebron, Director of Public Affairs

Via: Karin Burns, Chief Executive Officer

Subject: Update on Marketing and Public Relations

Date: September 28, 2023

RECOMMENDATION

Receive and file update on marketing and public relations activities for San Diego Community Power.

BACKGROUND

San Diego Community Power (SDCP) has engaged in a variety of public relations, marketing, and community outreach activities to drive awareness, spark community engagement, and maintain high customer enrollment.

ANALYSIS AND DISCUSSION

After months of increased focus on community engagement as we prepared for the enrollment of customers in National City and the unincorporated areas of San Diego County, SDCP scaled back some of its engagement efforts to emphasize long-term strategic planning and growing the team to create sustainable levels of community outreach, increase levels of media engagement and develop stronger partnerships with key organizations throughout the region.

The Public Affairs team has added three new members who are helping us reach broader audiences online and in person.

In August, we brought on a Digital Media Coordinator who has been tasked with increasing the reach of SDCP social media channels, maintaining the website with easy-to-understand content, and developing a newsletter.

On Sept. 6, we welcomed two Public Outreach Coordinators who have Tuesday through Saturday work schedules to ensure that SDCP attends or hosts public engagement events every weekend. They attended their first event on Saturday, Sept. 9 and are gearing up for a dozen more over the course of the next several weeks.



Recent and Upcoming Public Engagement Events

Aug. 8, 2023 – 2023 Tribal Leaders Clean Energy Summit
Aug. 9, 2023 – North San Diego Business Chamber Regional Connect
Aug. 12, 2023 – Chula Vista Lemon Festival
Aug. 16, 2023 – San Diego Economic Development Corporation Summer Bash
Aug. 23, 2023 – North San Diego Business Chamber Military Summit
Aug. 27, 2023 – Bike the Bay
Aug. 31, 2023 – San Diego Padres game
Sept. 9, 2023 – Clairemont Family Day
Sept. 9, 2023 - Environmental Health Coalition Semillas “Planting Seeds for the Future” Community Celebration
Sept. 14, 2023 – Cause Conference San Diego
Sept. 14, 2023 – Innovation Day 2023
Sept. 15, 2023 – NEXUS Climate Action Summit
Sept. 16, 2023 – Green Summit
Sept. 16, 2023 – San Diego Wave Fútbol Club game
Sept. 23, 2023 – Coastal Cleanup Day
Sept. 28, 2023 – Women’s Venture Summit

Marketing, Communications and Outreach

As the weather began to heat up August, SDCP launched a “Stay Cool & Save This Summer” campaign that will run through mid-September. The digital ads will direct viewers to visit the SDCP website and teach them energy-saving tips such as the best time of day to use appliances and how to find “Cool Zones” that offer free, air-conditioned settings across the county. Based on previous campaigns, we anticipate more than 2.7 million impressions across paid search, digital displays and social media.

SDCP is in regular communication with regional media in the spirit of transparency and openness with the goal of providing factual, timely information to the public at large. Over the past two months, SDCP has engaged with reporters to provide background on stories about the greater energy landscape in California and update them on our organization’s activities.

On July 26, SDCP held a news conference to announce the first awardees of its Community Clean Energy Innovation Grant Program. This collaboration between SDCP and the San Diego Foundation awarded \$390,000 to 10 nonprofits that will use the funds to advance local clean energy and green workforce development projects in San Diego County.

On Aug. 31, SDCP held a news conference in collaboration with the San Diego Padres and San Diego Regional Chamber of Commerce to honor small businesses who have opted up to use 100% clean, renewable power as Power100 Champions.



August also featured a refresh of SDCP social media channels. In just a few short weeks, Alyson Smith, our new Digital Media Coordinator, has increased engagement with our social media posts tenfold.

The Public Affairs team will continue to develop new strategies, processes and capacity over the next several months to conduct more community outreach, expand marketing and brand awareness efforts, and provide timely, factual information across multiple channels.

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 9

To: San Diego Community Power Board of Directors
From: Xiomalys Crespo, Community Engagement Manager
Via: Karin Burns, Chief Executive Officer
Subject: Receive and File Community Advisory Committee Monthly Report
Date: September 28, 2023

RECOMMENDATION

Receive and file Community Advisory Committee (CAC) monthly report.

BACKGROUND

Per Section 5.10.3 of the San Diego Community Power (SDCP) Joint Powers Authority (JPA) Agreement:

The Board shall establish a Community Advisory Committee comprised of non-Board members. The primary purpose of the Community Advisory Committee shall be to advise the Board of Directors and provide for a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of the Authority.

At the direction of the Chief Executive Officer (CEO), the CAC provides quarterly presentations to the Board of Directors in the regular agenda, and monthly reports in the consent agenda.

ANALYSIS AND DISCUSSION

The CAC and the Programs CAC Ad-Hoc Committee did not host a regular meeting in August. The Community and Equity CAC Ad-Hoc Committee met in August to discuss the Outreach Strategy and website part of the Solar for Our Communities' Marketing and Engagement Plan.

At the September 14, 2023 regular meeting of the CAC, several items were discussed.

- CAC members acknowledged the first meeting of the newly-elected slate of officers for Fiscal Year 2023-2024: Matthew Vasilakis as Chair (City of San Diego), David Harris as Vice-Chair (La Mesa), and Lauren Cazares as Secretary (La

Mesa). CAC members also welcomed Adana Martinez and Jushaun Jamieson as SDCP's Public Outreach Coordinators.

- For this meeting, the CAC introduced the consent agenda, in which they approved the July CAC meeting minutes and updates on Marketing and Public Relations, Customer Operations, and Regulatory and Legislative Affairs.
- The CAC received updates from the Programs Team on Regional Energy Network (REN) progress. Members had questions about timelines and commended staff on the proposed workforce development programs.
- The CAC also received updates on the September activity of its Ad-Hoc Committees. The Programs Ad-Hoc Committee discussed updates on REN submission progress. The Community and Equity Ad-Hoc Committee discussed our "Summer Tips" Targeted Social & Digital Display Campaign, as well as revisions to the Energy Proposal Evaluation Criteria; they also reviewed the Outreach and Events Schedule.
- SDCP staff provided an update on CAC Fiscal Year 2022-2023 Work Plan and future agenda items. There were no potential agenda items suggested for Board of Directors meetings. Committee members also provided announcements.

As of September 20, 2023, the CAC has two vacancies: one representing Imperial Beach and one representing the County of San Diego. Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 10

To: San Diego Community Power Board of Directors

From: Laura Fernandez, Director of Regulatory & Legislative Affairs
Aisha Cissna, Senior Policy Manager
Stephen Gunther, Senior Regulatory Analyst

Via: Karin Burns, Chief Executive Officer

Subject: Update on Regulatory and Legislative Affairs

Date: September 28, 2023

RECOMMENDATIONS

Receive and file update on regulatory and legislative affairs.

BACKGROUND

Staff will provide regular updates to the Board of Directors regarding SDCP's regulatory and legislative engagement.

ANALYSIS AND DISCUSSION

A) Regulatory Updates

Net Billing Tariff Update: CPUC Decision Addressing Remaining Proceeding Issues

Background

In December 2022, the CPUC adopted a successor tariff to net energy metering called the "net billing tariff." The net billing tariff has goals to incentivize battery storage and increase dispatch of renewable energy during times of peak demand. It compensates rooftop solar customers approximately 80% less for their exports to the grid than the previous net energy metering program, to decrease the cost-shift to nonparticipating customers.

On August 2, 2023, the CPUC released a proposed decision speaking to the remaining issues in the proceeding, including consumer protections, implementation of prevailing wage requirements for contractors installing rooftop solar systems, evaluation principles for the net billing tariff, and aligning the existing virtual net energy metering ("VNEM") and net energy metering aggregation

("NEMA") tariffs with the recently established net billing tariff. A workshop to discuss billing refinements was also ordered in the proposed decision.

Key Proposed Changes: Virtual Net Energy Metering and Net Energy Metering Aggregation

VNEM is a program largely utilized by multi-family properties to be compensated for solar production. It's distinct from traditional NEM because the electricity doesn't flow directly to any tenant meter but feeds directly back onto the grid. The intent of VNEM is to help tenants receive the direct benefits of the building's solar system, rather than all the benefits going to the building owner.

NEMA is designed to benefit a single customer with multiple eligible meters on the same property, or an adjacent or contiguous properties. It is often used by agricultural customers and municipalities.

There are two key proposals deliberated in the proposed decision to revise export compensation under both VNEM and NEMA. The IOUs proposed a "Virtual Net Energy Billing Tariff". Under this proposal, tenants would be required to buy all of their energy from the utilities at full retail rates, even if some of it is being generated on their own rooftop. Additionally, it would require multifamily properties to sell all of their solar generation to the utilities at the Avoided Cost Calculator rates that are a fraction of full retail rates, even if some of that energy is being used by tenants in real time.

Ivy Energy proposed a property-wide netting proposal which would account for on-site self-generation. The proposal would not require customers to pay the full retail rate for loads which they serve with on-site generation and would allow for higher compensation for these customers. This proposal has been supported by the majority of parties in the proceeding.

Proposed changes to NEMA are similar and would reduce compensation for customers enrolled in that rate.

Customers currently enrolled in VNEM and NEMA would have legacy treatment and not be transitioned to the new tariffs until their legacy period ends.

Proposed Decision Comments

SDCP and other CCAs submitted [opening comments](#) requesting that unbundled customer billing issues be explicitly addressed in the billing workshops. The Joint CCAs also requested that the proceeding remain open to consider other potential billing issues. The Proposed Decision posits closing the proceeding once the Proposed Decision is adopted. The Joint IOUs opposed the Joint CCA proposal in reply comments. The Joint IOUs also proposed immediately transitioning to the new tariffs once the decision is adopted.



As of the writing of this report, parties have submitted opening and reply comments. The earliest the Commission will adopt a final decision is October 12, 2023.

Resource Adequacy (RA)

CalCCA Application for Rehearing of Decision 23-06-029

As described in the regulatory and legislative staff report for the July 27 meeting of the Board of Directors ([see pages 75-76](#)), on July 5, 2023, the CPUC issued a [Final Decision Adopting Local Capacity Obligations For 2024-2026, Flexible Capacity Obligations For 2024, And Program Refinements](#) (D.23-06-029) addressing outstanding issues in Phase 3 of the Implementation Track within the Resource Adequacy (RA) proceeding ([R.21-10-002](#)). Notably, the Decision includes a problematic provision which prevents load serving entities (LSE), including CCAs, from expanding their service territory for two years following a month ahead or year ahead system RA deficiency.

On July 26, 2023, CalCCA filed an [Application for Rehearing of D.23-06-029](#) to address the CPUC's prohibition on CCA expansion for RA deficiency. CalCCA's Application includes several legal arguments demonstrating that the Decision exceeds the Commission's jurisdiction over the actions of local government bodies and impairs the right of customers to aggregate their electric loads with a CCA, as authorized by the Legislature. If not addressed via a CPUC Decision by Sept. 24, 2023, the Application will be deemed denied unless the CPUC requests more time for its review. SDCP staff will continue to work with CalCCA to explore options for potential next steps to address this regulatory overreach.

Income Graduated Fixed Charges (IGFC)

Background

On Nov. 2, 2022, the CPUC issued a [scoping memo and ruling](#) within the [Demand Flexibility proceeding \(R. 22-07-005\)](#), which included Track A issues related to establishing an income-graduated fixed charge (IGFC) for residential rates for all investor-owned electric utilities in accordance with Assembly Bill (AB) 205, Stats. 2022, ch. 61. For additional background and related proceeding activity, see the Update on Regulatory and Legislative Affairs during the July 13, 2023, meeting of the Community Advisory Committee, [slides 35-38](#).

CalCCA Comments on the ALJ Ruling on the Implementation Pathway for IGFC

On June 19, 2023, CPUC Administrative Law Judge (ALJ) Stephanie Wang issued a [Ruling](#) seeking comment on the implementation pathway for income-graduated



fixed charges. In response to the Ruling, CalCCA filed [opening comments](#) on July 31, 2023, and [reply comments](#) on Aug. 21, 2023, which included the following recommendations:

- Clarify that any volumetric rate reductions in the context of the IGFC proposed by the IOUs do not refer to generation rate reductions.
- Direct the IOUs to begin outreach to customers regarding the IGFC before the implementation phase of the first version of the IGFC.
- Require the IOUs to include CCAs in working groups related to IGFC implementation and marketing, education, and outreach.
- Reject party proposals to include the Power Charge Indifference Adjustment (PCIA) in the IGFC.
- Reject party recommendations to include the Competition Transition Charge (CTC) in the IGFC.
- Adopt the Joint IOU proposal to exclude non-marginal generation costs from the IGFC.
- Accept the Joint IOU's proposal for a limited working group process after initial IGFC implementation but require the Joint IOUs to notify CCAs on an ongoing basis of the implementation plans.

CPUC Denial of Motion for Public Participation Hearings

On July 13, 2023, the California Efficiency + Demand Management Council, California Solar & Storage Association, the Center for Energy Efficiency and Renewable Technologies, the Clean Coalition, the Solar Energy Industries Association, and Utility Consumers' Action Network (Joint Parties) filed a [motion for public participation hearings](#) in Track A of Phase 1 of the proceeding.

The Joint Parties argued that residential customers should have the opportunity to respond to the potentially significant impacts of implementing IGFC and requested at least 11 public participation hearings to be held throughout the state by the end of 2023. However, on Aug. 15, 2023, the CPUC ALJ issued a [Ruling denying the motion](#), stating that the request was made too late within the proceeding and that the Commission has already received over 565 public comments that will be considered when deliberating the outcomes for Track A of the proceeding.

ALJ Ruling Addressing the Track A Procedural Schedule, Opening Briefs Guidance, and Exhibits

On Aug. 22, 2023, the CPUC ALJ issued a [Ruling](#) modifying the Track A procedural schedule and providing guidance for opening briefs. Specifically, the Ruling directs parties to focus their briefs on issues necessary to authorize the first version of IGFCs, which will reduce volumetric rates and rely on existing income verification processes used by the Commission for the California Alternate Rates for Energy



(CARE) and Family Electric Rate Assistance Program (FERA) programs, as well as direct parties to respond to a series of specific implementation questions.

Opening Briefs are due Oct. 6, 2023, and Reply Briefs due on Nov. 3, 2023, with a Proposed Decision expected in March or April of 2024. SDCP staff will continue to monitor and coordinate with CalCCA on relevant engagement in Track A.

ERRA Forecast Proceeding Update

On Aug. 18, SDCP and CEA jointly filed testimony in the ERRA forecast to make the following three points:

1. SDG&E should update its PCIA accounting to reflect corrections and updates to the capacity values for several contract resources before the Commission approves SDG&E's 2024 Portfolio Allocation Balancing Account (PABA) forecast revenue requirement. The PABA is a true-up of the actual costs and revenues SDG&E realizes during the year related to its PCIA eligible resource portfolio.
2. SDG&E should forecast a larger volume of RA sales as an offset to the 2024 PABA forecast revenue requirement.
3. SDG&E should revert to past confidentiality designation practices which allow for the disclosure of commodity rates while still redacting bundled sales volumes.

The following is the remaining ERRA Forecast proceeding schedule:

Sept. 29: Evidentiary Hearing
Oct. 4: Opening Brief
Oct. 11: Reply Brief
Oct. 13: October Update
Oct. 27: Comments on October Update
Nov. 28: Proposed Decision
Dec. 14: Final Decision

General Rate Case Update

On Aug. 14, SDCP and CEA jointly filed an [opening brief](#) in the General Rate Case. In this brief, SDCP and CEA argue that the CPUC should find that the proposed enhancements to the Miramar facility constitute a significant overhaul of the facility made on behalf of bundled customers, and require the entire facility to be re-vintaged as a 2024 Utility-Owned Generation ("UOG") asset, among other contentions. In summary, SDCP and CEA are aiming to ensure that financial commitments that will only benefit bundled customers are not costs which will be borne by unbundled (CCA) customers. SDCP and



CEA also filed a [reply brief](#) on Sept. 7. A proposed decision is expected to be issued in 2024.

B) Legislative Update

a. Assembly Bill 1373

On September 6, 2023, the Senate Energy, Utilities and Communications Committee held a hearing for AB 1373 and the bill passed out of Committee 14-3. SDCP is very pleased that the final version of the bill creates new central procurement authority only for the Department of Water Resources. Previous versions of the bill would have permitted the investor-owned utilities to be in the new central procurement role, which will potentially be used for procuring resources that have a lead time of at least five years, such as offshore wind, geothermal and pumped hydro. SDCP is also pleased that the analysis of the bill indicates the “intent for the six-month window is to allow other LSEs the opportunity to procure their share of their load if they elect to do so. This approach is a long-held principle of CCAs whose primary (if not exclusive) mission is to procure energy on behalf of their load. Such an approach seems appropriate to ensure LSEs exercise their responsibility to procure resources for their load, prior to a state agency stepping in.” SDCP changed its position from “Oppose Unless Amend” to “Neutral” prior to the floor votes in each house in light of the fact that the latest amendments to the bill reflected SDCP’s requests to remove the IOUs from the new central procurement function, among other technical amendments. SDCP’s neutral letter on the bill is attached to this staff report. The bill has now passed both houses of the legislature and been presented to the Governor for signature. AB 1373 is an urgency measure, meaning it would become law immediately if signed by the Governor. SDCP anticipates the Governor will sign the bill into law soon.

AD-HOC COMMITTEE AND/OR SUBCOMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

SDCP Letter Re: Neutral: AB 1373 (Garcia) Energy (As amended on 9/7/2023)





September 8, 2023

Assemblymember Eduardo Garcia
1021 O Street, Room 8120
Sacramento, CA 95814

Re: Neutral: AB 1373 (Garcia) Energy (As amended on 9/7/2023)

The Honorable Eduardo Garcia,

On behalf of San Diego Community Power (SDCP), I write this letter to express our neutral position on AB 1373. SDCP is the second largest Community Choice Aggregator (CCA) in the state and currently provides renewable electricity service to the cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, National City and San Diego, as well as unincorporated San Diego County, for a total of over 960,000 customer accounts.

With the recent amendments as of 9/07/2023 to AB 1373, SDCP is neutral on this bill. We want to express our gratitude to you and legislative staff for actively and collaboratively working with us on our concerns. SDCP appreciates AB 1373's tailored approach to central procurement of strategic resources by placing the responsibility solely with the Department of Water Resources (DWR). AB 1373 also establishes important guardrails around DWR as a central procurement entity (CPE) that will mitigate the risk of market disruption. SDCP also appreciates the recent amendment to preserve the existing right of CCA's to self-procure diverse resources that are not otherwise procured by the DWR in their central procurement capacity. This amendment strikes the appropriate balance of giving the California Public Utilities Commission (CPUC) the tools necessary to ensure grid reliability while still honoring the long-standing right of CCAs to procure resources on behalf of their customers.

Additionally, we would like to acknowledge that the bill establishes a rebuttable presumption with regard to the need for proposed transmission projects when the California Independent System Operator has already made findings regarding the need for the proposed transmission project, among other requirements. Throughout the year, SDCP has highlighted expediting transmission as a key issue that must be addressed in order to expedite bringing additional clean energy resources online.

Finally, SDCP urges caution as the State considers potentially directing DWR to procure strategic resources. SDCP is concerned that there is the potential for significant costs that will be borne on the backs of ratepayers who are already paying some of the highest rates in the country. SDCP hopes that rising costs will be taken into consideration and carefully evaluated as the potential for centrally procured resources is considered.



SDCP thanks the author and staff for their willingness to address our initial concerns in AB 1373 and for refining the proposal to address our concerns. If you have any questions, please contact Amy Costa at amy@fullmoonstrategies.com.

Sincerely,

A handwritten signature in black ink that reads "Laura Fernandez". The signature is fluid and cursive, with the first and last names being more prominent.

Laura Fernandez, SDCP Director of Regulatory and Legislative Affairs

CC:

Senator Bradford, Chair, Senate Energy, Utilities, and Communications Committee
Nidia Bautista, Chief Consultant, Senate Energy, Utilities, and Communications Committee
Senator Portantino, Chair, Senate Appropriations Committee
Kip Lipper, Chief Policy Advisor, Office of Senator pro Tempore Atkins
Chase Hopkins, Policy Consultant, Office of the Assembly Speaker
Grant Mack, Deputy Legislative Secretary, Office of California Governor Gavin Newsom
Teresa Calvert, PBM, Department of Finance



SAN DIEGO COMMUNITY POWER Staff Report – Item 11

To: San Diego Community Power Board of Directors
From: Kimberly Isley, Clerk of the Board
Via: Karin Burns, Chief Operating Officer
Subject: Approval of 2024 Board Meeting Schedule by Resolution
Date: September 28, 2023

RECOMMENDATION

Adopt a resolution to establish a regular date, time and location for San Diego Community Power (SDCP) Board Meetings for the year 2024.

BACKGROUND

Section 4.8 of the Joint Powers Authority (JPA) Agreement states that the date, hour, and place of each regular meeting shall be fixed annually by resolution of the Board.

ANALYSIS AND DISCUSSION

For the 2023 calendar year, the Board of Directors held their meetings every fourth Thursday at 5 pm, except when holidays required an adjustment. Moving forward, staff recommends maintaining the same schedule. Staff expects for SDCP to hold these meetings at the City of San Diego Public Utilities Department's Metropolitan Operations Complex, located at 9192 Topaz Way, San Diego, CA 92123.

Below are proposed 2024 Board meeting dates with all meetings starting at 5 pm (exceptions noted):

Meetings anticipated to be in person with remote/teleconference option for the general public, staff and Board Members if the need arises to participate remotely.

- January 18, 2024 (meeting date adjustment to accommodate rate setting)
- February 22, 2024
- March 28, 2024
- April 25, 2024
- April 26, 2024 (Strategic Planning Session to be held at the Downtown Public Library in San Diego)
- May 23, 2024
- June 27, 2024

- July 25, 2024
- August 22, 2024
- September 26, 2024
- October 24, 2024
- November 21, 2024 (Third Thursday)
- December 12, 2024 (Second Thursday)

The attached resolution reflects the schedule and location considerations described above.

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: Resolution 2023-XX establishing a 2024 Board Meeting schedule.



RESOLUTION NO. 2023-XX

A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER ESTABLISHING ITS REGULAR MEETING SCHEDULE FOR CALENDAR YEAR 2024

A. San Diego Community Power (SDCP) is a joint powers agency formed pursuant to the Joint Exercise of Powers Act (Cal. Gov. Code § 6500 *et seq.*), California Public Utilities Code § 366.2, and a Joint Powers Agreement effective on October 1, 2019 (JPA Agreement).

B. The Ralph M. Brown Act (Cal. Gov. Code § 54950, *et seq.*) provides that the legislative body of each local agency shall provide, by ordinance, resolution, bylaws, or other rule, the time and place for holding its regular meetings.

C. Section 4.8 of the JPA Agreement provides that the “date, hour, and place of each regular meeting shall be fixed annually by resolution of the Board.”

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of San Diego Community Power as follows:

Section 1. For calendar year 2024, regular meetings of the Board of Directors shall take place on the dates set forth below and shall begin at 5:00 P.M. All regular meetings shall take place at the Metropolitan Operations Complex 9192 Topaz Way, San Diego, CA 92123. Teleconferencing or virtual meetings may occur only as authorized under Government Code section 54953 or other applicable law.

Regular Meeting Dates:

- January 18, 2024 (meeting date adjustment to accommodate rate setting)
- February 22, 2024
- March 28, 2024
- April 25, 2024
- April 26, 2024 (Strategic Planning Session to be held at the Downtown Public Library in San Diego)
- May 23, 2024
- June 27, 2024
- July 25, 2024
- August 22, 2024
- September 26, 2024
- October 24, 2024
- November 21, 2024 (Third Thursday)
- December 12, 2024 (Second Thursday)

Section 2. Special and adjourned meetings of the Board of Directors may be called and held in the manner authorized in the Ralph M. Brown Act, Cal. Gov. Code § 54950, *et seq.*, as may be amended from time to time or as may be modified or suspended by Executive Order.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power held on September 28, 2023.

Joe LaCava, Chair
San Diego Community Power

Kimberly Isley, SDCP Secretary
San Diego Community Power



SAN DIEGO COMMUNITY POWER Staff Report – Item 12

To: San Diego Community Power Board of Directors

From: Jack Clark, Chief Operations Officer

Via: Karin Burns, Chief Executive Officer

Subject: Approval of Updated Letter of Intent with SDEEC LLC for Potential Lease Agreement

Date: September 28, 2023

RECOMMENDATION

Authorize the Chief Executive Officer to execute updated Letter of Intent (LOI) with SDEEC LLC (dba San Diego Energy Equity Campus at Valencia Park) for Potential Lease Agreement, and related documents.

BACKGROUND

On October 12, 2021, SDCP signed a non-binding LOI with SDEEC LLC to lease 11,739 square feet of office space at the San Diego Energy Equity Campus at Valencia Park located at 5515-5565 Stevens Way, San Diego, California, 92114. The goal of The San Diego Energy Equity Center at Valencia Park is to make sure that all levels of society participate in, contribute to, and benefit from minimizing climate impacts. Additionally, it will strive to increase local renewable energy development and assist the local public agencies successfully implement their Climate Action Plans.

The LOI referenced a term of the future Lease Agreement for 10 years and 3 months. The effective date of the future Lease shall be the date upon which the Lease Agreement is fully executed by both SDCP and SDEEC LLC, with two potential five-year extensions at a fair market and not-to-exceed 3% increase over the current rate. SDCP entering into a Lease Agreement with SDEEC LLC is contingent on the completion of 5515-5565 Stevens Way, San Diego, California, 92114 as mentioned in the LOI.

The LOI included an Estimated Delivery Date of the San Diego Energy Equity Campus at Valencia Park of January 2023. The Estimated Delivery Date is now July 2025 and has been reflected in the updated LOI proposed for recommendation execution.

Pursuant to the SDCP Joint Powers Agreement, originally signed October 1, 2019, and subsequently amended December 16, 2021, states in Section 3.2.5 that SDCP may enter into any lease agreement at the discretion of the Board of Directors (Board).

In the short-term, SDCP has committed to building financial reserves of \$500 million (180-day cash on hand), since one of the organization's strategic goals is to obtain a credit rating. This attention to building a strong financial position is important to enable SDCP to effectively meet the long-term needs of the community. As reserve targets are met, the ability of SDCP to invest revenues back into communities through programs will increase. Meeting financial reserve targets will give SDCP the ability to offer programs with larger budgets and provide financial incentives using internal revenues.

As SDCP matures and builds financial reserves, the agency intends to invest back into member agencies and in particular to communities of concern. SDCP's participation in the proposed San Diego Energy Equity Center at Valencia Park could be one such opportunity for this community reinvestment.

ANALYSIS AND DISCUSSION

SDCP developed a Community Power Plan (CPP) which conducted public outreach and, as a result, there were recommendations for programs that support energy awareness and education, clean energy technology grant application assistance, energy efficiency, workforce development and others to advance the communities' sustainability and energy needs.

The clean energy landscape continues to evolve quickly, and the needs of both community members and industry stakeholders require a collaborative space for this ongoing transition. SDCP's use of the San Diego Energy Equity Center space could be designed to be a collaborative environment that adapts to the changing needs of the community.

The scope of services in this space could possibly include:

- An **Energy Learning Center** where expert-facilitated workshops can be held in a classroom style environment, along with educational programs.
- A **diagnostic tool lending library**, complete with training.
- The space can also host and facilitate a **collaborative industry workspace** for start-ups, and industry stakeholders looking to engage with community members, businesses, and other partners.
- The space can help **educate consumers** and **bring together the growing economic interests** of both those looking to enter the workforce and those looking to hire qualified and trained professionals.
- The space could also be used as a location for a team of **Energy Advisors or Energy Auditors**, employees that could be sourced from within the local community and/or other neighboring communities.

SDCP's location at the San Diego Energy Equity Campus at Valencia Park could provide resources and opportunities to communities of concern, including training on clean energy technologies, education on sustainability and access to affordable energy technologies.



Staff recommend that the Board authorize the Chief Executive Officer to execute an updated LOI with SDEEC LLC (dba San Diego Energy Equity Campus at Valencia Park) for Potential Lease Agreement, and related documents, that reflects an updated Estimated Delivery Date of July 2025.

COMMITTEE REVIEW

The report was not reviewed by the Finance and Risk Management Committee (FRMC).

FISCAL IMPACT

SDCP will not incur a fiscal impact from execution of an LOI with SDEEC LLC. Upon signing a formal lease agreement SDGP's anticipated cost for the 10 year term and 3 months of the potential lease would cost an average of \$26,258.43 monthly or \$315,101.22 annually, not considering renewal options.

ATTACHMENTS

Attachment A: Draft Letter of Intent of Potential Lease Agreement with SDEEC LLC





Sept 7, 2023

San Diego Energy Equity Campus @ Valencia Park
RE: Non-Binding Letter of Intent to Lease

Via Email

San Diego Community Power,

We are pleased to present to you this non-binding **Letter of Intent ("LOI")** to lease the real property described below. The purpose of this LOI is to set forth the primary terms and conditions upon which **San Diego Community Power (SDCP) ("Tenant")** would be willing to lease the described property in a definitive agreement. We hope that by countersigning it, it will confirm our mutual understanding of the basic terms and conditions of a future, formal Lease Agreement. This LOI is not intended to create a binding agreement between **SDEEC LLC and/or assigns ("Landlord")** to lease to Tenant and Tenant to lease from Landlord.

Tenant	San Diego Community Power (SDCP)
Landlord	SDEEC LLC (dba San Diego Energy Equity Campus @ Valencia Park), a Nevada limited liability company
Property	5515-5565 Stevens Way, San Diego, CA 92114 (the "Property") Suite on the 2 nd floor of Building 1 - Address TBD (the "Premises")
Premises Square Footage	Approximately 11,739 rentable sq. ft. of Office Space
Use	<u>The Demised Premises shall be used for a combination of purposes, including professional and educational uses</u> The Demised Premises shall be used solely for office use
Lease Term	Ten (10) years and three (3) months from the Delivery Date
Effective Date	The Effective Date of the Lease shall be the date upon which the Lease Agreement is fully executed by both Tenant and Landlord
Lease Commencement Date	The Lease shall commence upon Delivery to Tenant. Landlord will provide Tenant with a Lease Commencement Letter so that all parties can acknowledge the Lease Commencement Date
Estimated Delivery Date	July 2025 as may be executed by Force Majeure or as updated by the Landlord from time to time. The actual date of delivery is referred to herein as the "Delivery Date"
Rent Commencement Date	Ninety (90) days after the Delivery Date
Base Rent	\$24.00 per sf annually with 3% increases per annum

Year	Base Rent psf	Monthly Rent	Annual Rent
1	\$24.00	\$23,478.00	\$281,736.00
2	\$24.72	\$24,182.34	\$290,188.08

3	\$25.46	\$24,907.81	\$298,893.72
4	\$26.23	\$25,655.04	\$307,860.53
5	\$27.01	\$26,424.70	\$317,096.35
6	\$27.82	\$27,217.44	\$326,609.24
7	\$28.66	\$28,033.96	\$336,407.52
8	\$29.52	\$28,874.98	\$346,499.74
9	\$30.40	\$29,741.23	\$356,894.74
10	\$31.31	\$30,633.46	\$367,601.58

Renewal Options

The Tenant shall have two (2) 5-year options to renew the Lease. The Base Rent in the renewal option period shall be at Fair Market Value, but in no event shall it be less than a 3% increase over then-current rent

Common Area Maintenance Charges

Tenant shall pre-pay monthly to Landlord Tenant's share of common area maintenance (CAM Charges), as per the Lease

Taxes

Tenant shall prepay monthly Tenant's pro-rata share of taxes, including real estate taxes and special assessments, on the Property.

CAM, Taxes and Insurance Estimates

CAM Charges	\$3.13 psf per annum
Real Estate Taxes	\$2.28 psf per annum
Insurance	\$0.53 psf per annum

Utilities

Tenant shall be responsible for all separately metered utilities and/or utilities which tenant is liable, which includes the cost of electricity generated from any solar panel(s) which will be charged back to the tenant at the market rates normally provided by the local utility company

Tenant Improvements

Landlord shall provide Tenant an improvement allowance (the "Allowance") of \$35.00 per rentable sf (or \$410,865) and an Architectural and Permit Fee allowance of \$10.00 per rentable sf.

Insurance

Tenant shall maintain fire and extended coverage insurance on Tenant's fixtures and improvements for full replacement value. Tenant shall also maintain commercial general liability coverage, naming Landlord as additional insured, at the minimum amount of \$2,000,000.00 combined single limit. In addition, Tenant shall prepay monthly Tenant's share of Property and Liability coverage.

Parking

At no expense to Tenant, its employees or customers, Landlord will provide two (2) non-exclusive parking spaces per leased 1,000 rentable sf leased for Tenant's employees and customers

Permitted Use



The Tenant shall use the space solely for the purpose of office space. Tenant shall provide a valid City of San Diego Business Tax Credit and Diamond Business Association membership prior to occupying the space

Signage

Sign plans shall be prepared by Tenant in accordance with the sign criteria of the Property and City Code and submitted to Landlord for Landlord's approval. Tenant shall be responsible for any and all costs of its signage.)

Jobs Reporting

Tenant shall provide Landlord with a quarterly jobs report as per City of San Diego requirements.

Intended Use

Landlord makes no warranties or representations regarding Tenant's intended use of the Premises. Tenant hereby acknowledges that it is responsible for determining at all times whether or not the Applicable Requirements, and especially the zoning codes, are appropriate for Tenant's intended use and acknowledges that past uses of the Premises may no longer be allowed. Tenant hereby warrants that it has investigated whether its proposed use of the Premises and its proposed manner of operation will comply with the Applicable Requirements, and Tenant assumes the risk that its proposed use of the Premises and its proposed manner of operation are and will continue to be, in compliance with all Applicable Requirements, including, without limitation, all zoning laws regulating the use and enjoyment of the Premises. Tenant agrees that under no circumstances will Tenant be released in whole or in part from any of its obligations under this Lease as a result of any governmental authority disallowing or limiting Lessee's proposed use of the Premises or its manner of operation.

Confidentiality

Landlord agrees to keep all information regarding this Letter of Intent, as well as any information provided to the Landlord, strictly confidential and only for internal review purposes.

Leasing Commission

n/a



If the terms and conditions of this letter are acceptable, please execute as indicated below. This letter and its terms are non-binding between the parties, and no Landlord-Tenant relationship is created by hereby. This letter does not provide Tenant with rights in the Property or against Landlord or its affiliates. Landlord will not negotiate with any other party subsequent to the date first above written, and for a period of 60 days thereafter, during which time the parties will negotiate in good faith to reach a definitive lease agreement. If no such definitive lease agreement has been reached at the expiration of the 60 day period, then this Letter of Intent shall terminate and the parties shall have no further obligations toward each other. If you have any questions, please do not hesitate to contact me at 661.547.9567 or dbooker@elevate-commercial.com

Sincerely,

Matt Hillerud
SDEEC LLC, Managing Partner

AGREED AND ACCEPTED
PROSPECTIVE TENANT:

By: _____

Date: _____

AGREED AND ACCEPTED
PROSPECTIVE TENANT:

By: _____

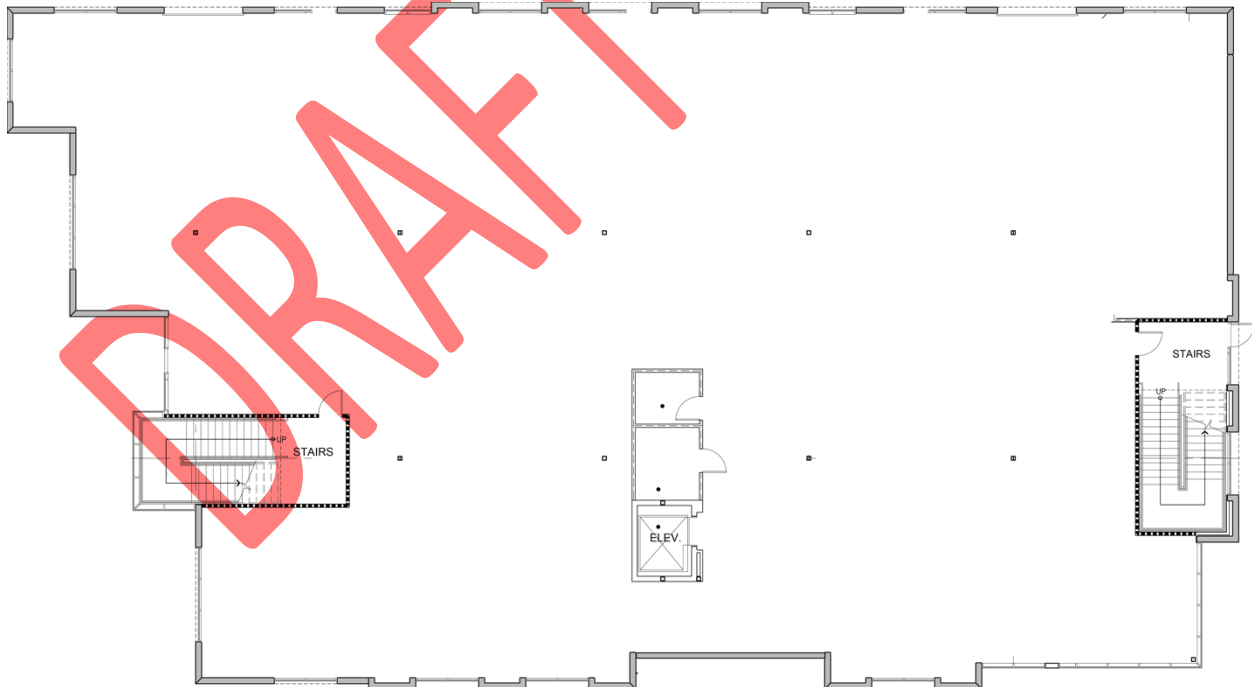
Date: _____

Exhibit "A"

Site Plan



Floor Plan (for illustration purposes only, not final layout)





SAN DIEGO COMMUNITY POWER Staff Report – Item 13

To: San Diego Community Power Board of Directors

From: Eric W. Washington, Chief Financial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Approval of Sublease agreements with CORELATION, INC.

Date: September 28, 2023

RECOMMENDATION

Authorize the Chief Executive Officer to execute a Sublease agreement, all potential extension options and related documents necessary to rent office space through CORELATION, INC. at 2305 Historic Decatur Road Suite 200, San Diego, California, 92106 .

BACKGROUND

On June 1, 2022, SDCP entered into a Sublease Agreement to rent 4,811 square feet of office space with Nuvve Holding Corporation at 2488 Historic Decatur Road, Suite 250, San Diego, California 92106. The term of the Sublease Agreement was for six months, effective June 1, 2022, with two potential six-month extensions at a rate of \$14,500 per month.

Subsequently, On November 1, 2022 SDCP entered into new Sublease Agreements with Nuvve Holding Corporation with a term through October 31, 2025. The new Sublease Agreements includes the original space, Suite 250, and an additional 2,408 square feet of space located at 2488 Historic Decatur Road, Suite 230, San Diego, California 92106. The monthly cost for the new Sublease Agreements is \$31,041.70.

SDCP's number of employees are expected to increase rapidly from 44 to 58 this fiscal year, adding additional staff beyond this fiscal year. To quickly accommodate new employees, SDCP will more space. We would like to enter into a new Sublease agreement with CORELATION, INC. for a term from November 1, 2023 to October 31, 2025. Optional extensions are possible. The monthly cost for the new Sublease Agreements is \$51,390.00.

In order to accommodate SDCP's rapid expansion the ideal solution would be to obtain office space at 2305 Historic Decatur Road Suite 201, San Diego, California, 92106 through a Sublease agreement with CORELATION, INC. Staff recommends approval to execute the necessary documents to obtain additional office spaces.

ANALYSIS AND DISCUSSION

SDCP currently has 44 staff members and plans to grow to 58 staff by the end of fiscal year 2023-24. Meanwhile, SDCP's current office space can only support 52 people at 2488 Historic Decatur Road, San Diego, CA 92106. Given that SDCP is approaching maximum occupancy on the Sublease Agreement for suite 250 and suite 230, staff recommends acquiring a larger office space located at 2305 Historic Decatur Road Suite 201, San Diego, California, 92106 through a Sublease agreement with CORELATION, INC.

The new potential office space would accommodate SDCP's growing staff and will be a dedicated area only for SDCP with 13,704 square feet. It includes private offices, conference rooms and a shared community space. The term of the agreement for the new office is for 2 years from November 1, 2023 to October 31, 2025. Staff believes that this new office space can accommodate SDCP as it continues to grow and add staff.

SDCP had considered keeping the current offices and expanding by obtaining a lease for an additional suite within the current property. SDCP compared the costs of both options and determined there would be a total cost savings of \$265,439 in moving properties compared to staying and expanding in the current property. The new space would also provide an additional 1,602 square feet, all of which is contiguous and all on the same floor. Trifurcating our office space, as would happen in the 'stay in place' scenario, was not supported by staff given our speed of growth and need for extensive collaboration.

SDCP would incur a lease break fee of \$143,399 which would be offset by 4 months of free rent from the CORELATION, INC. Sublease Agreement which would provide \$61,561 in additional savings when breaking the lease with Nuvve Holding Corporation.

Stats	Expansion in Place / Trifurcation	Corelation Inc. Sublease	Cost / (Savings)
Square Footage	12,102	13,704	1,602
\$/SF	\$4.46	\$3.75	\$ (0.71)
Rent	\$ 647,902	\$ 616,680	\$ (31,222)
FF&E	\$ 26,267	\$ -	\$ (26,267)
Estimate TI's	\$ 146,390	\$ -	\$ (146,390)
Annual Sub Total	\$ 820,559	\$ 616,680	\$ (203,879)
Lease Break Fee	\$ -	\$ 143,999	\$ 143,999
Free Rent (4mos)	\$ -	\$ (205,560)	\$ (205,560)
Adjusted Annual Total	\$ 820,559	\$ 555,119	\$ (265,439)

Staff therefore recommends that the Board authorize the Chief Financial Officer or Chief Executive Officer to execute Sublease agreements for 2 years and any related documents necessary to rent office space through CORELATION, INC. at 2305 Historic Decatur Road Suite 200, San Diego, California, 92106. Additionally, the Sublease agreements are drafts but are substantially complete and subject to minor revisions by the Chief Executive Officer.

COMMITTEE REVIEW

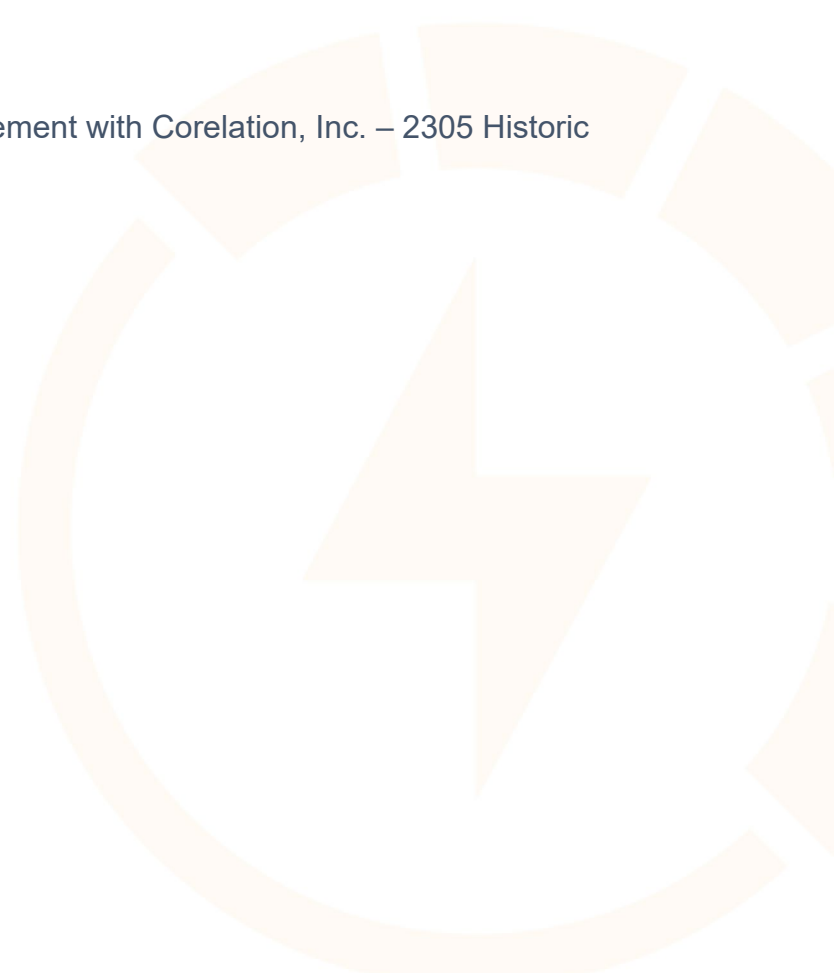
The report was not reviewed by the Finance and Risk Management Committee (FRMC).

FISCAL IMPACT

SDCP's current Sublease agreement to lease office space is at a rate of \$31,041.70 per month for a shared office space that holds up to 50 people. SDCP is expected to reach 55 employees in October 2023 and is currently near capacity. The proposed Sublease Agreements is at an increased rate of \$53,991.80 per month for a dedicated office space that holds 70+ people. Staff strongly believes the new Sublease Agreement is necessary due to SDCP's growth.

ATTACHMENTS

- Attachment A: Draft Sublease Agreement with Corelation, Inc. – 2305 Historic Decatur, Suite 200



SUBLEASE FOR A SINGLE SUBLESSEE

To be used if the entire space (Premises) will be subleased by a single sublessee whether or not the space (Premises) is a single tenant building or is located in a multi-tenant building.

If there will be one or more sublessees sharing the space with each other and/or the lessee, whether or not the space (Premises) is a single tenant building or is located in a multi-tenant building, use the Sublease for Multiple Tenants.

1. Basic Provisions ("Basic Provisions").

- 1.1 **Parties:** This Sublease ("Sublease"), dated for reference purposes only 9/14/23, is made by and between Corelation, Inc. ("Sublessor") and San Diego Community Power ("Sublessee"), (collectively the "Parties", or individually a "Party").
- 1.2 **Premises:** That certain real property, including all improvements therein, and commonly known as (street address, city, state, zip) 2305 Historic Decatur Road located in the County of San Diego, State of California and generally described as (describe briefly the nature of the property) Suite 200, approximately 13,704 rentable square feet ("Premises").
- 1.3 **Term:** 2 years and 0 months commencing 11/1/23 ("Commencement Date") and ending 10/31/25 ("Expiration Date").
- 1.4 **Early Possession:** If the Premises are available Sublessee may have non-exclusive possession of the Premises commencing upon fully executed Master Lessor consent, payment of first month's rent, but no earlier than 10.15.23 post sublease execution ("Early Possession Date").
- 1.5 **Base Rent:** \$3.75 + E per rentable square foot per month ("Base Rent"), payable on the first (1st) day of each month commencing 11/1/23.

☐ If this box is checked, there are provisions in this Sublease for the Base Rent to be adjusted.

1.6 Base Rent and Other Monies Paid Upon Execution:

- (a) **Base Rent:** \$51,390.00 for the period 11/1/23-11/30/23.
- (b) **Security Deposit:** N/A ("Security Deposit").
- (c) **Association Fees:** N/A for the period _____.
- (d) **Other:** N/A for _____.
- (e) **Total Due Upon Execution of this Sublease:** \$51,390.00.

1.7 Agreed Use:

The Premises shall be used and occupied only for general office use and for no other purposes.

1.8 Real Estate Brokers.

(a) **Representation:** Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Sublease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)"):

Sublessor's Brokerage Firm Range Partners SD, Inc. License No. 02169612 is the broker of (check one): ☒ the Sublessor; or

☐ both the Sublessee and Sublessor (dual agent).

Sublessor's Agent Nick Norris License No. 01911071 is (check one): ☒ the Sublessor's Agent (salesperson or broker associate); or

☐ both the Sublessee's Agent and the Sublessor's Agent (dual agent).

Sublessee's Brokerage Firm CBRE License No. 01850867 is the broker of (check one): ☒ the Sublessee; or ☐ both the Sublessee and Sublessor (dual agent).

Sublessee's Agent Chuck Reiter License No. 01850867 is (check one): ☒ the Sublessee's Agent (salesperson or broker associate); or

☐ both the Sublessee's Agent and the Sublessor's Agent (dual agent).

(b) **Payment to Brokers:** Upon execution and delivery of this Sublease by both Parties, Sublessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of _____ or Four (4) % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.9 Guarantor.

The obligations of the Sublessee under this Sublease shall be guaranteed by N/A ("Guarantor").

1.10 Attachments.

Attached hereto are the following, all of which constitute a part of this Sublease:

- ☒ an Addendum consisting of Paragraphs 14 through 20 ;
- ☐ a plot plan depicting the Premises;
- ☐ a Work Letter;
- ☒ a copy of the Master Lease and any and all amendments to such lease (collectively the "Master Lease");
- ☒ other (specify): Agency Disclosure .

2. Premises.

2.1 Letting.

Sublessor hereby subleases to Sublessee, and Sublessee hereby subleases from Sublessor, the Premises, for the term, at the rental, and upon all of

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the terms, covenants and conditions set forth in this Sublease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Sublessee is advised to verify the actual size prior to executing this Sublease.**

2.2 Condition. Sublessor shall deliver the Premises to Sublessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), and any items which the Sublessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Sublessee, shall be in good operating condition on said date. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Sublessor shall, as Sublessor's sole obligation with respect to such matter, except as otherwise provided in this Sublease, promptly after receipt of written notice from Sublessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Sublessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements. If Sublessee does not give Sublessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Sublessee at Sublessee's sole cost and expense.

2.3 Compliance. Sublessor warrants that any improvements, alterations or utility installations made or installed by or on behalf of Sublessor to or on the Premises comply with all applicable covenants or restrictions of record and applicable building codes, regulations and ordinances ("**Applicable Requirements**") in effect on the date that they were made or installed. Sublessor makes no warranty as to the use to which Sublessee will put the Premises or to modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Sublessee's use. **NOTE: Sublessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Sublessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Sublessor shall, except as otherwise provided, promptly after receipt of written notice from Sublessee setting forth with specificity the nature and extent of such non-compliance, rectify the same.

2.4 Acknowledgements. Sublessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Sublessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Sublessee's intended use, (c) Sublessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Sublessor, (e) the square footage of the Premises was not material to Sublessee's decision to sublease the Premises and pay the Rent stated herein, and (f) neither Sublessor, Sublessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Sublease. In addition, Sublessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Sublessee's ability to honor the Sublease or suitability to occupy the Premises, and (ii) it is Sublessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

~~**2.5 Americans with Disabilities Act.** In the event that as a result of Sublessee's use, or intended use, of the Premises the Americans with Disabilities Act or any similar law requires modifications or the construction or installation of improvements in or to the Premises, Building, Project and/or Common Areas, the Parties agree that such modifications, construction or improvements shall be made at: ☐ Sublessor's expense ☐ Sublessee's expense.~~

3. Possession.

3.1 Early Possession. Any provision herein granting Sublessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Sublessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Sublease (including but not limited to the obligations to pay Sublessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall, however, be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.2 Delay in Commencement. Sublessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises by the Commencement Date. ~~If, despite said efforts, Sublessor is unable to deliver possession as agreed, the rights and obligations of Sublessor and Sublessee shall be as set forth in Paragraph 3.3 of the Master Lease (as modified by Paragraph 6.3 of this Sublease).~~

3.3 Sublessee Compliance. Sublessor shall not be required to tender possession of the Premises to Sublessee until Sublessee complies with its obligation to provide evidence of insurance. Pending delivery of such evidence, Sublessee shall be required to perform all of its obligations under this Sublease from and after the Start Date, including the payment of Rent, notwithstanding Sublessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Sublessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Sublessor may elect to withhold possession until such conditions are satisfied.

4. Rent and Other Charges.

4.1 Rent Defined. All monetary obligations of Sublessee to Sublessor under the terms of this Sublease (except for the Security Deposit) are deemed to be rent ("**Rent**"). Rent shall be payable in lawful money of the United States to Sublessor at the address stated herein or to such other persons or at such other places as Sublessor may designate in writing.

4.2 Utilities. Sublessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon.

5. Security Deposit. The rights and obligations of Sublessor and Sublessee as to said Security Deposit shall be as set forth in Paragraph 5 of the Master Lease (as modified by Paragraph 6.3 of this Sublease).

6. Master Lease.

6.1 Sublessor is the lessee of the Premises by virtue of the "**Master Lease**", wherein Kilroy Realty, L.P. is the lessor, hereinafter the "**Master Lessor**".

6.2 This Sublease is and shall be at all times subject and subordinate to the Master Lease.

6.3 The terms, conditions and respective obligations of Sublessor and Sublessee to each other under this Sublease shall be the terms and conditions of the Master Lease except for those provisions of the Master Lease which are directly contradicted by this Sublease in which event the terms of this Sublease document shall control over the Master Lease. Therefore, for the purposes of this Sublease, wherever in the Master Lease the word "Lessor" is used it shall be deemed to mean the Sublessor herein and wherever in the Master Lease the word "Lessee" is used it shall be deemed to mean the Sublessee herein.

6.4 During the term of this Sublease and for all periods subsequent for obligations which have arisen prior to the termination of this Sublease, Sublessee does hereby expressly assume and agree to perform and comply with, for the benefit of Sublessor and Master Lessor, each and every obligation of Sublessor under the Master Lease except for the following paragraphs which are excluded therefrom: _____.

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6.5 The obligations that Sublessee has assumed under paragraph 6.4 hereof are hereinafter referred to as the "Sublessee's Assumed Obligations". The obligations that Sublessee has not assumed under paragraph 6.4 hereof are hereinafter referred to as the "Sublessor's Remaining Obligations".

6.6 Sublessee shall hold Sublessor free and harmless from all liability, judgments, costs, damages, claims or demands, including reasonable attorneys fees, arising out of Sublessee's failure to comply with or perform Sublessee's Assumed Obligations.

6.7 Sublessor agrees to maintain the Master Lease during the entire term of this Sublease, subject, however, to any earlier termination of the Master Lease without the fault of the Sublessor, and to comply with or perform Sublessor's Remaining Obligations and to hold Sublessee free and harmless from all liability, judgments, costs, damages, claims or demands arising out of Sublessor's failure to comply with or perform Sublessor's Remaining Obligations.

6.8 Sublessor represents to Sublessee that the Master Lease is in full force and effect and that no default exists on the part of any Party to the Master Lease.

7. Assignment of Sublease and Default.

7.1 Sublessor hereby assigns and transfers to Master Lessor the Sublessor's interest in this Sublease, subject however to the provisions of Paragraph 8.2 hereof.

7.2 Master Lessor, by executing this document, agrees that until a Default shall occur in the performance of Sublessor's Obligations under the Master Lease, that Sublessor may receive, collect and enjoy the Rent accruing under this Sublease. However, if Sublessor shall Default in the performance of its obligations to Master Lessor then Master Lessor may, at its option, receive and collect, directly from Sublessee, all Rent owing and to be owed under this Sublease. In the event, however, that the amount collected by Master Lessor exceeds Sublessor's obligations any such excess shall be refunded to Sublessor. Master Lessor shall not, by reason of this assignment of the Sublease nor by reason of the collection of the Rent from the Sublessee, be deemed liable to Sublessee for any failure of the Sublessor to perform and comply with Sublessor's Remaining Obligations.

7.3 Sublessor hereby irrevocably authorizes and directs Sublessee upon receipt of any written notice from the Master Lessor stating that a Default exists in the performance of Sublessor's obligations under the Master Lease, to pay to Master Lessor the Rent due and to become due under the Sublease. Sublessor agrees that Sublessee shall have the right to rely upon any such statement and request from Master Lessor, and that Sublessee shall pay such Rent to Master Lessor without any obligation or right to inquire as to whether such Default exists and notwithstanding any notice from or claim from Sublessor to the contrary and Sublessor shall have no right or claim against Sublessee for any such Rent so paid by Sublessee.

7.4 No changes or modifications shall be made to this Sublease without the consent of Master Lessor.

8. Consent of Master Lessor.

8.1 In the event that the Master Lease requires that Sublessor obtain the consent of Master Lessor to any subletting by Sublessor then, this Sublease shall not be effective unless, within 10 days of the date hereof, Master Lessor signs this Sublease thereby giving its consent to this Subletting.

8.2 In the event that the obligations of the Sublessor under the Master Lease have been guaranteed by third parties, then neither this Sublease, nor the Master Lessor's consent, shall be effective unless, within 10 days of the date hereof, said guarantors sign this Sublease thereby giving their consent to this Sublease.

8.3 In the event that Master Lessor does give such consent then:

(a) Such consent shall not release Sublessor of its obligations or alter the primary liability of Sublessor to pay the Rent and perform and comply with all of the obligations of Sublessor to be performed under the Master Lease.

(b) The acceptance of Rent by Master Lessor from Sublessee or anyone else liable under the Master Lease shall not be deemed a waiver by Master Lessor of any provisions of the Master Lease.

(c) The consent to this Sublease shall not constitute a consent to any subsequent subletting or assignment.

(d) In the event of any Default of Sublessor under the Master Lease, Master Lessor may proceed directly against Sublessor, any guarantors or any one else liable under the Master Lease or this Sublease without first exhausting Master Lessor's remedies against any other person or entity liable thereon to Master Lessor.

(e) Master Lessor may consent to subsequent sublettings and assignments of the Master Lease or this Sublease or any amendments or modifications thereto without notifying Sublessor or any one else liable under the Master Lease and without obtaining their consent and such action shall not relieve such persons from liability.

(f) In the event that Sublessor shall Default in its obligations under the Master Lease, then Master Lessor, at its option and without being obligated to do so, may require Sublessee to atton to Master Lessor in which event Master Lessor shall undertake the obligations of Sublessor under this Sublease from the time of the exercise of said option to termination of this Sublease but Master Lessor shall not be liable for any prepaid Rent nor any Security Deposit paid by Sublessee, nor shall Master Lessor be liable for any other Defaults of the Sublessor under the Sublease.

(g) Unless directly contradicted by other provisions of this Sublease, the consent of Master Lessor to this Sublease shall not constitute an agreement to allow Sublessee to exercise any options which may have been granted to Sublessor in the Master Lease (see Paragraph 39.2 of the Master Lease).

8.4 The signatures of the Master Lessor and any Guarantors of Sublessor at the end of this document shall constitute their consent to the terms of this Sublease.

8.5 Master Lessor acknowledges that, to the best of Master Lessor's knowledge, no Default presently exists under the Master Lease of obligations to be performed by Sublessor and that the Master Lease is in full force and effect.

8.6 In the event that Sublessor Defaults under its obligations to be performed under the Master Lease by Sublessor, Master Lessor agrees to deliver to Sublessee a copy of any such notice of default. Sublessee shall have the right to cure any Default of Sublessor described in any notice of default if Sublessee does so within the same number of days set forth in the notice of default given to Sublessor. If such Default is cured by Sublessee then Sublessee shall have the right of reimbursement and offset from and against Sublessor.

9. ~~Additional Brokers Commissions.~~

~~9.1 Sublessor agrees that if Sublessee exercises any option or right of first refusal as granted by Sublessor herein, or any option or right substantially similar thereto, either to extend the term of this Sublease, to renew this Sublease, to purchase the Premises, or to lease or purchase adjacent property which Sublessor may own or in which Sublessor has an interest, then Sublessor shall pay to Broker a fee in accordance with the schedule of Broker in effect at the time of the execution of this Sublease. Notwithstanding the foregoing, Sublessor's obligation under this Paragraph is limited to a transaction in which Sublessor is acting as a Sublessor, lessor or seller.~~

~~9.2 If a separate brokerage fee agreement is attached then Master Lessor agrees that if Sublessee shall exercise any option or right of first refusal granted to Sublessee by Master Lessor in connection with this Sublease, or any option or right substantially similar thereto, either to extend or renew the Master Lease, to purchase the Premises or any part thereof, or to lease or purchase adjacent property which Master Lessor may own or in which Master Lessor has an interest, or if Broker is the procuring cause of any other lease or sale entered into between Sublessee and Master Lessor pertaining to the Premises, any part thereof, or any adjacent property which Master Lessor owns or in which it has an interest, then as to any of said transactions, Master Lessor shall pay to Broker a fee, in cash, in accordance with the schedule attached to such brokerage fee agreement.~~

~~9.3 Any fee due from Sublessor or Master Lessor hereunder shall be due and payable upon the exercise of any option to extend or renew, upon the execution~~

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~~of any new lease, or, in the event of a purchase, at the close of escrow.~~

~~9.4 Any transferee of Sublessor's interest in this Sublease, or of Master Lessor's interest in the Master Lease, by accepting an assignment thereof, shall be deemed to have assumed the respective obligations of Sublessor or Master Lessor under this Paragraph 9. Broker shall be deemed to be a third-party beneficiary of this paragraph 9.~~

10. Representations and Indemnities of Broker Relationships. The Parties each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Sublease, and that no one other than said named Brokers and Agents is entitled to any commission or finder's fee in connection herewith. Sublessee and Sublessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

11. Attorney's fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Sublessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

12. No Prior or Other Agreements; Broker Disclaimer. This Sublease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Sublessor and Sublessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Sublease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys' fees), of any Broker with respect to negotiation, execution, delivery or performance by either Sublessor or Sublessee under this Sublease or any amendment or modification hereto shall be limited to an amount up to the fee received by such Broker pursuant to this Sublease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker. Signatures to this Sublease accomplished by means of electronic signature or similar technology shall be legal and binding.

13. Accessibility; Americans with Disabilities Act.

(a) The Premises:

☒ have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY REAL ESTATE BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS SUBLEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS SUBLEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PROPERTY, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR SUBLESSEE'S INTENDED USE.

WARNING: IF THE SUBJECT PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE SUBLEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

Executed At: _____

On: _____

By Sublessor:

Corelation, Inc.

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Executed At: _____

On: _____

By Sublessee:

San Diego Community Power

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By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

Address: _____
Federal ID No.: _____

BROKER

Range Partners-SD, Inc.

Attn: Nick Norris
Title: _____

Address: _____
Phone: _____
Fax: _____
Email: _____
Federal ID No.: _____
Broker DRE License #: 02169612
Agent DRE License #: _____

Consent to the above Sublease is hereby given.

Executed At: _____
Executed On: _____

By Master Lessor:

Kilroy Realty, L.P.

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

Address: _____
Federal ID No.: _____

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

Address: _____
Federal ID No.: _____

BROKER

CBRE

Attn: Chuck Reiter
Title: _____

Address: _____
Phone: _____
Fax: _____
Email: _____
Federal ID No.: _____
Broker DRE License #: _____
Agent DRE License #: _____

Executed At: _____
Executed On: _____

By Guarantor:

By: _____
Name Printed: _____
Title: _____
Address: _____

By: _____
Name Printed: _____
Title: _____
Address: _____

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ADDENDUM TO SUBLEASE

Date: 9/14/23

By and Between

Sublessor: Corelation, Inc.

Sublessee: San Diego Community Power

Property Address: 2305 Historic Decatur Road
(street address, city, state, zip)

Paragraph: 14-20

In the event of any conflict between the provisions of this Addendum and the printed provisions of the Sublease, this Addendum shall control.

14. Option to Extend: Sublessee shall have one (1) consecutive option to extend the Term of the Sublease (the "Extension Option"), with said option being for an additional twelve (12) months. The Base Rent for the Extension Option shall be \$3.75 + Electricity per rentable square foot of the Premises.
15. Abated Base Rent: Four (4) months from months Two (2) through Five (5) of the Sublease Term.
16. Holdover: Sublessee shall have the right at the expiration of the Sublease and upon sixty (60) days prior written notice to the Sublessor to extend the Term of the Sublease for no more than Four (4) months at the same rental rate in effect upon the scheduled Sublease Expiration Date.
17. Operating Expenses: Sublessee shall not be required to pay its pro-rata share of Operating Expenses for the Sublease Term.
18. Condition: Sublessee shall accept the Premises in "as-is" condition.
19. Signage: Subject to the approval of the Master Lessor, Sublessor shall provide Sublessee all standard lobby directory and suite identification signage per the Master Lease.
20. Existing Furniture and Fixtures of Premises: Sublessee shall have the right, at no additional cost, to utilize the existing Furniture and Fixtures (including cameras and badge readers), including telecommunications cabling, located in the Premises, but excluding computer equipment and file cabinets which shall be removed from the Premises by Sublessor prior to the Commencement Date. Sublessee shall have no responsibility to remove existing Furniture, Fixtures, and network cabling at the end of the Sublease Term.

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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salesperson and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation. Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).**

☐ Buyer ☐ Seller ☒ Lessor ☐ Lessee Corelation, Inc. Date: 9/14/23

☐ Buyer ☐ Seller ☐ Lessor ☐ Lessee _____ Date: _____

Agent: Range Partners-SD, Inc. DRE Lic. #: 02103252
Real Estate Broker (Firm)

By: Nick C. Norris DRE Lic. #: 01911071 Date: 9/14/23
(Salesperson or Broker-Associate)

THIS FORM HAS BEEN PREPARED BY AIR CRE. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC

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**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)**

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. **(b)** "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. **(c)** "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobile home, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. **(d)** "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. **(e)** "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. **(f)** "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. **(g)** "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. **(h)** "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. **(i)** "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. **(j)** "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multi-unit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobile home as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. **(k)** "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. **(l)** "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. **(m)** "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. **(n)** "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: **(a)** The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. **(b)** The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. **(b)** As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

(C) CONFIRMATION: The following agency relationships are confirmed for this transaction.

Seller's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is the broker of (check one): ☐ the seller; or ☐ both the buyer and seller. (dual agent)

Seller's Agent DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is (check one): ☐ the Seller's Agent. (salesperson or broker associate); or ☐ both the Buyer's Agent and the Seller's Agent. (dual agent)

Buyer's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is the broker of (check one): ☐ the buyer; or ☐ both the buyer and seller. (dual agent)

Buyer's Agent DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is (check one): ☐ the Buyer's Agent. (salesperson or broker associate); or ☐ both the Buyer's Agent and the Seller's Agent. (dual agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289, 2017-18 California Legislative session)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically

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prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. **(b)** A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. **(c)** "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. **(d)** This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship. **(b)** A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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SAN DIEGO COMMUNITY POWER Staff Report – Item 14

To: San Diego Community Power Board of Directors

From: Eric Washington, Chief Financial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Approval of Third Amendment to Professional Services Agreement with Brentech Inc. for up to \$112,360 in FY 2023-24 for Computer and Information Technology Services through June 30, 2024

Date: September 28, 2023

RECOMMENDATIONS

Approve third amendment to professional services agreement with Brentech Inc. to increase the not-to-exceed to \$112,360 for services in FY 2023-24 and to authorize the Chief Executive Officer to execute the agreement.

BACKGROUND

On August 17, 2021, San Diego Community Power (SDCP) approved a contract with Brentech Inc. for computer and information technology (IT)-related services and technical labor through June 30, 2022 with a not-to-exceed amount of \$48,000 (\$24,000 for non-equipment services and \$24,000 for equipment).

BrenTech Inc. is one of San Diego's longest established computer and information technology solutions providers servicing San Diego, Riverside, and Orange Counties with business solutions for over 40 years.

Brentech provides full IT, cloud-based services, and computer system services including:

- Purchase and setup of business-class laptops
- Configuration of cloud-based systems including Microsoft 365, Microsoft application suite (e.g. Word, Excel, Teams, etc.), Microsoft Azure, Microsoft Authenticator, Adobe Acrobat DC, etc.
- Setup, configure, and manage Microsoft 365 accounts for all Staff members
- Setup, configure, and manage miscellaneous email inboxes (Exchange setups)
- Provision of support services to staff members regarding any IT/computer related inquiries, issues, and troubleshooting:
- Advise, establish, configure, and manage IT and network security protocols, policies, best practices, and trainings.

- Assist with, resolve, and report on security breaches (including but not limited to hacking, phishing incidents, virus installations, and all other compromises of SDCP systems and networks).
- Work with and assist SDCP contracted vendors to conduct regular and periodic security audits, including installing monitoring and reporting clients for audit purposes.

Subsequently, on July 29, 2022, SDCP amended the contract to extend the agreement through June 30, 2023 with a not-to-exceed amount for FY 2022-23 of \$73,000 (\$33,000 for non-equipment services and \$40,000 for equipment).

After the amendment, on February 1, 2023, SDCP hired an IT Associate as SDCP desired to transition its IT services from Brentech Inc. to be delivered internally. This transition is intended to be in parallel to retaining Brentech Inc. in the short term to ensure continuity in IT services.

On April 27, 2023, SDCP approved a second amendment with BrenTech Inc. for computer and information technology (IT)-related services and technical labor through June 30, 2024, with a not-to-exceed amount of \$77,380 (\$34,980 for non-equipment services and \$42,400 for equipment).

Since the second amendment, SDCP's IT Associate position has been vacated and SDCP has therefore required additional services from BrenTech Inc. to ensure business operations were not negatively impacted. Those services include an on-site IT Technician which resulted in a significant increase in hours billed.

On June 22, 2023, the SDCP Board adopted its FY 2023-24 budget which included in its hiring plan a new Director of IT and Data Analytics. SDCP expects to fill the role of the Director of IT and Data Analytics and subsequently will fill the current vacant IT Associate role by the end of this calendar year. An additional 300 contract hours is estimated to cover the agency's need for an IT consultant until the establishment of an internal IT department.

ANALYSIS AND DISCUSSION

Staff recommends increasing the Brentech Inc. contract for a not-to-exceed amount of \$112,360 (\$69,960 for non-equipment services and \$42,400 for equipment) in FY 2023-24.

The second amendment stated a not-to-exceed amount of \$34,980 for non-equipment services which equates to 300 contract hours. SDCP estimates an additional 300 hours of service is needed from BrenTech. The services included are all on-site IT Consultant or Technician responsibilities such as new employee onboarding, troubleshooting hardware and software, network maintenance, Board and committee meeting setup, internal presentation or meeting equipment setup and other various IT related tasks. The not-to-exceed amount will increase by a total of \$34,980.



SDCP intends to continue to build its IT services function in-house but will conduct a Request for Proposals for these services in the future, if needed.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

Given the recent vacancy in SDCP's IT Associate position, SDCP anticipates shifting FY 2023-24 cost savings in personnel to offset the increase in professional services resulting from this amendment. Cost of this action includes an increase to the not-to-exceed amount of \$112,360 through June 30, 2024.

ATTACHMENTS

Attachment A: Third Amendment to Professional Services Agreement Between San Diego Community Power and Brentech Inc.



**AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN
SAN DIEGO COMMUNITY POWER AND BRENTech INC.**

THIS THIRD AMENDMENT (“**Third Amendment**”) is entered into as of this 28th day of September, 2023 by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority (“**SDCP**”) and BRENTech INC., a California corporation (“**Consultant**”). SDCP and Consultant are sometimes individually referred to herein as the “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, the Parties entered into that certain Professional Services Agreement between San Diego Community Power and Consultant, dated August 17, 2021, a First Amendment to the Professional Services Agreement, dated July 29, 2022, and a Second Amendment to the Professional Services Agreement, dated April 27, 2023 (collectively, the “**Agreement**”); and

WHEREAS, pursuant to the Agreement, Consultant provides computer-related and information technology (IT)-related services and technical labor services to SDCP; and

WHEREAS, the Parties desire to amend the Agreement to revise the scope of work and to increase the not-to-exceed amount.

AGREEMENT

NOW, THEREFORE, it is agreed by and between the parties as follows:

1. Recitals. The Recitals set forth above are true and correct and are incorporated into the body of this Amendment as though expressly set forth herein.
2. Amendment of Section 3.1.1. Section 3.1.1 of the Agreement is amended to increase the not-to-exceed amount by Thirty-Four Thousand Nine-Hundred Eighty Dollars (\$34,980) for fiscal year 2023-24 to Sixty-Nine Thousand Nine-Hundred Sixty Dollars (\$69,960).
3. Amendment of Exhibit C. Exhibit C is hereby replaced in its entirety with a new and modified Exhibit C, attached hereto.
4. Effect of Amendment. Except as expressly set forth in this Amendment, all other sections, provisions, exhibits and commitments of the Agreement remain unchanged and in full force and effect.
5. Capitalized Terms. Any capitalized terms not defined herein shall have the meanings set forth in the Agreement.
6. Counterparts. This Amendment may be executed in one or more counterparts, including facsimile counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Amendment to the Professional Services Agreement between San Diego Community Power and BrenTech Inc., as of the date first set forth above.

SAN DIEGO COMMUNITY POWER

BRENTECH, INC.

By: _____

By: _____

Name: Karin Burns

Name: Daniel Brenner

Title: Chief Executive Officer

Title: President

APPROVED AS TO FORM:

SDCP General Counsel

EXHIBIT C

COMPENSATION BILLING RATES

Consultant will provide 75 Contract Hours of services for eight-thousand seven-hundred and forty-five dollars (\$8,745), with the ability to purchase additional 75 Contract Hours, not to exceed 600 Contract Hours. SDCP will pay a retainer of \$8,745 for each 75 Contract Hours under this Agreement. Consultant will charge a one-hour minimum charge for all onsite service calls. Consultant will charge for remote access support in 15-minute increments. Consultant will provide free voice telephone support with this service agreement during normal business hours.

Consultant will invoice SDCP for work performed according to the charge provisions set above and at contract hour rates set below.

Title	Amount
Technician	Technician 1.0 contract hours for each hour worked
Engineer	Engineer 1.25 contract hours for each hour worked

All labor and support, and telephone support performed after normal business hours are billed at 1.5 times above contract technician and engineering contract hour rates above.

If labor is required in excess of the 600 Contract Hours, at SDCP's sole discretion and subject to request and approval from SDCP, Consultant will charge for labor time at standard labor rates set below:

Title	Amount per Hour
Technician	\$168.54
Engineer	\$210.94

All labor performed after normal business hours are billed at 1.5 times the standard labor rates. At no point shall the amount billed by Consultant exceed the Compensation amount set forth in Section 3.1 of the Agreement unless approved by SDCP in accordance with Section 3.1, subsections 3.1.1 & 3.1.2.

EQUIPMENT

Any equipment, parts, supplies, and/or other ancillary costs requested by SDCP for procurement by Consultant will be sent to SDCP for approval before being purchased by Consultant and invoiced to SDCP as a pass-through cost.

TRAVEL TIME

All time charged against the Agreement will include a round trip travel charge for areas outside of the local area, calculated as travel time North of Hwy 78, South of Hwy. 94, and East of 67 Hwy, **billed in 15-minute increments beginning at perimeter of local area.**



SAN DIEGO COMMUNITY POWER Staff Report – Item 15

To: San Diego Community Power Board of Directors

From: Colin Santulli, Director of Programs
Alyson Scurlock, Program Associate

Via: Karin Burns, Chief Executive Officer

Subject: Approval of the Professional Services Agreement with San Diego Foundation for up to \$450,000 for Program Administration Services for the Community Grant Program through July 30, 2027

Date: September 28, 2023

RECOMMENDATION

Approve the Professional Services Agreement with San Diego Foundation and authorize the CEO to execute the Agreement in substantially the form attached hereto, with such changes as are approved by the CEO and reviewed and approved as to form by the General Counsel.

BACKGROUND

SDCP's Community Grant Program (Program) aims to support clean energy projects that provide economic, environmental, and health benefits to SDCP's communities. In December 2022, SDCP's Board of Directors approved the [Program Policy](#), and in March 2023, SDCP officially launched the Program. Grant awards were provided to 10 organizations in June 2023 and grant reporting for the first round of awardees is anticipated to conclude in June 2024.

SDCP plans on administering the Program annually. The inaugural Fiscal Year (FY) 2022-23 Program had a total approved budget of \$300,000 and program administration was completed for a fee equal to 15% of the total Program budget (i.e., 15% of \$300,000 or \$45,000). Now that the inaugural Program is underway, SDCP staff are beginning to plan for the FY 2023-24 Program, which includes establishing continued program administration support.

In August 2023, SDCP issued Request for Proposal (RFP) number 23-008 for Program Administration Services for the Community Grant Program to solicit bids from potential program administrations for the next three program years (i.e., FY 2023-24, FY 2024-25, and FY 2025-26). The services requested for the Program include development of

additional funding sources to add to the total budget, facilitation of the grant application and evaluation process, execution of grant agreements, distribution of grant funds, and facilitation of grant reporting with awardees.

ANALYSIS AND DISCUSSION

SDCP received 6 proposals to the RFP. Staff completed the evaluation process per the SDCP Procurement Policy and selected San Diego Foundation as the preferred bidder based on demonstrated expertise in supporting similar grant programs locally, established relationships with community-based organizations, and experience securing additional funding to support the grant budget.

The FY 2023-24 Program currently has an approved budget of \$500,000, however, future Board-approved Program budgets and the amount of additional funding sources that will be secured each fiscal year are unknown. To account for this uncertainty, the not-to-exceed amount of this contract was calculated based on a 15% administration fee and an assumed \$1,000,000 total Program budget for the next three fiscal years (i.e., 15% of \$3,000,000 or \$450,000).

COMMITTEE REVIEW

SDCP staff plan on informing the Community Advisory Committee of the RFP process and selected bidder at a future meeting.

FISCAL IMPACT

The costs associated with this Professional Services Agreement will not exceed \$450,000 between October 2, 2023 and July 30, 2027. The FY 2023-24 Programs Department budget includes funding to support the administration of the grant agreement. Staff intend to request funding not incurred during this FY in future FY budgets to account for this contract.

ATTACHMENTS

Attachment A: AGREEMENT BETWEEN SAN DIEGO COMMUNITY POWER AND SAN DIEGO FOUNDATION FOR PROGRAM ADMINISTRATION SERVICES FOR THE COMMUNITY GRANT PROGRAM



SAN DIEGO COMMUNITY POWER PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“**Agreement**”) is made and entered into this 2nd day of October 2023, (the “**Commencement Date**”) by and between SAN DIEGO COMMUNITY POWER, a California joint powers agency (“**SDCP**”), and SAN DIEGO FOUNDATION, a California nonprofit public benefit corporation (“**Consultant**”). SDCP and Consultant are sometimes individually referred to as “**Party**” and collectively as “**Parties**.”

RECITALS

A. Consultant desires to perform and assume responsibility for the provision of certain professional services required by SDCP on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in administering and implementing grant programs that support local community-based projects and programs and is familiar with the related plans of SDCP.

B. SDCP desires to engage Consultant to render such professional services for its Community Grant Program, which aims to support clean energy programs and projects that provide economic, environment, community, and health benefits (“**Project**”) as set forth in this Agreement.

AGREEMENT

1. Scope of Services and Term.

1.1 **General Scope of Services.** Consultant promises and agrees to furnish to SDCP all labor, materials, tools, equipment, services, and incidental and customary work necessary to supply the services necessary to administer the Project, including without limitation, structuring and implementing the grantmaking cycle, reviewing and making grant decisions, entering into grant agreements, and receiving financial reporting from grantees (“**Services**”). The Services are more particularly described in Exhibit A attached hereto, and are stated in the proposal to SDCP. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

1.2 **Term.** The term of this Agreement shall be from **October 2, 2023**, to **July 30, 2027**, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

1.3 **Task Orders.** At such time that SDCP determines to have Consultant perform Services under this Agreement, SDCP shall issue a Task Order. Any and all work performed under any Task Order issued pursuant hereto shall be governed by the terms and conditions set forth in this Agreement. It is contemplated that individual Task Orders shall, in general, contain the following information: (i) a description of the scope of work included in such Task Order; (ii) a lump sum price and/or such other terms of compensation (including a not-to-exceed amount) for the specific work included in the Task Order’s scope of work; (iii) a date and time by which the

requested work shall be completed for the Task Order's scope of work and/or such other schedule requirements for Task Order; (iv) any other specific requirements of the scope of work. If Consultant agrees to perform the requested work, begins to perform the requested work, or does not respond within five calendar days, then Consultant will have agreed to perform the requested work on the terms set forth in the Task Order, this Agreement and its Exhibits.

2. Responsibilities of Consultant.

2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. SDCP retains Consultant on an independent contractor basis and not as an employee, partner or joint venturer of SDCP. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any personnel of Consultant performing the Services under this Agreement on behalf of Consultant shall also not be employees of SDCP and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel of Consultant in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all employer reports and obligations respecting such personnel that may be required by applicable law, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Except as SDCP may specify in writing, including under this Agreement, no Party shall have no authority, express or implied, to act on behalf of the other Party in any capacity whatsoever as an agent. Neither Party shall have any authority, express or implied, pursuant to this Agreement to bind the other Party to any obligation whatsoever.

2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit B attached hereto. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, SDCP shall respond to Consultant's submittals in a timely manner. Upon reasonable request of SDCP, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of SDCP, which approval shall not be unreasonably delayed or denied.

2.4 Substitution of Key Personnel. Consultant has represented to SDCP that certain key personnel of Consultant will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of Consultant of at least equal competence upon written approval of SDCP, which approval shall not be unreasonably delayed or denied. In the event that SDCP and Consultant cannot agree as to the substitution of key personnel, either Party shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to SDCP, or who are determined by the SDCP to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, or a threat to the safety of persons or

property, shall be promptly removed from the Project by the Consultant at the request of the SDCP. The key personnel for performance of this Agreement are as follows:

2.5 SDCP's Representative. SDCP hereby designates **Colin Santulli, Director of Programs**, or his or her designee, to act as its representative for the performance of this Agreement ("**SDCP's Representative**"). SDCP's Representative shall have the power to act on behalf of SDCP for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than SDCP's Representative, or designee.

2.6 Consultant's Representative. Consultant hereby designates **Christiana DeBenedict, Director of Environmental Initiatives**, or his or her designee, to act as its Representative for the performance of this Agreement ("**Consultant's Representative**"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

2.7 Coordination of Services. Consultant agrees to work closely with SDCP staff in the performance of Services and shall be available to SDCP's staff, consultants and other staff at reasonable times within normal business hours and with reasonable notice.

2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and sub- contractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required under applicable law to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from SDCP, any services necessary to correct errors or omissions which are caused by the Consultant's material failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subcontractors who is determined by SDCP to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to SDCP, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such applicable laws and regulations in connection with the Services provided under this Agreement with respect to the

Project. If the Consultant performs any Services under this Agreement knowing such Services to be contrary to such applicable laws, rules and regulations and without giving written notice to SDCP, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold SDCP, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure of Consultant to comply with such laws, rules or regulations.

2.10 Insurance.

2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to SDCP that it has secured all insurance required under this section, in a form and with insurance companies acceptable to SDCP. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to SDCP that the subcontractor has secured all insurance required under this section.

2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the term of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services under this Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors, at their cost and expense, to procure and maintain the same or comparable levels of insurance for the term of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

2.10.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by SDCP to add the following provisions to the insurance policies:

(A) General Liability.

(i) Commercial General Liability Insurance must include coverage for (1) Bodily Injury and Property Damage; (2) Personal Injury/Advertising Injury; (3) Premises/Operations Liability; (4) Products/Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Consultants Coverage.

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(iii) The policy shall give SDCP, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(iv) The additional insured coverage under the policy shall be “primary and non-contributory” and will not seek contribution from SDCP’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) SDCP, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects SDCP, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant’s scheduled underlying coverage. Any insurance or self-insurance maintained by SDCP, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant’s insurance and shall not be called upon to contribute with it in any way.

(C) Workers’ Compensation and Employers Liability Coverage.

(i) Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and Consultant will comply with such provisions before commencing work under this Agreement.

(ii) The insurer shall agree to waive all rights of subrogation against SDCP, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Defense costs shall be payable in addition to the limits set forth hereunder. Requirements of specific coverage or limits contained in this section are

not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to SDCP, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

(i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of SDCP (if agreed to in a written contract or agreement) before SDCP's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(ii) Consultant shall provide SDCP at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to SDCP at least ten (10) days prior to the effective date of cancellation or expiration.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by SDCP, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(v) If at any time during the term of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, SDCP has the right but not the duty to obtain the insurance it deems necessary and any premium paid by SDCP will be promptly reimbursed by Consultant or SDCP will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, SDCP may cancel this Agreement. SDCP may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(vi) Neither SDCP nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement. In no event shall either Party be liable to the other for any indirect, punitive, special, consequential, or incidental damages whatsoever, including loss of goodwill or loss of profits.

2.10.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to SDCP, its directors, officials, officers, employees, agents and volunteers.

2.10.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by SDCP. Consultant shall guarantee that, at the option of SDCP, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SDCP, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

2.10.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, licensed to do business in California, and satisfactory to SDCP.

2.10.7 Verification of Coverage. Consultant shall furnish SDCP with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to SDCP. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf and shall be on forms provided by SDCP if requested. All certificates and endorsements must be received and approved by SDCP before work commences. SDCP reserves the right to require complete, certified copies of all required insurance policies, at any time.

2.10.8 Subcontractor Insurance Requirements. Consultant shall not allow any subcontractors to commence work on any subcontract until they have provided evidence satisfactory to SDCP that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors shall be endorsed to name SDCP as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, SDCP may approve different scopes or minimum limits of insurance for particular subcontractors.

2.10.9 Safety. Consultant shall execute and maintain its Services provided under this Agreement so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work related to the Services and the conditions under which the work related to the Services is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and

procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3. **Fees and Payments.**

3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the fees set forth in Exhibit C, attached hereto. The total compensation shall not exceed **four hundred fifty thousand (\$450,000)** without written approval of SDCP's Chief Executive Officer. Such compensation may generally be referred to herein as "Grant Administration Fees." Extra Work may be authorized with mutual agreement of the Parties, as described below, and, if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement. The Parties acknowledge that, following the SDCP Board of Directors' approval of an annual program budget including the grant funding referred to herein, SDCP's Chief Executive Officer or his or her designee will deposit with Consultant an amount up to the total approved annual program budget for purposes of the grant funding; this amount is separate from, and shall not be used for, compensation to Consultant. Amounts deposited for purposes of grant funding shall be known as "Grant Funds."

3.2 Payment of Compensation. Consistent with the payment milestones described in Exhibit C and the Task Order authorizing the Services, SDCP shall, within 45 days of receiving an invoice for payment, review the invoice and pay all approved charges thereon. Prior to payment, SDCP shall provide Consultant with an explanation of any disputed charges thereon and provide Consultant with an opportunity to submit a revised invoice.

3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by SDCP.

3.4 Extra Work. At any time during the term of this Agreement, SDCP may request that Consultant perform Extra Work, subject to Consultant's acceptance of such Extra Work. As used herein, "**Extra Work**" means any work which is reasonably determined by SDCP to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from SDCP's Representative.

4. **Accounting Records.** Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of SDCP during normal business hours and upon reasonable advance notice to Consultant, to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow reasonable inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

5. **General Provisions.**

5.1 Termination of Agreement.

5.1.1 Grounds for Termination. SDCP may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least fourteen (14) business days before the effective date of such termination. Upon termination, Consultant shall be promptly compensated for Services performed, and reimbursed for any expenses authorized in writing by SDCP, through the effective date of termination, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause, provided that Consultant may determine not to accept Extra Work for any reason and no reason.

5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, SDCP may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, SDCP may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: San Diego Foundation
Attn: Mark Stuart, President and Chief Executive Officer
2508 Historic Decatur Rd., Suite 200
San Diego, CA, 92106
marks@sdfoundation.org

SDCP: San Diego Community Power
Attn: Colin Santulli, Director of Programs
PO BOX 12716
San Diego, CA 92101
csantulli@sdcommunitypower.org

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

5.3 Ownership of Materials and Confidentiality.

5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement

creates a non-exclusive and perpetual license for SDCP to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“**Documents & Data**”). Consultant shall require all subcontractors to agree in writing that SDCP is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by SDCP. SDCP shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at SDCP’s sole risk.

5.3.2 Intellectual Property. In addition, SDCP shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media (“**Intellectual Property**”) prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

SDCP shall have and retain all right, title and interest in Intellectual Property developed or modified by Consultant under this Agreement.

All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

SDCP further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

5.3.3 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of SDCP, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related

industry or the public shall be deemed confidential. Consultant shall not use SDCP's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of SDCP.

5.3.4 Infringement Indemnification. Consultant shall defend, indemnify and hold SDCP, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by SDCP of the Documents & Data, including any method, process, product, or concept specified or depicted.

5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

5.6 Indemnification.

5.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of SDCP's choosing), indemnify and hold the SDCP, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses, except to the extent caused by any acts, errors or omissions, or willful misconduct of SDCP, its officials, officers, employees, volunteers or agents. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against SDCP, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against SDCP or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse SDCP and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the SDCP, its officials, officers, employees, agents, or volunteers. This section shall survive any expiration or termination of this Agreement.

5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties

with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Diego County.

5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

5.10 Force Majeure. No Party shall incur liability of any kind or nature whatsoever in relation to any other Party in the event of a failure or delay to perform any of its obligations hereunder directly or indirectly caused by circumstances beyond the relevant party's reasonable control, such as war or war-like activities, government orders, riots, insurrection, civil commotion, strike, lock-out, fires, floods, explosions, act of God, pandemic or any other similar cause, or any failure, interruption or curtailment of any building service or utility (including without limitation heating, plumbing, electrical systems, security systems, communication systems, and fire protection and detection systems). The Party experiencing a failure or delay in performance of its obligations shall undertake reasonable efforts to recommence performance and shall be excused from performing that act for a period of time equal to the period of time of the prevention or delay. In the event of the existence of such delay, the Party claiming the delay shall notify the other Party in writing of that fact within five (5) calendar days after the beginning of any such delay.

5.11 SDCP's Right to Employ Other Consultants. SDCP reserves right to engage other consultants in connection with this Project.

5.12 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

5.13 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of SDCP. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

5.14 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days, unless expressly provided otherwise. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to SDCP include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

5.15 Amendment; Modification. No supplement, modification, or amendment of this

Agreement shall be binding unless executed in writing and signed by both Parties.

5.16 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

5.17 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

5.18 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5.19 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, SDCP shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of SDCP, during the term of his or her service with SDCP, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

5.20 Equal Opportunity Employment and Subcontracting. Consultant represents that it is an equal opportunity employer and it shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of applicants, employees, subcontractors, vendors, or suppliers. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Further, Consultant shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.

5.21 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

5.22 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

5.23 Counterparts. This Agreement may be signed electronically or via facsimile

signature and/or in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one agreement.

5.24 Subcontracting. Consultant shall not subcontract any portion of the Services contemplated under this Agreement, except as expressly stated herein, without prior written approval of SDCP. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE TO
SAN DIEGO COMMUNITY POWER
PROFESSIONAL SERVICES AGREEMENT**

IN WITNESS WHEREOF, the Parties have made and executed this Agreement as of the date first written above.

SAN DIEGO COMMUNITY POWER

THE SAN DIEGO FOUNDATION

By : _____
Name: Karin Burns
Title: Chief Executive Officer

By : _____
Name: Mark Stuart
Title: President and Chief Executive Officer

ATTEST:

ATTEST:

Secretary, SDCP Board of Directors

James Howell, Chief Financial Officer

APPROVED AS TO FORM:

SDCP General Counsel

EXHIBIT A

SCOPE OF SERVICES

San Diego Foundation will support administration of SDCP's Community Grant Program for the next three program years (i.e., FY 2023-24, FY 2024-25, and FY 2025-26). Tasks are anticipated to include but are not limited to the following:

Task 1: Program Planning and Development

- Lead the design and development of the grant program in partnership with SDCP.
- Draft and finalize grant guidelines.
- Draft and finalize grant application questions and process. Grant materials will include language and procedures on compliance with California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"), which may apply to the projects funded by the grants.
- Build grant application in grant management software (Foundant).
- Establish grant evaluation process.

Task 2: Development of Leveraged Funding Sources

- Lead cultivation of potential funding opportunities alongside SDCP that can be leveraged to grow the total amount of grants made through the program, by:
 - Identifying a targeted list of leveraged funding opportunities, and
 - Leading the inquiry of at least 2 leveraged funding opportunities.

Task 3: Grant Management Cycle

- Lead promotion of the grant cycle.
- Provide technical assistance to grant applicants through office hours and a webinar.
- Manage the grant application intake process using Foundant.
- Serve as the primary relationship holder with applicants and grantees.

Task 4: Grant Application Evaluation Period

- Review grant applications for eligibility and alignment with funding sources.
- Work with an evaluation committee to review and score eligible grant applications.
- Convene the evaluation committee to provide input on reviewed applications.

- Facilitate a Q&A process for the evaluation committee to ask questions of applicants.
- Work with a grant selection committee to identify funded applications.

Task 5: Grant Awards

- Process grant selections, notify grantees, execute grant agreements, and distribute grant funds. Grant agreements will include language regarding compliance with applicable law, including Prevailing Wage Laws.
- Promote grant awards through media channels and/or press event.

Task 6: Grantee Management and Reporting

- Provide support to grantees throughout the grant period.
- Develop interim and final reports for grantees to submit via Foundant and coordinate receipt of progress reports from grantees.
- Develop an impact report to be shared with SDCP staff.

EXHIBIT B

SCHEDULE OF SERVICES

Schedules will be included in Task Orders and will generally reflect the following each program year:

Tasks	Timeline
Program Planning and Development	October – January
Development of Leveraged Funding Sources	October – April
Grant Cycle Management	February – April
Grant Application Evaluation Period	April – May
Grant Awards	May – June
Grantee Management and Reporting	June – June (of following calendar year)

EXHIBIT C

FEEES

San Diego Foundation will support administration of SDCP's Community Grant Program for the next three program years (i.e., FY 2023-24, FY 2024-25, and FY 2025-26) on a fixed fee basis with a **Grant Administration Fee equal to 15% of the total program budget**. The total program budget each fiscal year will depend on the annual program budget approved by SDCP's Board of Directors and the amount of additional funding sources secured for the program (see Task 2 in Exhibit A).

Task Orders will be issued each fiscal year prior to commencement of work and after the annual program budget is approved by the SDCP Board of Directors (anticipated in June of each year). SDCP will pay San Diego Foundation the Grant Administration Fee (equal to 15% of the total program budget) in four payments during the following months: January, April, July, and October. SDCP will transfer the approved Grant Funds prior to grant awards being made each program year (anticipated in May/June of each year).

San Diego Foundation shall promptly refund to SDCP any deposited Grant Administration Fees for services not yet provided or Grant Funds not yet awarded as follows: (1) in the event SDCP terminates this Agreement prior to the award of any Grant Funds, San Diego Foundation will refund all deposited Grant Funds and Grant Administration Fees, less reasonable amounts for services satisfactorily provided through the effective date of termination, which amount shall not exceed the Grant Administration Fee associated with the deposited Grant Funds or applicable Task Order; or (2) if less than the total program budget in grant funds is awarded, San Diego Foundation will refund the relevant Grant Funds and associated Grant Administration Fee to SDCP.



SAN DIEGO COMMUNITY POWER Staff Report – Item 16

To: San Diego Community Power Board of Directors
From: Karin Burns, Chief Executive Officer
Subject: Approval of Recommendation of In-House General Counsel
Date: September 28, 2023

RECOMMENDATION

1. Approve General Counsel job description
2. Amend the salary schedule to include the General Counsel and approve a salary range
3. Discuss Recruitment Process and Consider Appointing an Ad-Hoc Recruitment Committee

BACKGROUND

On October 1, 2019, the Founding Members of San Diego Community Power (SDCP) adopted the Joint Powers Agreement (JPA) which was amended and restated on December 16, 2021. Section 4.5.3 of the JPA specifies that one of the general purposes of the SDCP Board of Directors (Board) is to retain legal counsel.

Section 5.6 of the JPA further specifies that the Board shall appoint a qualified person to act as SDCP's General Counsel, who shall not be a member of the Board, or an elected official or employee of a Party. The JPA is otherwise silent on whether the counsel is to be an outside contractor or an employee of SDCP.

On October 31, 2019, the Board discussed the need to retain legal support as soon as possible. Subsequently an ad-hoc committee made up of former Board members Steve Padilla and Monica Montgomery Steppe was created to support the Interim Executive Officer in this effort. The Board members and Interim Executive Officer agreed upon an approach to directly solicit proposals from firms in order to execute an agreement and secure General Counsel support.

Staff requested proposals/letters of engagement from several firms with relevant experience, all but one of whom were unavailable due to capacity or potential conflicts of interest. Ultimately, Best, Best & Krieger (BB&K) responded with both availability and the expertise needed to provide General Counsel legal services for. BB&K has extensive experience with municipal/public agency clients as well as experience with Community Choice Energy programs in California. Finally, on November 21, 2019, SDCP entered

into a professional services agreement (Agreement) with BB&K that was recently amended by the Board on April 28, 2022, that allowed BB&K to continue to serve as SDCP's General Counsel.

Best organizational practice suggests revisiting outside services every few years. BB&K having served nearly 4 years as SDCP's outside General Counsel raises the question of whether to continue to renew their contract annually, re-open a search for an outside General Counsel, or consider instead an in-house General Counsel.

On August 24, 2023, the Board provided direction to staff to review and analyze options for an in-house General Counsel and to provide a recommendation to the Board.

SDCP has grown rapidly since its founding in 2019, transitioning from a start-up to a stable organization. SDCP is currently a 40-person agency, growing to over 60 by the end of fiscal year (FY) 2023-24. We have fully enrolled all seven member agencies and manage an approximately \$1.2 billion budget. Other agencies the size of SDCP (e.g., Clean Power Alliance, Marin Clean Energy) have already hired in-house counsel and often have an in-house legal team of two or three staff.

To accommodate SDCP's growth, the Board additionally approved an amendment to its contract with Futura Energy Group, LLC, on May 25, 2023, for recruitment services through March 31, 2024.

ANALYSIS AND DISCUSSION

At the direction of the Board, staff analyzed the possibility of adding an in-house General Counsel by reviewing the qualitative benefits, current and projected costs, and best practices.

Qualitative Benefits

During the last Board meeting on August 24, 2023, the Board discussed several of the tradeoffs in regards to hiring an in-house General Counsel. Among the reasons discussed by the Board, the benefits included:

- **Full-time dedication** to the organization and its priorities
- **Strategic support to the executive team**
- **Additional leadership** to the organization as a whole
- **Increased staff productivity and efficiency** as the General Counsel would have direct interaction and communication with various outside counsel as needed
- Can help to **determine what issues require outside legal expertise** or if issues can be addressed in-house, benefiting SDCP leadership by providing back valuable time for leadership to focus on their priorities
- Additional **legal dimension to key decisions**, which should improve the organization's risk management profile
- Additional **strategic decision-making element** focused on the organization's needs **without potential conflict of interest or outside influence**



- **An internal attorney is a partner**, where the organization in the eyes of outside counsel is a *client*
- Works as **part of the executive leadership team** and an **extension of the Board**, interacting with peers, staff and Board members, not with “clients”
- Will have an **aligned objective to support and protect the organization** in both strategy and tactical priorities
- Legal background and industry experience may better align with the organization’s, understanding issues from the ground up (i.e. direct, internal public agency, utility experience)
- Will be able to **better understand the details and relationships** of SDCP as their core role and will be able to provide **more comprehensive support** instead of situational or project-specific advice
- **Solutions Support**: Outside General Counsel typically provides advice on what the organization cannot do. In-house General Counsel is more likely to provide a mindset that focuses on solutions while protecting SDCP from legal risks.
- **Confidence and Conscience**: Will operate as the organization’s conscience. A trusted advisor on the team to guide decisions, help manage crises and risks, and provide sound legal and organizational advice. And most importantly are the issues that arise when the in-house General Counsel also has an internal stake in the organization.

Meanwhile, the Board also discussed the benefits to retaining an external General Counsel which included:

- **Usually more cost-effective** than in-house General Counsel, primarily because they have a diverse set of expertise that can be called upon quickly and due to the ebb and flow of legal work at various times
- **Faster response times** within different areas because of the variety of legal expertise within a firm that can be quickly drawn upon without the need for additional contracting
- An **in-house General Counsel**, as a single individual, will likely have more **limited legal expertise**

Current and Projected Costs

While the Board discussed the tradeoffs for hiring an in-house General Counsel, staff analyzed SDCP’s spending across legal practice areas.

SDCP Legal Expenses by Practice Area from 8/1/22 to 7/31/23		
Legal Practice Area	Annualized Spending (8/1/22-7/31/23)	Monthly Spending (8/1/22-7/31/23)
Regulatory	\$340,312	\$28,359
Compliance	\$217,628	\$18,136
General	\$206,310	\$17,192
Financial/Power Procurement	\$188,368	\$15,697
Public Records Requests	\$44,908	\$3,742

Labor and Employment	\$26,053	\$2,171
Reimbursable Costs	\$3,755	\$313
Litigation	\$1,643	\$137
Legal Fees (Excluding Reimbursable Costs)	\$1,025,221	\$85,435

The general, public records requests, labor and employment, reimbursable costs and litigation practice areas are functions that will be expected to be performed directly by an in-house General Counsel and total \$278,914 in annualized spending.

Meanwhile, the practice areas of regulatory, compliance, and financial/power procurement are considered specialty practices which may not be the specialty of an in-house General Counsel. These costs totaled \$746,307. And while these practice areas may not be the specialty of an in-house General Counsel, staff expect that an in-house General Counsel may reduce spending in these areas given their inherent familiarity with legal matters combined with their understanding of SDCP.

An in-house General Counsel is expected to be within SDCP pay grade 18 which has a mid-point salary of \$294,515 and a mid-point salary with fringe benefits totaling \$352,431. Given the annualized spending of \$278,914 for current general counsel services combined with small potential savings from the \$746,307 in spending from specialty practice areas from external counsel, SDCP expects a net neutral cost from hiring an in-house General Counsel.

Best Practices

An analysis of a sample of SDCP peer community choice aggregators (CCAs) shows the usage of similar legal practice areas with spending as follows.

Community Choice Aggregator (CCA) Comparison			
CCA	FY24 Budget Professional Services (Legal, Policy, Reg.)	Staff (Legal)	Staff (Legal/Policy/Reg.)
East Bay Community Energy	\$3,509,000	1	1
San Diego Community Power	\$2,176,000	0	3
Central Coast Community Energy	\$1,844,660	0	2
Peninsula Clean Energy	\$1,574,558	3	6
Marin Clean Energy	\$1,487,000	4	9
Clean Power Alliance	\$1,054,000	3	6

Among the peer CCAs that were reviewed, the large majority had a dedicated in-house General Counsel. Even further, Peninsula Clean Energy, Marin Clean Energy, and Clean Power Alliance all had a dedicated in-house legal team to bolster the in-house General Counsel function. Finally, Marin Clean Energy, in addition to its in-house General Counsel and dedicated in-house legal team, also retained an in-house Associate General Counsel dedicated to policy along with an in-house policy team.

Further, each of the peer CCAs that were reviewed have been established for 6+ years and it has clearly been the best practice for CCAs to establish not only an in-house General Counsel, but also dedicated legal staff.

Given the qualitative reasons, projected costs and best practices, SDCP recommends that the agency move forward with hiring an in-house General Counsel.

However, while several CCAs had an in-house General Counsel and legal staff, it should still be noted that each of these CCAs also had substantial spending in its professional services budget related to specialty legal services. Staff therefore expect that SDCP will still need to maintain a level of spending for external counsel especially for its specialty practice areas.

Job Description

We received support from various CCAs and interviewed the General Counsel of two of them prior to drafting the job description.

The General Counsel will provide legal advice and information to SDCP to inform business decisions that follow local, state, and federal law. Key areas of responsibility will be in contract & transactional law (primary), municipal law (secondary), and employment law (potential), similar to how SDCP utilizes its current, outsourced General Counsel. This position will manage legal matters arising from general operations for the agency including, but not limited to, the contracting process, agency compliance, and review of procedures and policies to ensure they are in compliance with municipal, state, and federal law.

The position will provide legal advice in advanced transactional areas of the law, including but not limited to review, evaluation, and finalization of contracts, cybersecurity, and related policies. The General Counsel will be a resource to staff and senior management and will be consulted on legal matters impacting the agency. This position will also be required to consistently assess and monitor risk and communicate risk factors and recommendations to executive management.

More details on the General Counsel job description are included in the attachments.

Salary Schedule

SDCP did a full salary survey of the General Counsel position that analyzed similar positions across the energy industry and across peer CCAs. Given the sensitivity, high visibility, and reporting structure of the position, staff propose that the salary schedule be amended to include the General Counsel at SDCP pay grade 18, which has a midpoint salary of \$294,515.

SDCP Pay Grades				
EEO Category	Pay Grade	Minimum	Midpoint	Maximum
Administrative Support Workers	11	\$62,776	\$69,160	\$100,974

Administrative Support Workers	12	\$74,054	\$96,292	\$118,530
Professionals	13	\$87,461	\$113,635	\$139,916
Professionals	14	\$100,974	\$136,405	\$171,623
First/Mid-Level Professionals and Managers	15	\$121,190	\$163,643	\$205,990
First/Mid-Level Professionals and Managers	16	\$145,449	\$196,308	\$247,274
First/Mid-Level Professionals and Managers	17	\$174,496	\$235,676	\$296,643
Executive	18	\$210,353	\$294,515	\$378,678
Executive	19	\$262,808	\$368,144	\$473,480

Hiring Process

With the sensitivity and specialized area of recruitment for the General Counsel, staff recommends utilizing the Board-approved contract with Futura Energy Group, LLC to source candidates for the position. This firm has extensive experience in recruiting in the energy sector and has completed several successful recruitments for SDCP including:

1. Chief Operating Officer (Jack Clark)
2. Director of Public Affairs (Jen Lebron)
3. Director of People (Chandra Pugh)
4. Senior Contracts Manager (Kenny Key)
5. Financial Analyst (Christopher Do)
6. Program Associate (Alyson Scurlock)
7. Portfolio Manager (Asikeh Kanu)
8. Senior Settlements Manager (Tacko Diaite-Koumba)
9. Senior Portfolio Manager (Andrea Torres)
10. Portfolio Manager (Karlee Mink)
11. Senior Development Manager (Morgan Adam)
12. Senior Marketing Manager (Jill Monroe)

Staff further recommends using the typical SDCP hiring process to further screen and vet candidates. This process includes an initial screening interview in which final candidates are selected for an in-person interview consisting of a group interview panel and an executive interview panel.

Finally, given the sensitivity of the position and the inherent interaction with/reporting to the Board of Directors, staff additionally recommend the Board considers appointing an Ad-Hoc Recruitment Committee to serve as a final interview panel consisting of at least two, up to three members of the Board, and at least 1, up to two SDCP Executives (the CEO and COO or CFO) for final selection, for a minimum of three and maximum of five committee members.



COMMITTEE REVIEW

N/A

FISCAL IMPACT

The SDCP budget included \$450,000 for external general-counsel services for FY 2023-24 but has had annualized spending of \$278,914 for general counsel services from 8/1/22 to 7/31/23. An in-house General Counsel is expected to cost at least \$352,431 in salary and fringe benefits at SDCP pay grade 18. And while the in-house General Counsel may also help offset spending of \$746,307 from specialty practice areas from external counsel, SDCP expects a net neutral cost from hiring an in-house General Counsel with a small potential for savings depending on the expertise in specialty practice areas from the potential in-house General Counsel.

ATTACHMENTS

- A. General Counsel Job Description



Job Description

General Counsel

The Job

The General Counsel provides legal advice and information to San Diego Community Power (SDCP) to inform business decisions that follow local, state, and federal law. Key areas of responsibility are in contract/ transactional law, municipal law, and employment law. This position manages legal matters arising from general operations for the agency including, but not limited to, the contracting process, agency compliance, and review of procedures and policies to ensure they are in compliance with municipal, state, and federal law. The General Counsel provides legal advice in advanced transactional areas of the law, including but not limited to review, evaluation, and finalization of contracts, cybersecurity, and related policies. The General Counsel is a resource to staff and senior management and should be consulted on legal matters impacting the agency. This position will also be required to consistently assess and monitor risk and communicate risk factors and recommendations to executive management. The General Counsel works closely with the Executive team, C-Suite, Leadership team, and Board of Directors. The General Counsel possesses the skill, experience, ability, background, and knowledge to perform the duties and services listed below.

Qualities Desired:

- Demonstrate good judgement and integrity.
- High attention to detail with strong organizational skills.
- Communicate effectively, orally, and in writing; and the ability to translate complex technical information into non-technical language.
- Have a strong work ethic and be comfortable taking initiative/working in a fast paced, start-up environment.
- Work well on diverse teams and be highly collaborative.
- Devote time, ability, and attention equivalent to the professional effort necessary to fulfill duties.

Primary Responsibilities of this Role:

- Provide general legal services to SDCP.
- Provide advice to and representation of SDCP departments, divisions and offices, including but not limited to: preparing written and oral opinions; the management and oversight of civil actions, administrative proceedings, civil trials, and appeals.

- Preparing and approving agreements for execution authorized by the Board as well as the Chief Executive Officer.
- Prepare and approve resolutions, policies, and rules and regulations for adoption by the Board and other legislative bodies; supervision of outside counsel; and attendance at meetings of the Board, and other boards, commissions, and committees.
- Manage additional outside Counsel as needed.
- Duties will require flexibility in work hours and location of work, including attendance at Board of Director's meetings or other derivative Board meetings or necessary meetings prescheduled for the Department Heads, Directors, or the SDCP Chief Executive Officer.
- Perform the duties required hereunder in accordance with all local, state, and federal laws applicable to SDCP operations.
- Other duties as assigned.

Required Skills:

- Expertise and experience in transactional law, including reviewing contracts such as Professional Services Agreements
- Excellent written, speaking, and presentation skills, with the ability to clearly explain complex technical matters and instill confidence.
- Ability to identify and address legal issues in ongoing operations and new business objectives.
- Developed business sense with ability to quickly understand SDCP's business objectives and assess and anticipate legal and risk issues impacting SDCP's enterprise.
- Experience with clerical duties and court proceedings.
- Perform, and carry out in good and professional manner, the duties, and responsibilities of the position of General Counsel.

Minimum Qualifications

Education/Experience:

- Juris Doctor (J.D.) from an accredited law school and must be admitted to the California State Bar to practice law.
- 12 years of legal experience, with energy and/or utility experience preferred.

Desired Qualifications / Knowledge Of:

- Municipal law
- Energy-related goods and services



- Contract language specific to the utility industry in a wide range of areas.
- California laws governing the operation of electric utilities, in particular, Community Choice Aggregation (CCA) programs, including data privacy requirements.
- Terminology typically used in the electric utility industry.
- State and municipal law governing public agencies including the Brown Act and the California Public Records Act.
- Best practices for employment law.

Licenses/Certificates

Possession and continued maintenance of a valid class C California driver's license, automobile insurance and a safe driving record.

Working Conditions

The position requires typical activities of an office work environment – sitting, standing, computer work, in person and online meeting participation, occasional carrying of objects, and occasional travel locally or by plane, etc. The position occasionally requires lifting and/or moving objects up to 40 pounds. SDCP will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.





SAN DIEGO COMMUNITY POWER Staff Report – Item 17

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director and Kenny Key, Sr. Contracts Manager

Via: Karin Burns, Chief Executive Officer

Subject: Long-Term Resource Adequacy Agreements with EnerSmart

Date: September 28, 2023

RECOMMENDATION

Adopt the five proposed 10-year Resource Adequacy Agreements with EnerSmart's subsidiaries, set up as LLCs for each project, for a total purchase of 13.5 MW of Resource Adequacy (EnerSmart Alpine BESS LLC 3 MW, EnerSmart El Cajon BESS LLC 4.5 MW, EnerSmart Imperial Beach BESS LLC 3 MW, EnerSmart Los Coches BESS LLC 1.5 MW, EnerSmart Mesa Heights BESS LLC 1.5 MW), and authorize the CEO to execute the agreements.

BACKGROUND

As San Diego Community Power (SDCP) strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term agreements of at least 10 years in duration are integral components of its portfolio. Long-term resource adequacy agreements provide facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term agreement that SDGP signs with a developing facility will underpin a new, incremental project.

In D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, incremental generation facilities that will achieve commercial operation during 2023 through 2026. Additionally, SDGP has set internal targets to procure 600MW of capacity from local wholesale projects by 2035.

The agreements proposed originated from an offer SDGP received in 2022 via its Local RFI Solicitation. SDGP engaged with EnerSmart after short-listing the projects and has reached terms mutually agreeable to both parties.

ANALYSIS AND DISCUSSION

Staff negotiated the five attached Long-Term Resource Adequacy Agreements for the purchase of resource adequacy from five stand-alone battery-storage projects being developed by EnerSmart in San Diego County.

Resource Adequacy would help with SDCP's internal Local Procurement targets as well as external resource adequacy and mid-term reliability compliance requirements. Specifically these projects would help with local resource adequacy obligations.

Below is additional information regarding EnerSmart and the draft agreements.

Background on EnerSmart:

- EnerSmart is a local developer and has a management team with decades of experience in project development
- EnerSmart is planning to develop over 160 MW of stand-alone storage in San Diego across 10 projects

Contract Overview for the Five Local Projects:

- Product: Local Resource Adequacy, 13.5 MW in total
- Projects: A total of 27 MW/54 MWh 2-hour lithium-ion battery energy systems
- Project location: El Cajon, Imperial Beach, Mesa Heights, Alpine, Los Coches
- Guaranteed Initial Resource Adequacy Delivery Date: between 9/15/24 and 2/15/25
- Contract term: 10 years
- Pricing:
 - BESS – Fixed price for resource adequacy
- SDCP receives financial compensation if EnerSmart fails to meet certain performance requirements

Community Benefits:

- EnerSmart plans to use local labor when possible and union labor on portions of each project
- EnerSmart commits to prevailing wage for all projects
- ESS projects benefit the community by providing clean energy to the grid when it's needed the most, helping to reduce the local risk of brownouts and blackouts.
- ESS provides local storage reducing the need for additional transmission to import energy



COMMITTEE REVIEW

N/A

FISCAL IMPACT

The competitive resource adequacy pricing of the agreement is confidential, but the long-term purchase of resource adequacy will provide SDCP with significant value and cost certainty over the term of this agreement.

ATTACHMENTS

- A. Long-Term Resource Adequacy Agreement with EnerSmart El Cajon BESS, LLC (redacted version for commercially sensitive information)
- B. Long-Term Resource Adequacy Agreement with EnerSmart Imperial Beach BESS, LLC (redacted version for commercially sensitive information)
- C. Long-Term Resource Adequacy Agreement with EnerSmart Mesa Height BESS, LLC (redacted version for commercially sensitive information)
- D. Long-Term Resource Adequacy Agreement with EnerSmart Alpine BESS, LLC (redacted version for commercially sensitive information)
- E. Long-Term Resource Adequacy Agreement with EnerSmart Los Coches BESS, LLC (redacted version for commercially sensitive information)



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**RESOURCE ADEQUACY AGREEMENT
COVER SHEET**

A. Parties

Seller: EnerSmart El Cajon BESS LLC, a California limited liability company

Buyer: San Diego Community Power, a California joint powers authority

B. Unit Information

Unit Name:	EnerSmart El Cajon
Location:	1523 E Main St. El Cajon, CA
CAISO Resource ID:	21NGR18729
Unit SCID:	AESM
Unit NQC:	4.5 MW
Unit EFC:	4.5 MW
Resource Type:	Battery Energy Storage System
Resource Category (1, 2, 3 or 4):	4
FCR Category (1, 2 or 3):	2
Path 26 (North or South):	SP26
Local Capacity Area (if any, as of Effective Date):	SDGE
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	TBD
Run Hour Restrictions	N/A

C. RA Product and Attributes

Throughout the Delivery Term, Seller shall provide Buyer with the Designated RA Capacity having the following attributes:

☒ RAR Attributes

☐ RAR Attributes with FCR Attributes

☐ LAR Attributes

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☒ LAR Attributes with FCR Attributes

☐ FCR Attributes

D. Delivery Term

The Delivery Term is ten (10) Contract Years.

E. Contract Quantities

The Contract Quantities for each Showing Month of the Delivery Term shall be:

RAR Attributes: [REDACTED]

LAR Attributes: [REDACTED]

FCR Attributes: [REDACTED]

F. Contract Price

The Contract Price shall be: [REDACTED]

G. Seller's Security Amounts

Performance Security: [REDACTED]

H. Milestones

Milestone	Date for Completion
Site Control obtained	July 2020
Interconnection Agreement executed	October 2021
Expected Construction Start Date	March 2024
Full Capacity Deliverability Status obtained	July 2024
Guaranteed Initial Delivery Date	February 15, 2025

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PREAMBLE

This Resource Adequacy Agreement (“Agreement”) is entered into between **EnerSmart El Cajon BESS LLC**, a California limited liability company (“Seller”) and **San Diego Community Power**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties,” as of [REDACTED] (the “Effective Date”). All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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


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

ARTICLE 1: DEFINITIONS

- 1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2 “Agreement” has the meaning set forth in the Preamble.
- 1.3 “Alternate Capacity” means any replacement RA Capacity having at least equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Product provided by the Unit; *provided*, if any portion of the Designated RA Capacity that Seller is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Seller may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product).
- 1.4 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Agreement, including without limitation, the Tariff.
- 1.5 “Availability Incentive Payments” means Availability Incentive Payments as defined in the Tariff.
- 1.6 “Availability Standards” means Availability Standards as defined in the Tariff.
- 1.7 “Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of

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action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

- 1.8 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.
- 1.9 “Buyer” has the meaning set forth in the Preamble.
- 1.10 “CAISO” means the California Independent System Operator or its successor.
- 1.11 “CAISO Control Area” means the Control Area (as defined in the Tariff) that is operated by the CAISO.
- 1.12 “CAISO Controlled Grid” has the meaning set forth in the Tariff.
- 1.13 “CAISO Offer Requirements” has the meaning set forth in Article 4.
- 1.14 “Capacity Replacement Price” 
- 1.15 “CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.
- 1.16 “Claiming Party” has the meaning set forth in Section 3.12.
- 1.17 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
- 1.18 “Compliance Issue” has the meaning set forth in Article 13.
- 1.19 “Compliance Obligation” means the RAR, Local RAR, FCR, and any other resource adequacy or capacity procurement requirements imposed on LSEs by the CPUC pursuant to the Resource Adequacy Rulings, by the CAISO, by the WECC, or by any other Governmental Body having jurisdiction.

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- 1.20 “Confidential Information” has the meaning set forth in Article 11.
- 1.21 “Construction Start” has the meaning set forth in Section 16.1(a).
- 1.22 “Construction Start Date” has the meaning set forth in Section 16.1(a).
- 1.23 “Contract Price” has the meaning set forth in Section F of the Cover Sheet.
- 1.24 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Term, the amount of Product (in MWs) set forth in Section E of the Cover Sheet, which Seller has agreed to provide to Buyer from the Unit for such Showing Month, which amount may be amended in accordance with Section 16.2(b).
- 1.25 “Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date; and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.
- 1.26 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the Terminated Transaction.
- 1.27 “CPUC” means the California Public Utilities Commission or its successor.
- 1.28 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.29 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.30 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s.
- 1.31 “Defaulting Party” has the meaning set forth in Section 5.1.
- 1.32 “Delivery Point” has the meaning set forth in Section 3.4.

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- 1.33 “Delivery Term” means the period of Contract Years set forth on the Cover Sheet beginning on the Initial Delivery Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.
- 1.34 “Designated RA Capacity” shall be equal to, with respect to each Showing Month of the Delivery Term, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity that Seller has elected to provide as Alternate Capacity from one or more Replacement Units in accordance with Section 3.6.
- 1.35 “Development Cure Period” has the meaning set forth in Section 16.2(c).
- 1.36 “Dispute” has the meaning set forth in Section 17.10(a).
- 1.37 “Dispute Notice” has the meaning set forth in Section 17.10(a).
- 1.38 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.39 “Effective Date” is the date set forth in the Preamble.
- 1.40 “Effective Flexible Capacity” or “EFC” means the capacity of a resource that can be counted towards an LSE’s Flexible Capacity Requirements, as identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or other Governmental Body having jurisdiction.
- 1.41 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.
- 1.42 “EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.
- 1.43 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- 1.44 “Event of Default” has the meaning set forth in Section 5.1.
- 1.45 “FCR Attributes” means, with respect to a Resource Adequacy Resource, any and all flexible resource adequacy attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the Resource Adequacy Rulings, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.
- 1.46 “FCR Showings” 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 Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.

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- 1.47 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.48 “Flexible Capacity Category” has the meaning set forth in the Resource Adequacy Resource.
- 1.49 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.50 “Flexible RA Product” means that the Product includes FCR Attributes, if applicable, as specified in Sections C and E of the Cover Sheet.
- 1.51 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under the Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply (except to the extent due to a Force Majeure); or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider (i) unless such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) except to the extent such curtailment is due to Transmission Provider; *provided, however*, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.
- 1.52 “Full Capacity Deliverability Status” or “FCDS” has the meaning set forth in the Tariff.
- 1.53 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.
- 1.54 “Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Body and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Unit.
- 1.55 “Governmental Body” means (a) any federal, state, local, municipal or other government; (b) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; (c) any court or governmental tribunal, but in all cases, excludes both Parties; and (d) CAISO.

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- 1.56 “Governmental Charges” has the meaning set forth in Section 8.2.
- 1.57 “Guaranteed Initial Delivery Date” is the date set forth in Section H of the Cover Sheet, subject to extension pursuant to Section 16.2(c), but as limited by Section 16.2(d).
- 1.58 “Initial Delivery” has the meaning set forth in Section 16.2(a).
- 1.59 “Initial Delivery Date” means the date on which Initial Delivery is achieved.
- 1.60 “Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Unit and Seller’s Interconnection Facilities will be interconnected with the Transmission System during the Delivery Term.
- 1.61 “Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Unit with the Transmission System in accordance with the Interconnection Agreement.
- 1.62 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.
- 1.63 “Investment Grade” means a Credit Rating of at least “[REDACTED]” from Moody’s (or, if such entities cease to provide Credit Ratings, from another comparable rating agency that is reasonably acceptable to the Parties).
- 1.64 “Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).
- 1.65 “Joint Powers Agreement” means that certain Joint Powers Agreement dated October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.
- 1.66 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.67 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the Resource Adequacy Rulings, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body,

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defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.

- 1.68 “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 Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.69 “Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least “ ” with an outlook designation of “ ” with an outlook designation of “ ” from Moody’s, in a form as set forth in Exhibit A or as otherwise acceptable to Buyer.
- 1.70 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.
- 1.71 “LRA” has the meaning set forth in the Tariff.
- 1.72 “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).
- 1.73 “Milestones” has the meaning set forth in Section H of the Cover Sheet.
- 1.74 “Monthly RA Capacity Payment” has the meaning specified in Section 3.10(a) hereof.
- 1.75 “Moody’s” means Moody’s Investor Services, Inc. or its successor.
- 1.76 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.77 “Net Qualifying Capacity” or “NQC” has the meaning set forth in the Tariff.
- 1.78 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.79 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.80 “Notification Deadline” has the meaning set forth in Section 3.6.
- 1.81 “Notifying Party” has the meaning set forth in Section 17.10(a).
- 1.82 “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the obligations of the Unit under the CAISO Offer Requirements consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage.
- 1.83 “Participating Transmission Owner” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain

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transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. The Participating Transmission Owner for purposes of this Agreement is San Diego Gas & Electric.

- 1.84 “Performance Security” means collateral in the form of cash or a Letter of Credit in an amount set forth in Section G of the Cover Sheet.
- 1.85 “Planned Outage” means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.86 “Product” has the meaning set forth in Section 3.1.
- 1.87 “Progress Report” means a report substantially in the form set forth in Exhibit F, the requirements for which are further set forth in Section 16.1(c).
- 1.88 “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CPUC, CAISO, or other Governmental Body authorized to make such determination under Applicable Laws, including the Resource Adequacy Rulings. RA Capacity encompasses the applicable RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit.
- 1.89 “RAR” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.90 “RAR Attributes” means, with respect to a Resource Adequacy Resource, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, Resource Adequacy Rulings, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.
- 1.91 “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 Tariff or Resource Adequacy Rulings, or to an LRA having jurisdiction.
- 1.92 “Recipient Party” has the meaning set forth in Section 17.10(a).
- 1.93 “Regulatory Event” has the meaning set forth in Section 17.7.
- 1.94 “Reliability Compensation Services Tariff” has the meaning set forth in the Tariff.
- 1.95 “Replacement Capacity” has the meaning specified in Section 3.8 hereof.

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- 1.96 “Replacement Unit” means a unit meeting the requirements specified in Section 3.6 hereof that is located within the CAISO Control Area and that is capable of providing Alternate Capacity. A Replacement Unit may not be a coal-fired or nuclear generating resource.
- 1.97 “Required TPD Allocation” means an allocation of TP Deliverability from the CAISO that is sufficient for the Unit to obtain Full Capacity Deliverability Status for at least the Contract Quantity.
- 1.98 “Residual Unit Commitment” has the meaning set forth in the Tariff.
- 1.99 “Resource Adequacy Plan” has the meaning specified in the Tariff.
- 1.100 “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.
- 1.101 “Resold Product” has the meaning set forth in Article 12.
- 1.102 “Resource Adequacy Resource” has the meaning set forth in the Tariff.
- 1.103 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.104 “RMR Contracts” has the meaning set forth in the Tariff.
- 1.105 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.106 “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 Term at a specified Delivery Point.
- 1.107 “Scheduling Coordinator” has the same meaning as in the Tariff.
- 1.108 “Security Interest” has the meaning set forth in Section 14.3(a).
- 1.109 “Seller” has the meaning set forth in the Preamble.
- 1.110 “Settlement Amount” means, with respect to the Non-Defaulting Party, the aggregate Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of a Terminated Transaction pursuant to Section 5.2.

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- 1.111 “Showing Month” shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the Resource Adequacy Rulings or Tariff. For illustrative purposes only, pursuant to the Resource Adequacy Rulings in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.112 “Site” means the real property on which the Unit is located as identified in Appendix D.
- 1.113 “Site Control” means that, for the Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.
- 1.114 “Substitution Rules” has the meaning specified in the Tariff.
- 1.115 “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 Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.116 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.117 “Term” has the meaning set forth in Section 2.1(a).
- 1.118 “Terminated Transaction” has the meaning set forth in Section 5.2.
- 1.119 “Termination Payment” has the meaning set forth in Section 5.3.
- 1.120 “TP Deliverability” has the meaning set forth in the CAISO Tariff.
- 1.121 “Transmission Provider” means the CAISO.
- 1.122 “Transmission System” means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Delivery Point.
- 1.123 “Unit” shall mean the storage asset described in Section B of the Cover Sheet and Exhibit D hereof and any Replacement Units, from which Product is provided by Seller to Buyer. A Unit may not include a coal-fired or nuclear generating resource.
- 1.124 “Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

ARTICLE 2: TERM; DELIVERY TERM; CONDITIONS PRECEDENT

2.1 Term.

The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, then-owing indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Performance Security is released and/or returned (the “Term”). Upon Seller’s request, Buyer will promptly confirm in writing the Initial Delivery Date following Seller’s completion of all conditions precedent hereto. All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 17.2 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 11 (Confidentiality) survive the end of the Delivery Term for an additional two (2) years; (iii) all rights and obligations under Section 16.2(f) (Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date) survive early termination of this Agreement for an additional two (2) years; and (iv) all provisions relating to limitations of liability survive without limit.

2.2 Conditions Precedent to Initial Delivery Date.

Seller shall provide notice of expected Initial Delivery Date to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Unit and to enable Seller to deliver the Product to Buyer.

(d) Seller shall have provided to Buyer a certification of Seller and a licensed professional engineer, substantially in the form attached hereto as Exhibit C, demonstrating that the Initial Delivery Date has occurred.

(e) Seller shall have provided Performance Security to Buyer as required by Section 14.2.

(f) As of the Initial Delivery Date, no Event of Default on the part of Seller shall have occurred and be continuing.

(g) Seller shall have obtained Full Capacity Deliverability Status.

(h) Subject to Section 16.2(b), Seller shall have obtained an NQC for the Unit of at least 4.5 MW.

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(i) In accordance with Section 3.7(a), Seller shall have (i) submitted, or caused the Unit's SC to submit, a notice to Buyer including Seller's proposed Supply Plan for the first Showing Month of the Delivery Term and (ii) submitted, or caused the Unit's SC to submit, a Supply Plan to CAISO for the first Showing Month of the Delivery Term.

(j) Seller shall have delivered to Buyer all insurance documents required under Article 15.

(k) As of the Initial Delivery Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1 Resource Adequacy Capacity Product.

During the Delivery Term, Seller shall provide Buyer with RA Capacity from the Unit in the amount of the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Sections C and E of the Cover Sheet to this Agreement with respect to each Showing Month (the "Product"). Seller's obligation to deliver the Contract Quantity of Product for each day of the Delivery Term is firm and will not be excused for any reason other than Force Majeure.

If the Unit is not available to provide the full amount of the Contract Quantity with respect to an applicable Showing Month for any reason other than Force Majeure, including, without limitation, any Outage or any adjustment of the RA Capacity of any Unit, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 3.6 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 3.6, then Seller shall be liable for damages and/or be required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 3.8 and 3.9 hereof.

Notwithstanding anything to the contrary herein, no energy or ancillary services associated with the Unit is required to be made available to Buyer 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, pursuant to the Tariff, any RA Capacity that is in excess of the Unit's Contract Quantity and any RAR Attributes, LAR Attributes, or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Agreement.

3.2 Seller's and Buyer's Obligations.

Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Designated RA Capacity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price for the Designated RA Capacity. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

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3.3 [Reserved].

3.4 Delivery Point.

The “Delivery Point” for the Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

3.5 Planned Outages.

Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Unit as a Resource Adequacy Resource that is subject to the Availability Standards to qualify for an “Approved Maintenance Outage” under the CAISO Tariff. Seller shall reimburse Buyer for any cost Buyer incurs to provide Replacement RA, as required by the CAISO, during any Planned Outages (including the cost of procuring Replacement RA for a full calendar month during any month in which a Planned Outage is planned or scheduled). Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Unit shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion.

3.6 Alternate Capacity and Replacement Units.

(a) The “Notification Deadline” for a given Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding CPUC RAR Showings, LAR Showings and/or FCR Showings, as applicable for that Showing Month, or (b) submission of the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, or if Seller desires to provide the Contract Quantity for any Showing Month from a Replacement Unit, then Seller may, at no additional cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and any Replacement Unit(s) up to an amount equal to the Contract Quantity for the applicable Showing Month; *provided*, in each case, Seller shall notify Buyer of the amount of Product that Seller will not be able to deliver from the Unit and the portion of the Contract Quantity for which Seller intends to provide Buyer with Alternate Capacity from identified Replacement Unit(s) no later than the Notification Deadline.

(c) If Seller fails to provide Buyer the Contract Quantity of Product from the Unit or a Replacement Unit for a given Showing Month during the Delivery Term, then Buyer may, but shall not be required to, purchase replacement Product from a third party.

3.7 Delivery of Product.

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Unit’s Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each

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Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) The Designated RA Capacity is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the Designated RA Capacity from Seller's Supply Plan for any Showing Month during the Delivery Term, has been accepted by the CAISO. If CAISO rejects either the Supply Plan or Buyer's Resource Adequacy Plan with respect to any part of the Designated RA Capacity in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable Notification Deadline for the relevant Showing Month.

(c) Consistent with the Substitution Rules, take all action, or cause each Unit's Scheduling Coordinator to take all action, to allow Buyer or a subsequent purchaser under Article 12 to utilize the Contract Quantity during each Showing Month under the Substitution Rules, including, but not limited to, ensuring that the Designated RA Capacity being provided in the pertinent Showing Month will qualify for substitution under the Substitution Rules and providing Buyer or subsequent purchaser under Article 12 with all information needed to utilize the Substitution Rules.

3.8 Damages for Failure to Provide Designated RA Capacity.

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller; *provided*, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product) ("Replacement Capacity"), in either case, by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer, so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer, on the date payment would otherwise be due in respect of the Showing Month for which the failure occurred, an amount equal to the positive difference, if any, between (A) the product of the Capacity Replacement Price times the amount of the Designated RA Capacity not provided by Seller and (B) the product of the Contract Price times the amount of the Designated RA Capacity not provided by Seller. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller pursuant to Article 6 of this Agreement.

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3.9 Indemnities for Failure to Deliver Contract Quantity.

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

(a) Seller's failure to provide any portion of the Designated RA Capacity for the respective Showing Month for the Delivery Term; or

(b) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right, or a subsequent purchaser's right, to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; *provided*, 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 costs, 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.

3.10 Monthly RA Capacity Payment.

Buyer shall make a Monthly RA Capacity Payment to Seller for the Unit, in arrears, after the applicable Showing Month. The Parties agree that all invoices under this Agreement shall be due and payable on the twentieth (20th) day of the month after the Showing Month; *provided*, if such day is not a Business Day, then such invoice will be due and payable on the next Business Day. The Unit's "Monthly RA Capacity Payment" shall be equal to the product of (i) the applicable Contract Price for that Showing Month, (ii) the Designated RA Capacity of the Product actually delivered by Seller to Buyer for the Showing Month and (iii) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

3.11 Allocation of Other Payments and Costs.

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the storage 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 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.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of the Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.11(a) above).

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(c) In accordance with Section 3.10 of this Agreement:

(i) all such Buyer revenues described in Section 3.11(b) received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). 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.

(ii) all such Seller, or a Unit's Scheduling Coordinator, owner, or operator revenues described in Section 3.11(a)(i)-(v), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Seller (and upon any such payment by Buyer, Buyer shall be subrogated to all rights of Seller against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues. Buyer shall be responsible for any material, incremental costs of offering, bidding, submitting, or re-selling Designated RA Capacity in such centralized capacity market.

(e) 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.

3.12 Force Majeure.

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

ARTICLE 4: CAISO OFFER REQUIREMENTS

During the Delivery Term, except to the extent the Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of the Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO the Unit's Designated RA Capacity in compliance with the Tariff, including compliance with Minimum State of Charge, Day-Ahead Availability, Real-Time Availability, Must Offer Obligation, and Default Energy Bid requirements established in Article 40 of the Tariff and Seller shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Product hereunder. (the "CAISO Offer Requirements"). Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 5: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and such Party does not fully mitigate the adverse consequences as reasonably determined by the other Party of such incorrect representation or warranty to the other Party within thirty (30) days after written notice thereof;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Section 3.8 and 3.9) if such failure is not remedied within thirty (30) Business Days after written notice;
- (d) if at any time, Seller delivers or attempts to deliver Product to the Delivery Point for sale under this Agreement that was not generated by the Unit, except for Alternate Capacity;
- (e) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Term to any party other than Buyer except as expressly permitted under this Agreement;
- (f) such Party becomes Bankrupt;
- (g) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 17.3, if applicable;

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(h) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 14 hereof if such failure is not remedied within ten (10) Business Days after written notice;

(i) 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; or

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

(i) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least [REDACTED] by Moody's;

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

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

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

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

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

(vii) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement (referred to herein as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement; and (iii) suspend performance. If the Early Termination Date occurs before the

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Initial Delivery Date, then no Settlement Amount shall be owed by either Party. If the Early Termination Date occurs after the Initial Delivery Date, then as soon as reasonably practicable, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for 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 Transaction 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). The Gains and Losses for a Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall net out (a) any Settlement Amount that is due to the Non-Defaulting Party, plus, (b) 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 14, plus (c) any or all other amounts due to the Non-Defaulting Party under this Agreement against (d) all amounts that are due to the Defaulting Party, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within ten (10) days after such notice is effective.

5.5 Disputes with Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) 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 Security to the Non-Defaulting Party in an amount equal to the Termination Payment.

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5.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Agreement is not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

ARTICLE 6: PAYMENT AND NETTING

6.1 Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment.

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

6.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party.

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receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

6.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security.

Unless the Party benefiting from Performance Security notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article 5, all amounts netted pursuant to this Article 6 shall not take into account or include any Performance Security which may be in effect to secure a Party's performance under this Agreement.

ARTICLE 7: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages.

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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

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INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8: GOVERNMENTAL CHARGES

8.1 Cooperation.

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

8.2 Governmental Charges.

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

ARTICLE 9: [RESERVED]

ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS

10.1 Mutual Representations and Warranties.

On the Effective Date, each Party represents and warrants to the other Party that:

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- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain the Unit and sell the Product therefrom in the case of Seller;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (e) 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;
- (f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and
- (h) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of Product.

10.2 Buyer and Seller Covenants.

Buyer and Seller shall, throughout the Delivery Term, 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 Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Article 12. Such commercially reasonable actions shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing the Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR, and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Term the ability to deliver the Contract Quantity from the Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability”

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standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform it to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; *provided, however*, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, Unit enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

10.3 Seller Representations, Warranties and Covenants.

Seller represents, warrants and covenants to Buyer that:

(a) Throughout the Delivery Term, the Unit qualifies as a Resource Adequacy Resource that is eligible to provide the Product pursuant to the Tariff and the Resource Adequacy Rulings;

(b) Throughout the Delivery Term, Seller owns or has the exclusive right to the RA Capacity sold under this Agreement, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(c) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

(d) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;

(e) The Unit is within the CAISO Control Area and Seller shall maintain Site Control throughout the Delivery Term;

(f) Throughout the Delivery Term, the owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(g) Throughout the Delivery Term, the respective cumulative amounts of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred from the Unit does not exceed that Unit's RA Capacity;

(h) Throughout the Delivery Term, with respect to the RA Capacity provided under this Agreement, Seller shall, and the Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RAR, LAR, and FCR;

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(i) Seller has notified the Scheduling Coordinator of the Unit that, throughout the Delivery Term, has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with this Agreement and the Tariff;

(j) Seller has notified the Scheduling Coordinator of the Unit that Seller is obligated, throughout the Delivery Term, to cause the Unit's Scheduling Coordinator to provide to the Buyer, at least fifteen (15) Business Days before the Notification Deadline, the Designated RA Capacity of the Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified the Unit's Scheduling Coordinator that, throughout the Delivery Term, Buyer is entitled to the revenues set forth in Section 3.11 of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

10.4 Buyer Representations, Warranties and Covenants.

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

ARTICLE 11: CONFIDENTIALITY

(a) Neither Party shall disclose the terms or conditions of this Agreement or information exchanged between the Parties pursuant to this Agreement ("Confidential Information") to a third party (other than the Party's or its Affiliates' employees, lenders or potential lenders, investors or potential investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to fulfill such Party's obligations under this Agreement or to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; *provided, however*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) Notwithstanding the foregoing, the Parties agree that Buyer may disclose the information pertaining to this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Agreement to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans; *provided*, each disclosing Party shall use reasonable

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efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such information. In addition, in the event Buyer resells all or any portion of the Designated RA Capacity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information to the extent such disclosure is necessary to affect such resale transaction; *provided*, such other party agrees to keep such information confidential.

(c) Seller acknowledges that Buyer is subject to the California Constitution Article 1, Section 3, and the California Public Records Act, Cal. Gov. Code § 6250 *et seq.* (“Public Records Act”) in regard to the documents comprising this Agreement, which items may constitute public records subject to inspection and copying by the public under the authority of the California Constitution and the Public Records Act. Buyer shall, consistent with those laws, use reasonable efforts to provide Seller with notice of any third-party request to inspect or copy any of the documents that comprise this Agreement, which Seller might deem confidential and exempt from disclosure, in order that Seller may timely seek to protect those documents from disclosure to the third party. Seller acknowledges and agrees that Buyer shall not be liable to Seller if Buyer makes disclosure in accordance with the California Constitution and/or the Public Records Act before Seller has timely obtained an order to prevent Buyer from making the requested disclosure to the third party.

ARTICLE 12: BUYER’S RE-SALE OF PRODUCT

No less than fifteen (15) days prior to the Notification Deadline for any Showing Month of the Delivery Term, Buyer may provide written notice to Seller of Buyer’s intent to re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. If Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement in accordance with this Article 12 (“Resold Product”), Seller agrees, and agrees to cause the Unit’s Scheduling Coordinator, to follow Buyer’s reasonable instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller’s obligations under this Agreement. Seller further agrees, and agrees to cause the Unit’s Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer’s rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product directly due to the failure of Seller or the Unit’s Scheduling Coordinator to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Agreement if Buyer had not resold the Product, including without limitation, pursuant to Sections 3.8 and 3.9.

In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Article 12) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale: (i) benefitting load serving entity SC identification number (SCID), (ii) volume (in MW) of Resold Product, and (iii) subsequent sale delivery period for Resold Product.

ARTICLE 13: COMPLIANCE OBLIGATION

The Parties acknowledge and agree that a material purpose of this Agreement is to enable Buyer to satisfy its Compliance Obligation. If, at any time during the Term, the Unit is not qualified to produce Product, including RAR Attributes, LAR Attributes, and FCR Attributes, as applicable, including due to any action by the CPUC, CAISO or any Governmental Body having jurisdiction that results in any change in Applicable Law occurring after the Effective Date that changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Buyer's Compliance Obligation (a "Compliance Issue"), the Parties shall work in good faith to revise this Agreement so that the Parties can perform their obligations regarding the purchase and sale of Product sold hereunder in order to maintain the original intent; *provided, however*, in no event shall Seller be obligated to undertake capital improvements, Unit enhancements, or the construction of new facilities. If a Compliance Issue results in the Product not being able to be counted towards Buyer's Compliance Obligation, and the Parties have not reached agreement on amendments within thirty (30) days after the initiation of discussions regarding the Compliance Issue that would allow the Product to be able to be counted towards Buyer's Compliance Obligation, Buyer may terminate this Agreement upon written notice to Seller, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party, subject to payment of any amounts owing as of the effective date of such termination.

ARTICLE 14: COLLATERAL REQUIREMENTS

14.1 [Reserved].

14.2 Performance Security.

Seller shall deliver Performance Security to Buyer on or before the Initial Delivery Date. Seller shall maintain the Performance Security in full force and effect, and shall within ten (10) Business Days after any draws made by Buyer in accordance with this Agreement replenish the Performance Security, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, termination damages, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

14.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Performance

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Security, any other cash collateral and cash equivalent collateral posted under this Agreement, and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

(b) Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Performance Security, Buyer may do any one or more of the following:

- (i) Exercise any of its rights and remedies with respect to the Performance Security, as applicable, including any such rights and remedies under Applicable Law then in effect;
- (ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Performance Security; and
- (iii) Liquidate Performance Security then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

ARTICLE 15: INSURANCE

15.1 Insurance.

Throughout the Term, Seller shall procure and maintain the following insurance coverage and require and cause its contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of the Seller in this Section 15.1 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability.

- (i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Applicable Laws or statutes, California state or federal, where Seller performs Work.
- (ii) Employers' liability insurance will not be less than [REDACTED] ([REDACTED]) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] ([REDACTED]) policy limit will apply to each employee.

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(b) Commercial General Liability.

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] ([REDACTED]) per occurrence, and an annual aggregate of not less than [REDACTED] ([REDACTED]), endorsed to provide contractual liability in said amount (subject to policy terms and conditions), specifically covering Seller's insurable indemnity obligations under this Agreement and including Buyer as an additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement. Limits may be satisfied through a combination of primary and excess policies.

(ii) An umbrella insurance policy in a minimum limit of liability of [REDACTED] dollars ([REDACTED]).

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) Business Auto.

(i) Business auto insurance for bodily injury and property damage with limits of [REDACTED] ([REDACTED]) per occurrence.

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(d) Construction All-Risk Insurance.

(i) During the construction of the Unit prior to the Initial Delivery Date, construction all-risk form property insurance covering the Unit during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(e) Contractor's Pollution Liability.

(i) If the scope of Work involves areas of known pollutants or contaminants, Seller shall maintain or require to be maintained, pollution liability coverage for bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will be at least [REDACTED] ([REDACTED]) each occurrence for bodily injury and property damage.

(iii) The policy will endorse Buyer as additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement.

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15.2 Evidence of Insurance.

Within ten (10) days after the Effective Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior notice by Seller in the event of any cancellation or termination of coverage, except ten (10) days for nonpayment of premium. With the exception of Workers Compensation/Employers Liability, such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 16: UNIT CONSTRUCTION AND INITIAL DELIVERY DATE

16.1 Construction of the Unit.

(a) Construction Start. “Construction Start” will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Unit, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Unit may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract (or equivalent agreements) and issued thereunder a notice to proceed or its equivalent that authorizes the contractor to mobilize to Site and begin physical construction of the Unit at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit B hereto, and the date certified therein shall be the “Construction Start Date.”

(b) Progress Reports. The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date and (ii) each calendar month from the first calendar month following the Construction Start Date until the Initial Delivery Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit F. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller shall also provide Buyer with any information in Seller’s possession that is reasonably requested by Buyer for Buyer to demonstrate to the CPUC, CAISO, or other Governmental Bodies that Buyer has met its applicable resource adequacy requirements, including providing status reports to the CPUC with respect to the Unit.

16.2 Initial Delivery Date.

(a) Initial Delivery. “Initial Delivery” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided notice to Buyer substantially in the form of Exhibit C. Seller shall cause Initial Delivery for the Unit to occur by the Guaranteed Initial Delivery Date, as such date may be extended by a Development Cure Period pursuant to pursuant to Section 16.2(c) subject to the limitations in Section 16.2(d).

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(b) Reduction to Contract Quantity. If, on the Initial Delivery Date, Seller shall have obtained an NQC and/or EFC, as applicable, for the Unit from the CPUC that is less than the Contract Quantity of RAR Attributes and/or FCR Attributes set forth on the Cover Sheet as of the Effective Date, as applicable, then the following sections of this Agreement shall be automatically amended: (i) the Unit NQC and/or Unit EFC in Section B of the Cover Sheet shall be revised to equal the maximum amount of NQC and/or EFC, as applicable, established for the Unit by the CPUC; (ii) the Contract Quantities in Section E of the Cover Sheet shall be revised to equal the maximum amount of NQC and/or EFC, as applicable, established for the Unit by the CPUC; (iii) the Contract Quantity of LAR Attributes, if applicable, shall equal the revised Contract Quantity of RAR Attributes; and (iv) the quantity of NQC set forth in Section 2.2(h) shall be revised to equal the maximum amount of NQC established for the Unit by the CPUC, if such amount is less than the amount set forth in Section 2.2(h) as of the Effective Date.

(c) Extension of Guaranteed Initial Delivery Date.

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(d) Maximum Guaranteed Initial Delivery Date Extension.

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(e) Termination for Failure to Achieve Initial Delivery Date. If the Unit has not achieved Initial Delivery on or before the Guaranteed Initial Delivery Date, as such date may be extended by a Development Cure Period pursuant to Section 16.2(c) subject to the limitations in Section 16.2(d), then Buyer may terminate this Agreement upon written notice to Seller, which termination shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to Seller, subject to payment of any amounts owing as of the effective date of such termination and provided that Seller shall be subject to Section 16.2(f).

(f) Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date. If this Agreement is terminated by either Party prior to the Initial Delivery Date for any reason other than a Buyer Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Unit to a

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party other than Buyer for a period of two (2) years following such termination, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Unit, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Unit) so long as the limitations contained in this Section 16.2(f) apply, unless the transferee agrees to be bound by the terms set forth in this Section 16.2(f) pursuant to a written agreement approved by Buyer in its reasonable discretion. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 16.2(f).

ARTICLE 17: MISCELLANEOUS

17.1 Title and Risk of Loss.

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

17.2 Indemnity.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees associated with damage to third parties resulting from, or arising out of or in any way connected with Seller's operation and/or maintenance of the Unit, including without limitation any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to such third parties, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees associated with damage to third parties resulting from, or arising out of or in any way connected with Buyer's access to the Unit site, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to such third parties, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 17.2(a) and 17.2(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall

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constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

17.3 Assignment.

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; *provided, however*, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; *provided, however*, that in the case of any such assignment pursuant to clause (ii) or clause (iii), any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. In connection with any financing or refinancing of the Unit by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.

17.4 Governing Law and Venue.

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. Each of the Parties irrevocably and unconditionally agrees that any suit, action or other proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof shall be filed in either the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, as appropriate (and agrees not to commence any suit, action or proceeding relating thereto except in such courts). Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof in the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, as appropriate, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment (i.e., judgment after any appeals that may be duly made) in any suit, action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

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17.5 Notices.

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

17.6 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 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), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

Notwithstanding any provision of this Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

17.7 General.

This Agreement (including the exhibits, schedules and any written supplements hereto, if any) constitutes the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any

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third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; *provided, further*, that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

17.8 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. If requested, a Party shall provide to the other Party statements evidencing the Designated RA Capacity delivered hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

17.9 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

17.10 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 17.10) (a “Dispute”), any Party (the “Notifying Party”) may deliver to the other Parties (the “Recipient Party”) notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a “Dispute Notice”). The Dispute Notice shall include a schedule of the availability of the Notifying Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a brief summary of the Recipient Party’s position on the Dispute and a parallel schedule of availability of the Recipient Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers’ schedules of availability, the senior

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officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 17.10(a) and (b) by the expiration of the thirty (30) day period set forth in Section 17.10(b), then a Party may pursue any legal remedy available to it in accordance with this Agreement.

17.11 Execution.

A signature received via facsimile or email shall have the same legal effect as an original.

17.12 Joint Powers Authority.

Seller acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer's members in connection with this Agreement.

17.13 Dodd-Frank Act

The Parties intend this Agreement to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

17.14 Market-Based Rate Authority.

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

17.15 Rules of Interpretation.

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

[Remainder of Page Intentionally Left Blank]

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

**EMERSMART EL CAJON BESS LLC, a
California limited liability company**

**SAN DIEGO COMMUNITY POWER,
a California joint powers authority**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

[Buyer], a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of [Buyer], a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Agreement dated as of _____ and as amended (the “Agreement”) between [Applicant] and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]] (if presented by fax it must be followed up by a phone call to us at [XXXXXX] or [XXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

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We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [Buyer], Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

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[Insert officer title]

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Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [Buyer], a California joint powers authority, [Buyer address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of _____, (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [Buyer], a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [Buyer], a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

[Buyer]

Name and Title of Authorized Representative

Date _____

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EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE

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

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

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

[Seller]

By:_____

Its:_____

Date:_____

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EXHIBIT C: FORM OF INITIAL DELIVER DATE CERTIFICATE

This certification (“Certification”) of Initial Delivery is delivered by [Seller] (“Seller”) to San Diego Community Power, a California joint powers authority (“Buyer”) in accordance with the terms of that Agreement dated [date] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

- a) The Unit is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
- b) Seller has installed equipment for the Unit with a nameplate capacity of no less than 4.5 MW.
- c) The Unit is fully capable of charging, storing and discharging energy up to no less than 4.5 MW and receiving instructions to charge, store and discharge energy.
- d) Seller’s Interconnection Agreement provides for a maximum instantaneous discharge capability of no less than 4.5 MW.
- e) Authorization to parallel the Unit was obtained by the Participating Transmission Owner, SDG&E on _____[DATE]_____.

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

ENGINEER

Signature: _____

Name: _____

Title: _____

Date: _____

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EXHIBIT D: DESCRIPTION OF UNIT

The following describes the Unit to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

Unit name: EnerSmart El Cajon

Resource type: Battery Energy Storage

Nameplate capacity: 9 MW / 18 MWh

Location: El Cajon, CA

Unit physical address: 1523 E Main St. El Cajon, CA

Unit elevation: 500'

Unit latitude: 32 48' 14 N

Unit longitude: -116 55' 30" W

Interconnection: SDG&E

CAISO transmission access charge area (e.g. SDG&E): SDG&E

Point of interconnection: [REDACTED]

Point of interconnection address: [REDACTED]

Existing zone (e.g. SP-15): SP-15

PNode: GRANITE_6_N001

CAISO Resource ID: 21NGR18729

Substation: Granite

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EXHIBIT E: [RESERVED]

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EXHIBIT F: PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Unit description.
3. Site plan of the Unit.
4. Description of any material planned changes to the Unit or the Site.
5. Schedule showing progress on Unit construction generally and achieving each of the Milestones and the Initial Delivery Date.
6. Summary of activities during the previous month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to the Milestones and the Initial Delivery Date, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Milestones and the Initial Delivery Date.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress.
12. Any other documentation reasonably requested by Buyer.

EXHIBIT G: NOTICES

EnerSmart El Cajon BESS LLC. a California limited liability company (“Seller”)	SAN DIEGO COMMUNITY POWER, a California joint powers authority (“Buyer”)
All Notices: Street: 400 S. Sierra Ave. Suite 100 City: Solana Beach, CA. 92075 Attn: James Beach Phone: 619-877-8444 Email: james@enersmartstorage.com	All Notices: P.O. Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org
Reference Numbers: Duns: n/a Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Eric Wheatley, VP Finance Phone: 704-763-8642 E-mail: eric.wheatley@enersmartstorage.com	Invoices: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: Eric Wheatley, VP Finance Phone: 704-763-8642 E-mail: eric.wheatley@enersmartstorage.com	Payments: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Wire Transfer: [REDACTED]	Wire Transfer: [REDACTED]

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**RESOURCE ADEQUACY AGREEMENT
COVER SHEET**

A. Parties

Seller: EnerSmart Imperial Beach BESS LLC, a California limited liability company

Buyer: San Diego Community Power, a California joint powers authority

B. Unit Information

Unit Name:	EnerSmart Imperial Beach
Location:	1705 Palm Ave. San Diego, CA
CAISO Resource ID:	23NGR25823 & 23NGR26197
Unit SCID:	AESM
Unit NQC:	3 MW
Unit EFC:	3 MW
Resource Type:	Battery Energy Storage System
Resource Category (1, 2, 3 or 4):	4
FCR Category (1, 2 or 3):	2
Path 26 (North or South):	SP26
Local Capacity Area (if any, as of Effective Date):	SDGE
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	TBD
Run Hour Restrictions	N/A

C. RA Product and Attributes

Throughout the Delivery Term, Seller shall provide Buyer with the Designated RA Capacity having the following attributes:

☒ RAR Attributes

☐ RAR Attributes with FCR Attributes

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☐ LAR Attributes

☒ LAR Attributes with FCR Attributes

☐ FCR Attributes

D. Delivery Term

The Delivery Term is ten (10) Contract Years.

E. Contract Quantities

The Contract Quantities for each Showing Month of the Delivery Term shall be:

RAR Attributes: [REDACTED]

LAR Attributes: [REDACTED]

FCR Attributes: [REDACTED]

F. Contract Price

The Contract Price shall be: [REDACTED]

G. Seller's Security Amounts

Performance Security: [REDACTED]

H. Milestones

Milestone	Date for Completion
Site Control obtained	October 2021
Interconnection Agreement executed	July 2022
Expected Construction Start Date	May 2024
Full Capacity Deliverability Status obtained	July 2024
Guaranteed Initial Delivery Date	February 15, 2025

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PREAMBLE

This Resource Adequacy Agreement (“Agreement”) is entered into between **EnerSmart Imperial Beach BESS LLC**, a California limited liability company (“Seller”) and **San Diego Community Power**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties,” as of [REDACTED] (the “Effective Date”). All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

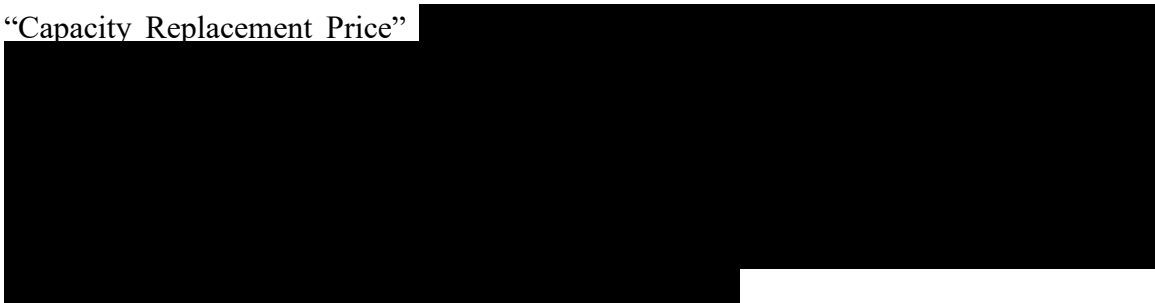
NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1: DEFINITIONS

- 1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2 “Agreement” has the meaning set forth in the Preamble.
- 1.3 “Alternate Capacity” means any replacement RA Capacity having at least equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Product provided by the Unit; *provided*, if any portion of the Designated RA Capacity that Seller is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Seller may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product).
- 1.4 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Agreement, including without limitation, the Tariff.
- 1.5 “Availability Incentive Payments” means Availability Incentive Payments as defined in the Tariff.
- 1.6 “Availability Standards” means Availability Standards as defined in the Tariff.
- 1.7 “Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of

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action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

- 1.8 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.
- 1.9 “Buyer” has the meaning set forth in the Preamble.
- 1.10 “CAISO” means the California Independent System Operator or its successor.
- 1.11 “CAISO Control Area” means the Control Area (as defined in the Tariff) that is operated by the CAISO.
- 1.12 “CAISO Controlled Grid” has the meaning set forth in the Tariff.
- 1.13 “CAISO Offer Requirements” has the meaning set forth in Article 4.
- 1.14 “Capacity Replacement Price” 
- 1.15 “CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.
- 1.16 “Claiming Party” has the meaning set forth in Section 3.12.
- 1.17 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
- 1.18 “Compliance Issue” has the meaning set forth in Article 13.
- 1.19 “Compliance Obligation” means the RAR, Local RAR, FCR, and any other resource adequacy or capacity procurement requirements imposed on LSEs by the CPUC pursuant to the Resource Adequacy Rulings, by the CAISO, by the WECC, or by any other Governmental Body having jurisdiction.

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- 1.20 “Confidential Information” has the meaning set forth in Article 11.
- 1.21 “Construction Start” has the meaning set forth in Section 16.1(a).
- 1.22 “Construction Start Date” has the meaning set forth in Section 16.1(a).
- 1.23 “Contract Price” has the meaning set forth in Section F of the Cover Sheet.
- 1.24 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Term, the amount of Product (in MWs) set forth in Section E of the Cover Sheet, which Seller has agreed to provide to Buyer from the Unit for such Showing Month, which amount may be amended in accordance with Section 16.2(b).
- 1.25 “Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date; and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.
- 1.26 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the Terminated Transaction.
- 1.27 “CPUC” means the California Public Utilities Commission or its successor.
- 1.28 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.29 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.30 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s.
- 1.31 “Defaulting Party” has the meaning set forth in Section 5.1.
- 1.32 “Delivery Point” has the meaning set forth in Section 3.4.

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- 1.33 “Delivery Term” means the period of Contract Years set forth on the Cover Sheet beginning on the Initial Delivery Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.
- 1.34 “Designated RA Capacity” shall be equal to, with respect to each Showing Month of the Delivery Term, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity that Seller has elected to provide as Alternate Capacity from one or more Replacement Units in accordance with Section 3.6.
- 1.35 “Development Cure Period” has the meaning set forth in Section 16.2(c).
- 1.36 “Dispute” has the meaning set forth in Section 17.10(a).
- 1.37 “Dispute Notice” has the meaning set forth in Section 17.10(a).
- 1.38 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.39 “Effective Date” is the date set forth in the Preamble.
- 1.40 “Effective Flexible Capacity” or “EFC” means the capacity of a resource that can be counted towards an LSE’s Flexible Capacity Requirements, as identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or other Governmental Body having jurisdiction.
- 1.41 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.
- 1.42 “EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.
- 1.43 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- 1.44 “Event of Default” has the meaning set forth in Section 5.1.
- 1.45 “FCR Attributes” means, with respect to a Resource Adequacy Resource, any and all flexible resource adequacy attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the Resource Adequacy Rulings, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.
- 1.46 “FCR Showings” 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 Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.

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- 1.47 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.48 “Flexible Capacity Category” has the meaning set forth in the Resource Adequacy Resource.
- 1.49 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.50 “Flexible RA Product” means that the Product includes FCR Attributes, if applicable, as specified in Sections C and E of the Cover Sheet.
- 1.51 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under the Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply (except to the extent due to a Force Majeure); or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider (i) unless such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) except to the extent such curtailment is due to Transmission Provider; *provided, however*, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.
- 1.52 “Full Capacity Deliverability Status” or “FCDS” has the meaning set forth in the Tariff.
- 1.53 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.
- 1.54 “Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Body and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Unit.
- 1.55 “Governmental Body” means (a) any federal, state, local, municipal or other government; (b) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; (c) any court or governmental tribunal, but in all cases, excludes both Parties; and (d) CAISO.

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- 1.56 “Governmental Charges” has the meaning set forth in Section 8.2.
- 1.57 “Guaranteed Initial Delivery Date” is the date set forth in Section H of the Cover Sheet, subject to extension pursuant to Section 16.2(c), but as limited by Section 16.2(d).
- 1.58 “Initial Delivery” has the meaning set forth in Section 16.2(a).
- 1.59 “Initial Delivery Date” means the date on which Initial Delivery is achieved.
- 1.60 “Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Unit and Seller’s Interconnection Facilities will be interconnected with the Transmission System during the Delivery Term.
- 1.61 “Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Unit with the Transmission System in accordance with the Interconnection Agreement.
- 1.62 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.
- 1.63 “Investment Grade” means a Credit Rating of at least [REDACTED] from Moody’s (or, if such entities cease to provide Credit Ratings, from another comparable rating agency that is reasonably acceptable to the Parties).
- 1.64 “Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).
- 1.65 “Joint Powers Agreement” means that certain Joint Powers Agreement dated October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.
- 1.66 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.67 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the Resource Adequacy Rulings, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body,

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defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.

- 1.68 “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 Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.69 “Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least [REDACTED] with an outlook designation of [REDACTED] with an outlook designation of [REDACTED] from Moody’s, in a form as set forth in Exhibit A or as otherwise acceptable to Buyer.
- 1.70 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.
- 1.71 “LRA” has the meaning set forth in the Tariff.
- 1.72 “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).
- 1.73 “Milestones” has the meaning set forth in Section H of the Cover Sheet.
- 1.74 “Monthly RA Capacity Payment” has the meaning specified in Section 3.10(a) hereof.
- 1.75 “Moody’s” means Moody’s Investor Services, Inc. or its successor.
- 1.76 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.77 “Net Qualifying Capacity” or “NQC” has the meaning set forth in the Tariff.
- 1.78 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.79 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.80 “Notification Deadline” has the meaning set forth in Section 3.6.
- 1.81 “Notifying Party” has the meaning set forth in Section 17.10(a).
- 1.82 “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the obligations of the Unit under the CAISO Offer Requirements consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage.
- 1.83 “Participating Transmission Owner” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain

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transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. The Participating Transmission Owner for purposes of this Agreement is San Diego Gas & Electric.

- 1.84 “Performance Security” means collateral in the form of cash or a Letter of Credit in an amount set forth in Section G of the Cover Sheet.
- 1.85 “Planned Outage” means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.86 “Product” has the meaning set forth in Section 3.1.
- 1.87 “Progress Report” means a report substantially in the form set forth in Exhibit F, the requirements for which are further set forth in Section 16.1(c).
- 1.88 “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CPUC, CAISO, or other Governmental Body authorized to make such determination under Applicable Laws, including the Resource Adequacy Rulings. RA Capacity encompasses the applicable RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit.
- 1.89 “RAR” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.90 “RAR Attributes” means, with respect to a Resource Adequacy Resource, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, Resource Adequacy Rulings, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.
- 1.91 “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 Tariff or Resource Adequacy Rulings, or to an LRA having jurisdiction.
- 1.92 “Recipient Party” has the meaning set forth in Section 17.10(a).
- 1.93 “Regulatory Event” has the meaning set forth in Section 17.7.
- 1.94 “Reliability Compensation Services Tariff” has the meaning set forth in the Tariff.
- 1.95 “Replacement Capacity” has the meaning specified in Section 3.8 hereof.

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- 1.96 “Replacement Unit” means a unit meeting the requirements specified in Section 3.6 hereof that is located within the CAISO Control Area and that is capable of providing Alternate Capacity. A Replacement Unit may not be a coal-fired or nuclear generating resource.
- 1.97 “Required TPD Allocation” means an allocation of TP Deliverability from the CAISO that is sufficient for the Unit to obtain Full Capacity Deliverability Status for at least the Contract Quantity.
- 1.98 “Residual Unit Commitment” has the meaning set forth in the Tariff.
- 1.99 “Resource Adequacy Plan” has the meaning specified in the Tariff.
- 1.100 “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.
- 1.101 “Resold Product” has the meaning set forth in Article 12.
- 1.102 “Resource Adequacy Resource” has the meaning set forth in the Tariff.
- 1.103 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.104 “RMR Contracts” has the meaning set forth in the Tariff.
- 1.105 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.106 “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 Term at a specified Delivery Point.
- 1.107 “Scheduling Coordinator” has the same meaning as in the Tariff.
- 1.108 “Security Interest” has the meaning set forth in Section 14.3(a).
- 1.109 “Seller” has the meaning set forth in the Preamble.
- 1.110 “Settlement Amount” means, with respect to the Non-Defaulting Party, the aggregate Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of a Terminated Transaction pursuant to Section 5.2.

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- 1.111 “Showing Month” shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the Resource Adequacy Rulings or Tariff. For illustrative purposes only, pursuant to the Resource Adequacy Rulings in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.112 “Site” means the real property on which the Unit is located as identified in Appendix D.
- 1.113 “Site Control” means that, for the Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.
- 1.114 “Substitution Rules” has the meaning specified in the Tariff.
- 1.115 “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 Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.116 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.117 “Term” has the meaning set forth in Section 2.1(a).
- 1.118 “Terminated Transaction” has the meaning set forth in Section 5.2.
- 1.119 “Termination Payment” has the meaning set forth in Section 5.3.
- 1.120 “TP Deliverability” has the meaning set forth in the CAISO Tariff.
- 1.121 “Transmission Provider” means the CAISO.
- 1.122 “Transmission System” means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Delivery Point.
- 1.123 “Unit” shall mean the storage asset described in Section B of the Cover Sheet and Exhibit D hereof and any Replacement Units, from which Product is provided by Seller to Buyer. A Unit may not include a coal-fired or nuclear generating resource.
- 1.124 “Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

ARTICLE 2: TERM; DELIVERY TERM; CONDITIONS PRECEDENT

2.1 Term.

The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, then-owing indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Performance Security is released and/or returned (the “Term”). Upon Seller’s request, Buyer will promptly confirm in writing the Initial Delivery Date following Seller’s completion of all conditions precedent hereto. All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 17.2 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 11 (Confidentiality) survive the end of the Delivery Term for an additional two (2) years; (iii) all rights and obligations under Section 16.2(f) (Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date) survive early termination of this Agreement for an additional two (2) years; and (iv) all provisions relating to limitations of liability survive without limit.

2.2 Conditions Precedent to Initial Delivery Date.

Seller shall provide notice of expected Initial Delivery Date to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Unit and to enable Seller to deliver the Product to Buyer.

(d) Seller shall have provided to Buyer a certification of Seller and a licensed professional engineer, substantially in the form attached hereto as Exhibit C, demonstrating that the Initial Delivery Date has occurred.

(e) Seller shall have provided Performance Security to Buyer as required by Section 14.2.

(f) As of the Initial Delivery Date, no Event of Default on the part of Seller shall have occurred and be continuing.

(g) Seller shall have obtained Full Capacity Deliverability Status.

(h) Subject to Section 16.2(b), Seller shall have obtained an NQC for the Unit of at least 3 MW.

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(i) In accordance with Section 3.7(a), Seller shall have (i) submitted, or caused the Unit's SC to submit, a notice to Buyer including Seller's proposed Supply Plan for the first Showing Month of the Delivery Term and (ii) submitted, or caused the Unit's SC to submit, a Supply Plan to CAISO for the first Showing Month of the Delivery Term.

(j) Seller shall have delivered to Buyer all insurance documents required under Article 15.

(k) As of the Initial Delivery Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1 Resource Adequacy Capacity Product.

During the Delivery Term, Seller shall provide Buyer with RA Capacity from the Unit in the amount of the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Sections C and E of the Cover Sheet to this Agreement with respect to each Showing Month (the "Product"). Seller's obligation to deliver the Contract Quantity of Product for each day of the Delivery Term is firm and will not be excused for any reason other than Force Majeure.

If the Unit is not available to provide the full amount of the Contract Quantity with respect to an applicable Showing Month for any reason other than Force Majeure, including, without limitation, any Outage or any adjustment of the RA Capacity of any Unit, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 3.6 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 3.6, then Seller shall be liable for damages and/or be required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 3.8 and 3.9 hereof.

Notwithstanding anything to the contrary herein, no energy or ancillary services associated with the Unit is required to be made available to Buyer 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, pursuant to the Tariff, any RA Capacity that is in excess of the Unit's Contract Quantity and any RAR Attributes, LAR Attributes, or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Agreement.

3.2 Seller's and Buyer's Obligations.

Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Designated RA Capacity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price for the Designated RA Capacity. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

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3.3 [Reserved].

3.4 Delivery Point.

The “Delivery Point” for the Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

3.5 Planned Outages.

Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Unit as a Resource Adequacy Resource that is subject to the Availability Standards to qualify for an “Approved Maintenance Outage” under the CAISO Tariff. Seller shall reimburse Buyer for any cost Buyer incurs to provide Replacement RA, as required by the CAISO, during any Planned Outages (including the cost of procuring Replacement RA for a full calendar month during any month in which a Planned Outage is planned or scheduled). Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Unit shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion.

3.6 Alternate Capacity and Replacement Units.

(a) The “Notification Deadline” for a given Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding CPUC RAR Showings, LAR Showings and/or FCR Showings, as applicable for that Showing Month, or (b) submission of the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, or if Seller desires to provide the Contract Quantity for any Showing Month from a Replacement Unit, then Seller may, at no additional cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and any Replacement Unit(s) up to an amount equal to the Contract Quantity for the applicable Showing Month; *provided*, in each case, Seller shall notify Buyer of the amount of Product that Seller will not be able to deliver from the Unit and the portion of the Contract Quantity for which Seller intends to provide Buyer with Alternate Capacity from identified Replacement Unit(s) no later than the Notification Deadline.

(c) If Seller fails to provide Buyer the Contract Quantity of Product from the Unit or a Replacement Unit for a given Showing Month during the Delivery Term, then Buyer may, but shall not be required to, purchase replacement Product from a third party.

3.7 Delivery of Product.

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Unit’s Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each

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Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) The Designated RA Capacity is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the Designated RA Capacity from Seller's Supply Plan for any Showing Month during the Delivery Term, has been accepted by the CAISO. If CAISO rejects either the Supply Plan or Buyer's Resource Adequacy Plan with respect to any part of the Designated RA Capacity in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable Notification Deadline for the relevant Showing Month.

(c) Consistent with the Substitution Rules, take all action, or cause each Unit's Scheduling Coordinator to take all action, to allow Buyer or a subsequent purchaser under Article 12 to utilize the Contract Quantity during each Showing Month under the Substitution Rules, including, but not limited to, ensuring that the Designated RA Capacity being provided in the pertinent Showing Month will qualify for substitution under the Substitution Rules and providing Buyer or subsequent purchaser under Article 12 with all information needed to utilize the Substitution Rules.

3.8 Damages for Failure to Provide Designated RA Capacity.

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller; *provided*, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product) ("Replacement Capacity"), in either case, by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer, so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer, on the date payment would otherwise be due in respect of the Showing Month for which the failure occurred, an amount equal to the positive difference, if any, between (A) the product of the Capacity Replacement Price times the amount of the Designated RA Capacity not provided by Seller and (B) the product of the Contract Price times the amount of the Designated RA Capacity not provided by Seller. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller pursuant to Article 6 of this Agreement.

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3.9 Indemnities for Failure to Deliver Contract Quantity.

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

(a) Seller's failure to provide any portion of the Designated RA Capacity for the respective Showing Month for the Delivery Term; or

(b) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right, or a subsequent purchaser's right, to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; *provided*, 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 costs, 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.

3.10 Monthly RA Capacity Payment.

Buyer shall make a Monthly RA Capacity Payment to Seller for the Unit, in arrears, after the applicable Showing Month. The Parties agree that all invoices under this Agreement shall be due and payable on the twentieth (20th) day of the month after the Showing Month; *provided*, if such day is not a Business Day, then such invoice will be due and payable on the next Business Day. The Unit's "Monthly RA Capacity Payment" shall be equal to the product of (i) the applicable Contract Price for that Showing Month, (ii) the Designated RA Capacity of the Product actually delivered by Seller to Buyer for the Showing Month and (iii) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

3.11 Allocation of Other Payments and Costs.

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the storage 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 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.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of the Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.11(a) above).

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(c) In accordance with Section 3.10 of this Agreement:

(i) all such Buyer revenues described in Section 3.11(b) received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). 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.

(ii) all such Seller, or a Unit's Scheduling Coordinator, owner, or operator revenues described in Section 3.11(a)(i)-(v), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Seller (and upon any such payment by Buyer, Buyer shall be subrogated to all rights of Seller against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues. Buyer shall be responsible for any material, incremental costs of offering, bidding, submitting, or re-selling Designated RA Capacity in such centralized capacity market.

(e) 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.

3.12 Force Majeure.

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

ARTICLE 4: CAISO OFFER REQUIREMENTS

During the Delivery Term, except to the extent the Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of the Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO the Unit's Designated RA Capacity in compliance with the Tariff, including compliance with Minimum State of Charge, Day-Ahead Availability, Real-Time Availability, Must Offer Obligation, and Default Energy Bid requirements established in Article 40 of the Tariff and Seller shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Product hereunder. (the "CAISO Offer Requirements"). Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 5: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and such Party does not fully mitigate the adverse consequences as reasonably determined by the other Party of such incorrect representation or warranty to the other Party within thirty (30) days after written notice thereof;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Section 3.8 and 3.9) if such failure is not remedied within thirty (30) Business Days after written notice;
- (d) if at any time, Seller delivers or attempts to deliver Product to the Delivery Point for sale under this Agreement that was not generated by the Unit, except for Alternate Capacity;
- (e) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Term to any party other than Buyer except as expressly permitted under this Agreement;
- (f) such Party becomes Bankrupt;
- (g) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 17.3, if applicable;

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(h) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 14 hereof if such failure is not remedied within ten (10) Business Days after written notice;

(i) 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; or

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

(i) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least [REDACTED] by Moody's;

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

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

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

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

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

(vii) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement (referred to herein as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement; and (iii) suspend performance. If the Early Termination Date occurs before the

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Initial Delivery Date, then no Settlement Amount shall be owed by either Party. If the Early Termination Date occurs after the Initial Delivery Date, then as soon as reasonably practicable, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for 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 Transaction 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). The Gains and Losses for a Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall net out (a) any Settlement Amount that is due to the Non-Defaulting Party, plus, (b) 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 14, plus (c) any or all other amounts due to the Non-Defaulting Party under this Agreement against (d) all amounts that are due to the Defaulting Party, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within ten (10) days after such notice is effective.

5.5 Disputes with Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) 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 Security to the Non-Defaulting Party in an amount equal to the Termination Payment.

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5.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Agreement is not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

ARTICLE 6: PAYMENT AND NETTING

6.1 Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment.

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

6.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party.

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receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

6.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security.

Unless the Party benefiting from Performance Security notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article 5, all amounts netted pursuant to this Article 6 shall not take into account or include any Performance Security which may be in effect to secure a Party's performance under this Agreement.

ARTICLE 7: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages.

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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

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INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8: GOVERNMENTAL CHARGES

8.1 Cooperation.

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

8.2 Governmental Charges.

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

ARTICLE 9: [RESERVED]

ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS

10.1 Mutual Representations and Warranties.

On the Effective Date, each Party represents and warrants to the other Party that:

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- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain the Unit and sell the Product therefrom in the case of Seller;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (e) 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;
- (f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and
- (h) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of Product.

10.2 Buyer and Seller Covenants.

Buyer and Seller shall, throughout the Delivery Term, 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 Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Article 12. Such commercially reasonable actions shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing the Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR, and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Term the ability to deliver the Contract Quantity from the Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability”

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standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform it to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; *provided, however*, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, Unit enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

10.3 Seller Representations, Warranties and Covenants.

Seller represents, warrants and covenants to Buyer that:

(a) Throughout the Delivery Term, the Unit qualifies as a Resource Adequacy Resource that is eligible to provide the Product pursuant to the Tariff and the Resource Adequacy Rulings;

(b) Throughout the Delivery Term, Seller owns or has the exclusive right to the RA Capacity sold under this Agreement, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(c) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

(d) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;

(e) The Unit is within the CAISO Control Area and Seller shall maintain Site Control throughout the Delivery Term;

(f) Throughout the Delivery Term, the owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(g) Throughout the Delivery Term, the respective cumulative amounts of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred from the Unit does not exceed that Unit's RA Capacity;

(h) Throughout the Delivery Term, with respect to the RA Capacity provided under this Agreement, Seller shall, and the Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RAR, LAR, and FCR;

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(i) Seller has notified the Scheduling Coordinator of the Unit that, throughout the Delivery Term, has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with this Agreement and the Tariff;

(j) Seller has notified the Scheduling Coordinator of the Unit that Seller is obligated, throughout the Delivery Term, to cause the Unit's Scheduling Coordinator to provide to the Buyer, at least fifteen (15) Business Days before the Notification Deadline, the Designated RA Capacity of the Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified the Unit's Scheduling Coordinator that, throughout the Delivery Term, Buyer is entitled to the revenues set forth in Section 3.11 of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

10.4 Buyer Representations, Warranties and Covenants.

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

ARTICLE 11: CONFIDENTIALITY

(a) Neither Party shall disclose the terms or conditions of this Agreement or information exchanged between the Parties pursuant to this Agreement ("Confidential Information") to a third party (other than the Party's or its Affiliates' employees, lenders or potential lenders, investors or potential investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to fulfill such Party's obligations under this Agreement or to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; *provided, however*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) Notwithstanding the foregoing, the Parties agree that Buyer may disclose the information pertaining to this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Agreement to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans; *provided*, each disclosing Party shall use reasonable

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efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such information. In addition, in the event Buyer resells all or any portion of the Designated RA Capacity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information to the extent such disclosure is necessary to affect such resale transaction; *provided*, such other party agrees to keep such information confidential.

(c) Seller acknowledges that Buyer is subject to the California Constitution Article 1, Section 3, and the California Public Records Act, Cal. Gov. Code § 6250 *et seq.* (“Public Records Act”) in regard to the documents comprising this Agreement, which items may constitute public records subject to inspection and copying by the public under the authority of the California Constitution and the Public Records Act. Buyer shall, consistent with those laws, use reasonable efforts to provide Seller with notice of any third-party request to inspect or copy any of the documents that comprise this Agreement, which Seller might deem confidential and exempt from disclosure, in order that Seller may timely seek to protect those documents from disclosure to the third party. Seller acknowledges and agrees that Buyer shall not be liable to Seller if Buyer makes disclosure in accordance with the California Constitution and/or the Public Records Act before Seller has timely obtained an order to prevent Buyer from making the requested disclosure to the third party.

ARTICLE 12: BUYER’S RE-SALE OF PRODUCT

No less than fifteen (15) days prior to the Notification Deadline for any Showing Month of the Delivery Term, Buyer may provide written notice to Seller of Buyer’s intent to re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. If Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement in accordance with this Article 12 (“Resold Product”), Seller agrees, and agrees to cause the Unit’s Scheduling Coordinator, to follow Buyer’s reasonable instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller’s obligations under this Agreement. Seller further agrees, and agrees to cause the Unit’s Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer’s rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product directly due to the failure of Seller or the Unit’s Scheduling Coordinator to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Agreement if Buyer had not resold the Product, including without limitation, pursuant to Sections 3.8 and 3.9.

In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Article 12) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale: (i) benefitting load serving entity SC identification number (SCID), (ii) volume (in MW) of Resold Product, and (iii) subsequent sale delivery period for Resold Product.

ARTICLE 13: COMPLIANCE OBLIGATION

The Parties acknowledge and agree that a material purpose of this Agreement is to enable Buyer to satisfy its Compliance Obligation. If, at any time during the Term, the Unit is not qualified to produce Product, including RAR Attributes, LAR Attributes, and FCR Attributes, as applicable, including due to any action by the CPUC, CAISO or any Governmental Body having jurisdiction that results in any change in Applicable Law occurring after the Effective Date that changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Buyer's Compliance Obligation (a "Compliance Issue"), the Parties shall work in good faith to revise this Agreement so that the Parties can perform their obligations regarding the purchase and sale of Product sold hereunder in order to maintain the original intent; *provided, however*, in no event shall Seller be obligated to undertake capital improvements, Unit enhancements, or the construction of new facilities. If a Compliance Issue results in the Product not being able to be counted towards Buyer's Compliance Obligation, and the Parties have not reached agreement on amendments within thirty (30) days after the initiation of discussions regarding the Compliance Issue that would allow the Product to be able to be counted towards Buyer's Compliance Obligation, Buyer may terminate this Agreement upon written notice to Seller, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party, subject to payment of any amounts owing as of the effective date of such termination.

ARTICLE 14: COLLATERAL REQUIREMENTS

14.1 [Reserved].

14.2 Performance Security.

Seller shall deliver Performance Security to Buyer on or before the Initial Delivery Date. Seller shall maintain the Performance Security in full force and effect, and shall within ten (10) Business Days after any draws made by Buyer in accordance with this Agreement replenish the Performance Security, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, termination damages, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

14.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Performance

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Security, any other cash collateral and cash equivalent collateral posted under this Agreement, and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

(b) Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Performance Security, Buyer may do any one or more of the following:

- (i) Exercise any of its rights and remedies with respect to the Performance Security, as applicable, including any such rights and remedies under Applicable Law then in effect;
- (ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Performance Security; and
- (iii) Liquidate Performance Security then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

ARTICLE 15: INSURANCE

15.1 Insurance.

Throughout the Term, Seller shall procure and maintain the following insurance coverage and require and cause its contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of the Seller in this Section 15.1 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability.

- (i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Applicable Laws or statutes, California state or federal, where Seller performs Work.
- (ii) Employers' liability insurance will not be less than [REDACTED] ([REDACTED]) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] ([REDACTED]) policy limit will apply to each employee.

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(b) Commercial General Liability.

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] ([REDACTED]) per occurrence, and an annual aggregate of not less than [REDACTED] ([REDACTED]), endorsed to provide contractual liability in said amount (subject to policy terms and conditions), specifically covering Seller's insurable indemnity obligations under this Agreement and including Buyer as an additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement. Limits may be satisfied through a combination of primary and excess policies.

(ii) An umbrella insurance policy in a minimum limit of liability of [REDACTED] ([REDACTED]).

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) Business Auto.

(i) Business auto insurance for bodily injury and property damage with limits of [REDACTED] ([REDACTED]) per occurrence.

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(d) Construction All-Risk Insurance.

(i) During the construction of the Unit prior to the Initial Delivery Date, construction all-risk form property insurance covering the Unit during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(e) Contractor's Pollution Liability.

(i) If the scope of Work involves areas of known pollutants or contaminants, Seller shall maintain or require to be maintained, pollution liability coverage for bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will be at least [REDACTED] ([REDACTED]) each occurrence for bodily injury and property damage.

(iii) The policy will endorse Buyer as additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement.

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15.2 Evidence of Insurance.

Within ten (10) days after the Effective Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior notice by Seller in the event of any cancellation or termination of coverage, except ten (10) days for nonpayment of premium. With the exception of Workers Compensation/Employers Liability, such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 16: UNIT CONSTRUCTION AND INITIAL DELIVERY DATE

16.1 Construction of the Unit.

(a) Construction Start. “Construction Start” will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Unit, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Unit may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract (or equivalent agreements) and issued thereunder a notice to proceed or its equivalent that authorizes the contractor to mobilize to Site and begin physical construction of the Unit at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit B hereto, and the date certified therein shall be the “Construction Start Date.”

(b) Progress Reports. The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date and (ii) each calendar month from the first calendar month following the Construction Start Date until the Initial Delivery Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit F. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller shall also provide Buyer with any information in Seller’s possession that is reasonably requested by Buyer for Buyer to demonstrate to the CPUC, CAISO, or other Governmental Bodies that Buyer has met its applicable resource adequacy requirements, including providing status reports to the CPUC with respect to the Unit.

16.2 Initial Delivery Date.

(a) Initial Delivery. “Initial Delivery” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided notice to Buyer substantially in the form of Exhibit C. Seller shall cause Initial Delivery for the Unit to occur by the Guaranteed Initial Delivery Date, as such date may be extended by a Development Cure Period pursuant to pursuant to Section 16.2(c) subject to the limitations in Section 16.2(d).

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(b) Reduction to Contract Quantity. If, on the Initial Delivery Date, Seller shall have obtained an NQC and/or EFC, as applicable, for the Unit from the CPUC that is less than the Contract Quantity of RAR Attributes and/or FCR Attributes set forth on the Cover Sheet as of the Effective Date, as applicable, then the following sections of this Agreement shall be automatically amended: (i) the Unit NQC and/or Unit EFC in Section B of the Cover Sheet shall be revised to equal the maximum amount of NQC and/or EFC, as applicable, established for the Unit by the CPUC; (ii) the Contract Quantities in Section E of the Cover Sheet shall be revised to equal the maximum amount of NQC and/or EFC, as applicable, established for the Unit by the CPUC; (iii) the Contract Quantity of LAR Attributes, if applicable, shall equal the revised Contract Quantity of RAR Attributes; and (iv) the quantity of NQC set forth in Section 2.2(h) shall be revised to equal the maximum amount of NQC established for the Unit by the CPUC, if such amount is less than the amount set forth in Section 2.2(h) as of the Effective Date.

(c)

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(d)

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(e) Termination for Failure to Achieve Initial Delivery Date. If the Unit has not achieved Initial Delivery on or before the Guaranteed Initial Delivery Date, as such date may be extended by a Development Cure Period pursuant to Section 16.2(c) subject to the limitations in Section 16.2(d), then Buyer may terminate this Agreement upon written notice to Seller, which termination shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to Seller, subject to payment of any amounts owing as of the effective date of such termination and provided that Seller shall be subject to Section 16.2(f).

(f) Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date. If this Agreement is terminated by either Party prior to the Initial Delivery Date for any reason other than a Buyer Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Unit to a

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party other than Buyer for a period of two (2) years following such termination, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Unit, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Unit) so long as the limitations contained in this Section 16.2(f) apply, unless the transferee agrees to be bound by the terms set forth in this Section 16.2(f) pursuant to a written agreement approved by Buyer in its reasonable discretion. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 16.2(f).

ARTICLE 17: MISCELLANEOUS

17.1 Title and Risk of Loss.

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

17.2 Indemnity.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees associated with damage to third parties resulting from, or arising out of or in any way connected with Seller's operation and/or maintenance of the Unit, including without limitation any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to such third parties, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees associated with damage to third parties resulting from, or arising out of or in any way connected with Buyer's access to the Unit site, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to such third parties, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 17.2(a) and 17.2(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall

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constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

17.3 Assignment.

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; *provided, however*, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; *provided, however*, that in the case of any such assignment pursuant to clause (ii) or clause (iii), any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. In connection with any financing or refinancing of the Unit by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.

17.4 Governing Law and Venue.

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. Each of the Parties irrevocably and unconditionally agrees that any suit, action or other proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof shall be filed in either the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, as appropriate (and agrees not to commence any suit, action or proceeding relating thereto except in such courts). Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof in the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, as appropriate, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment (i.e., judgment after any appeals that may be duly made) in any suit, action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

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17.5 Notices.

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

17.6 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 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), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

Notwithstanding any provision of this Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

17.7 General.

This Agreement (including the exhibits, schedules and any written supplements hereto, if any) constitutes the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any

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third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; *provided, further*, that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

17.8 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. If requested, a Party shall provide to the other Party statements evidencing the Designated RA Capacity delivered hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

17.9 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

17.10 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 17.10) (a “Dispute”), any Party (the “Notifying Party”) may deliver to the other Parties (the “Recipient Party”) notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a “Dispute Notice”). The Dispute Notice shall include a schedule of the availability of the Notifying Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a brief summary of the Recipient Party’s position on the Dispute and a parallel schedule of availability of the Recipient Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers’ schedules of availability, the senior

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officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 17.10(a) and (b) by the expiration of the thirty (30) day period set forth in Section 17.10(b), then a Party may pursue any legal remedy available to it in accordance with this Agreement.

17.11 Execution.

A signature received via facsimile or email shall have the same legal effect as an original.

17.12 Joint Powers Authority.

Seller acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer's members in connection with this Agreement.

17.13 Dodd-Frank Act

The Parties intend this Agreement to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

17.14 Market-Based Rate Authority.

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

17.15 Rules of Interpretation.

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ENERSMART IMPERIAL BEACH BESS
LLC, a California limited liability company**

**SAN DIEGO COMMUNITY POWER,
a California joint powers authority**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

[Buyer], a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of [Buyer], a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Agreement dated as of _____ and as amended (the “Agreement”) between [Applicant] and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]] (if presented by fax it must be followed up by a phone call to us at [XXXXXX] or [XXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

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We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [Buyer], Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

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[Insert officer title]

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Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [Buyer], a California joint powers authority, [Buyer address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of _____, (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [Buyer], a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [Buyer], a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

[Buyer]

Name and Title of Authorized Representative

Date _____

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EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE

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

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

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

[Seller]

By:_____

Its:_____

Date:_____

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EXHIBIT C: FORM OF INITIAL DELIVER DATE CERTIFICATE

This certification (“Certification”) of Initial Delivery is delivered by [Seller] (“Seller”) to San Diego Community Power, a California joint powers authority (“Buyer”) in accordance with the terms of that Agreement dated [date] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

- a) The Unit is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
- b) Seller has installed equipment for the Unit with a nameplate capacity of no less than 3 MW.
- c) The Unit is fully capable of charging, storing and discharging energy up to no less than 3 MW and receiving instructions to charge, store and discharge energy.
- d) Seller’s Interconnection Agreement provides for a maximum instantaneous discharge capability of no less than 3 MW.
- e) Authorization to parallel the Unit was obtained by the Participating Transmission Owner, SDG&E on _____[DATE]_____.

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

ENGINEER

Signature: _____

Name: _____

Title: _____

Date: _____

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EXHIBIT D: DESCRIPTION OF UNIT

The following describes the Unit to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

Unit name: EnerSmart Imperial Beach

Resource type: Battery Energy Storage

Nameplate capacity: 6 MW / 12 MWh

Location: San Diego, CA

Unit physical address: 1705 Palm Ave. San Diego, CA

Unit elevation: 15'

Unit latitude: 32 35' 00" N

Unit longitude: -117 05' 49" W

Interconnection: SDG&E

CAISO transmission access charge area (e.g. SDG&E): SDG&E

Point of interconnection: [REDACTED]

Point of interconnection address: [REDACTED]

Existing zone (e.g. SP-15): SP-15

PNode: IMPRLBCH_6_N001

CAISO Resource ID: 23NGR25823 & 23NGR26197

Substation: Imperial Beach

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EXHIBIT E: [RESERVED]

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EXHIBIT F: PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Unit description.
3. Site plan of the Unit.
4. Description of any material planned changes to the Unit or the Site.
5. Schedule showing progress on Unit construction generally and achieving each of the Milestones and the Initial Delivery Date.
6. Summary of activities during the previous month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to the Milestones and the Initial Delivery Date, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Milestones and the Initial Delivery Date.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress.
12. Any other documentation reasonably requested by Buyer.

EXHIBIT G: NOTICES

ENERSMART IMPERIAL BEACH BESS LLC, a California LLC (“Seller”)	SAN DIEGO COMMUNITY POWER, a California joint powers authority (“Buyer”)
All Notices: Street: 400 S. Sierra Ave. Suite 100 City: Solana Beach, CA. 92075 Attn: James Beach Phone: 619-877-8444 Email: james@enersmartstorage.com	All Notices: P.O. Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org
Reference Numbers: Duns: n/a Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Eric Wheatley, VP Finance Phone: 704-763-8642 E-mail: eric.wheatley@enersmartstorage.com	Invoices: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: Eric Wheatley, VP Finance Phone: 704-763-8642 E-mail: eric.wheatley@enersmartstorage.com	Payments: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Wire Transfer: [REDACTED]	Wire Transfer: [REDACTED]

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**RESOURCE ADEQUACY AGREEMENT
COVER SHEET**

A. Parties

Seller: EnerSmart Mesa Heights BESS LLC, a California limited liability company

Buyer: San Diego Community Power, a California joint powers authority

B. Unit Information

Unit Name:	EnerSmart Mesa Heights
Location:	7986 Dagget Street San Diego, CA
CAISO Resource ID:	23NGR25822
Unit SCID:	AESM
Unit NQC:	1.5 MW
Unit EFC:	1.5 MW
Resource Type:	Battery Energy Storage System
Resource Category (1, 2, 3 or 4):	4
FCR Category (1, 2 or 3):	2
Path 26 (North or South):	SP26
Local Capacity Area (if any, as of Effective Date):	SDGE
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	TBD
Run Hour Restrictions	N/A

C. RA Product and Attributes

Throughout the Delivery Term, Seller shall provide Buyer with the Designated RA Capacity having the following attributes:

☒ RAR Attributes

☐ RAR Attributes with FCR Attributes

☐ LAR Attributes

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☒ LAR Attributes with FCR Attributes

☐ FCR Attributes

D. Delivery Term

The Delivery Term is ten (10) Contract Years.

E. Contract Quantities

The Contract Quantities for each Showing Month of the Delivery Term shall be:

RAR Attributes: [REDACTED]

LAR Attributes: [REDACTED]

FCR Attributes: [REDACTED]

F. Contract Price

The Contract Price shall be: [REDACTED]

G. Seller's Security Amounts

Performance Security: [REDACTED]

H. Milestones

Milestone	Date for Completion
Site Control obtained	October 2020
Interconnection Agreement executed	July 2022
Expected Construction Start Date	November 2023
Full Capacity Deliverability Status obtained	July 2024
Guaranteed Initial Delivery Date	September 15, 2024

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PREAMBLE

This Resource Adequacy Agreement (“Agreement”) is entered into between EnerSmart Mesa Heights BESS LLC, a California limited liability company (“Seller”) and **San Diego Community Power**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties,” as of [REDACTED] (the “Effective Date”). All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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


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

ARTICLE 1: DEFINITIONS

- 1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2 “Agreement” has the meaning set forth in the Preamble.
- 1.3 “Alternate Capacity” means any replacement RA Capacity having at least equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Product provided by the Unit; *provided*, if any portion of the Designated RA Capacity that Seller is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Seller may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product).
- 1.4 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Agreement, including without limitation, the Tariff.
- 1.5 “Availability Incentive Payments” means Availability Incentive Payments as defined in the Tariff.
- 1.6 “Availability Standards” means Availability Standards as defined in the Tariff.
- 1.7 “Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of

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action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

- 1.8 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.
- 1.9 “Buyer” has the meaning set forth in the Preamble.
- 1.10 “CAISO” means the California Independent System Operator or its successor.
- 1.11 “CAISO Control Area” means the Control Area (as defined in the Tariff) that is operated by the CAISO.
- 1.12 “CAISO Controlled Grid” has the meaning set forth in the Tariff.
- 1.13 “CAISO Offer Requirements” has the meaning set forth in Article 4.
- 1.14 “Capacity Replacement Price”

- 1.15 “CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.
- 1.16 “Claiming Party” has the meaning set forth in Section 3.12.
- 1.17 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
- 1.18 “Compliance Issue” has the meaning set forth in Article 13.
- 1.19 “Compliance Obligation” means the RAR, Local RAR, FCR, and any other resource adequacy or capacity procurement requirements imposed on LSEs by the CPUC pursuant to the Resource Adequacy Rulings, by the CAISO, by the WECC, or by any other Governmental Body having jurisdiction.

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- 1.20 “Confidential Information” has the meaning set forth in Article 11.
- 1.21 “Construction Start” has the meaning set forth in Section 16.1(a).
- 1.22 “Construction Start Date” has the meaning set forth in Section 16.1(a).
- 1.23 “Contract Price” has the meaning set forth in Section F of the Cover Sheet.
- 1.24 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Term, the amount of Product (in MWs) set forth in Section E of the Cover Sheet, which Seller has agreed to provide to Buyer from the Unit for such Showing Month, which amount may be amended in accordance with Section 16.2(b).
- 1.25 “Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date; and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.
- 1.26 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the Terminated Transaction.
- 1.27 “CPUC” means the California Public Utilities Commission or its successor.
- 1.28 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.29 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.30 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s.
- 1.31 “Defaulting Party” has the meaning set forth in Section 5.1.
- 1.32 “Delivery Point” has the meaning set forth in Section 3.4.

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- 1.33 “Delivery Term” means the period of Contract Years set forth on the Cover Sheet beginning on the Initial Delivery Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.
- 1.34 “Designated RA Capacity” shall be equal to, with respect to each Showing Month of the Delivery Term, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity that Seller has elected to provide as Alternate Capacity from one or more Replacement Units in accordance with Section 3.6.
- 1.35 “Development Cure Period” has the meaning set forth in Section 16.2(c).
- 1.36 “Dispute” has the meaning set forth in Section 17.10(a).
- 1.37 “Dispute Notice” has the meaning set forth in Section 17.10(a).
- 1.38 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.39 “Effective Date” is the date set forth in the Preamble.
- 1.40 “Effective Flexible Capacity” or “EFC” means the capacity of a resource that can be counted towards an LSE’s Flexible Capacity Requirements, as identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or other Governmental Body having jurisdiction.
- 1.41 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.
- 1.42 “EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.
- 1.43 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- 1.44 “Event of Default” has the meaning set forth in Section 5.1.
- 1.45 “FCR Attributes” means, with respect to a Resource Adequacy Resource, any and all flexible resource adequacy attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the Resource Adequacy Rulings, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.
- 1.46 “FCR Showings” 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 Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.

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- 1.47 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.48 “Flexible Capacity Category” has the meaning set forth in the Resource Adequacy Resource.
- 1.49 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.50 “Flexible RA Product” means that the Product includes FCR Attributes, if applicable, as specified in Sections C and E of the Cover Sheet.
- 1.51 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under the Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply (except to the extent due to a Force Majeure); or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider (i) unless such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) except to the extent such curtailment is due to Transmission Provider; *provided, however*, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.
- 1.52 “Full Capacity Deliverability Status” or “FCDS” has the meaning set forth in the Tariff.
- 1.53 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.
- 1.54 “Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Body and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Unit.
- 1.55 “Governmental Body” means (a) any federal, state, local, municipal or other government; (b) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; (c) any court or governmental tribunal, but in all cases, excludes both Parties; and (d) CAISO.

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- 1.56 “Governmental Charges” has the meaning set forth in Section 8.2.
- 1.57 “Guaranteed Initial Delivery Date” is the date set forth in Section H of the Cover Sheet, subject to extension pursuant to Section 16.2(c), but as limited by Section 16.2(d).
- 1.58 “Initial Delivery” has the meaning set forth in Section 16.2(a).
- 1.59 “Initial Delivery Date” means the date on which Initial Delivery is achieved.
- 1.60 “Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Unit and Seller’s Interconnection Facilities will be interconnected with the Transmission System during the Delivery Term.
- 1.61 “Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Unit with the Transmission System in accordance with the Interconnection Agreement.
- 1.62 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.
- 1.63 “Investment Grade” means a Credit Rating of at least “[REDACTED]” from Moody’s (or, if such entities cease to provide Credit Ratings, from another comparable rating agency that is reasonably acceptable to the Parties).
- 1.64 “Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).
- 1.65 “Joint Powers Agreement” means that certain Joint Powers Agreement dated October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.
- 1.66 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.67 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the Resource Adequacy Rulings, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body,

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defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.

- 1.68 “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 Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.69 “Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least “ ” with an outlook designation of “ ” with an outlook designation of “ ” from Moody’s, in a form as set forth in Exhibit A or as otherwise acceptable to Buyer.
- 1.70 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.
- 1.71 “LRA” has the meaning set forth in the Tariff.
- 1.72 “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).
- 1.73 “Milestones” has the meaning set forth in Section H of the Cover Sheet.
- 1.74 “Monthly RA Capacity Payment” has the meaning specified in Section 3.10(a) hereof.
- 1.75 “Moody’s” means Moody’s Investor Services, Inc. or its successor.
- 1.76 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.77 “Net Qualifying Capacity” or “NQC” has the meaning set forth in the Tariff.
- 1.78 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.79 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.80 “Notification Deadline” has the meaning set forth in Section 3.6.
- 1.81 “Notifying Party” has the meaning set forth in Section 17.10(a).
- 1.82 “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the obligations of the Unit under the CAISO Offer Requirements consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage.
- 1.83 “Participating Transmission Owner” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain

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transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. The Participating Transmission Owner for purposes of this Agreement is San Diego Gas & Electric.

- 1.84 “Performance Security” means collateral in the form of cash or a Letter of Credit in an amount set forth in Section G of the Cover Sheet.
- 1.85 “Planned Outage” means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.86 “Product” has the meaning set forth in Section 3.1.
- 1.87 “Progress Report” means a report substantially in the form set forth in Exhibit F, the requirements for which are further set forth in Section 16.1(c).
- 1.88 “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CPUC, CAISO, or other Governmental Body authorized to make such determination under Applicable Laws, including the Resource Adequacy Rulings. RA Capacity encompasses the applicable RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit.
- 1.89 “RAR” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.90 “RAR Attributes” means, with respect to a Resource Adequacy Resource, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, Resource Adequacy Rulings, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.
- 1.91 “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 Tariff or Resource Adequacy Rulings, or to an LRA having jurisdiction.
- 1.92 “Recipient Party” has the meaning set forth in Section 17.10(a).
- 1.93 “Regulatory Event” has the meaning set forth in Section 17.7.
- 1.94 “Reliability Compensation Services Tariff” has the meaning set forth in the Tariff.
- 1.95 “Replacement Capacity” has the meaning specified in Section 3.8 hereof.

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- 1.96 “Replacement Unit” means a unit meeting the requirements specified in Section 3.6 hereof that is located within the CAISO Control Area and that is capable of providing Alternate Capacity. A Replacement Unit may not be a coal-fired or nuclear generating resource.
- 1.97 “Required TPD Allocation” means an allocation of TP Deliverability from the CAISO that is sufficient for the Unit to obtain Full Capacity Deliverability Status for at least the Contract Quantity.
- 1.98 “Residual Unit Commitment” has the meaning set forth in the Tariff.
- 1.99 “Resource Adequacy Plan” has the meaning specified in the Tariff.
- 1.100 “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.
- 1.101 “Resold Product” has the meaning set forth in Article 12.
- 1.102 “Resource Adequacy Resource” has the meaning set forth in the Tariff.
- 1.103 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.104 “RMR Contracts” has the meaning set forth in the Tariff.
- 1.105 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.106 “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 Term at a specified Delivery Point.
- 1.107 “Scheduling Coordinator” has the same meaning as in the Tariff.
- 1.108 “Security Interest” has the meaning set forth in Section 14.3(a).
- 1.109 “Seller” has the meaning set forth in the Preamble.
- 1.110 “Settlement Amount” means, with respect to the Non-Defaulting Party, the aggregate Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of a Terminated Transaction pursuant to Section 5.2.

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- 1.111 “Showing Month” shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the Resource Adequacy Rulings or Tariff. For illustrative purposes only, pursuant to the Resource Adequacy Rulings in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.112 “Site” means the real property on which the Unit is located as identified in Appendix D.
- 1.113 “Site Control” means that, for the Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.
- 1.114 “Substitution Rules” has the meaning specified in the Tariff.
- 1.115 “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 Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.116 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.117 “Term” has the meaning set forth in Section 2.1(a).
- 1.118 “Terminated Transaction” has the meaning set forth in Section 5.2.
- 1.119 “Termination Payment” has the meaning set forth in Section 5.3.
- 1.120 “TP Deliverability” has the meaning set forth in the CAISO Tariff.
- 1.121 “Transmission Provider” means the CAISO.
- 1.122 “Transmission System” means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Delivery Point.
- 1.123 “Unit” shall mean the storage asset described in Section B of the Cover Sheet and Exhibit D hereof and any Replacement Units, from which Product is provided by Seller to Buyer. A Unit may not include a coal-fired or nuclear generating resource.
- 1.124 “Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

ARTICLE 2: TERM; DELIVERY TERM; CONDITIONS PRECEDENT

2.1 Term.

The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, then-owing indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Performance Security is released and/or returned (the “Term”). Upon Seller’s request, Buyer will promptly confirm in writing the Initial Delivery Date following Seller’s completion of all conditions precedent hereto. All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 17.2 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 11 (Confidentiality) survive the end of the Delivery Term for an additional two (2) years; (iii) all rights and obligations under Section 16.2(f) (Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date) survive early termination of this Agreement for an additional two (2) years; and (iv) all provisions relating to limitations of liability survive without limit.

2.2 Conditions Precedent to Initial Delivery Date.

Seller shall provide notice of expected Initial Delivery Date to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Unit and to enable Seller to deliver the Product to Buyer.

(d) Seller shall have provided to Buyer a certification of Seller and a licensed professional engineer, substantially in the form attached hereto as Exhibit C, demonstrating that the Initial Delivery Date has occurred.

(e) Seller shall have provided Performance Security to Buyer as required by Section 14.2.

(f) As of the Initial Delivery Date, no Event of Default on the part of Seller shall have occurred and be continuing.

(g) Seller shall have obtained Full Capacity Deliverability Status.

(h) Subject to Section 16.2(b), Seller shall have obtained an NQC for the Unit of at least 1.5 MW.

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(i) In accordance with Section 3.7(a), Seller shall have (i) submitted, or caused the Unit's SC to submit, a notice to Buyer including Seller's proposed Supply Plan for the first Showing Month of the Delivery Term and (ii) submitted, or caused the Unit's SC to submit, a Supply Plan to CAISO for the first Showing Month of the Delivery Term.

(j) Seller shall have delivered to Buyer all insurance documents required under Article 15.

(k) As of the Initial Delivery Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1 Resource Adequacy Capacity Product.

During the Delivery Term, Seller shall provide Buyer with RA Capacity from the Unit in the amount of the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Sections C and E of the Cover Sheet to this Agreement with respect to each Showing Month (the "Product"). Seller's obligation to deliver the Contract Quantity of Product for each day of the Delivery Term is firm and will not be excused for any reason other than Force Majeure.

If the Unit is not available to provide the full amount of the Contract Quantity with respect to an applicable Showing Month for any reason other than Force Majeure, including, without limitation, any Outage or any adjustment of the RA Capacity of any Unit, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 3.6 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 3.6, then Seller shall be liable for damages and/or be required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 3.8 and 3.9 hereof.

Notwithstanding anything to the contrary herein, no energy or ancillary services associated with the Unit is required to be made available to Buyer 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, pursuant to the Tariff, any RA Capacity that is in excess of the Unit's Contract Quantity and any RAR Attributes, LAR Attributes, or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Agreement.

3.2 Seller's and Buyer's Obligations.

Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Designated RA Capacity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price for the Designated RA Capacity. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

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3.3 [Reserved].

3.4 Delivery Point.

The “Delivery Point” for the Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

3.5 Planned Outages.

Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Unit as a Resource Adequacy Resource that is subject to the Availability Standards to qualify for an “Approved Maintenance Outage” under the CAISO Tariff. Seller shall reimburse Buyer for any cost Buyer incurs to provide Replacement RA, as required by the CAISO, during any Planned Outages (including the cost of procuring Replacement RA for a full calendar month during any month in which a Planned Outage is planned or scheduled). Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Unit shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion.

3.6 Alternate Capacity and Replacement Units.

(a) The “Notification Deadline” for a given Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding CPUC RAR Showings, LAR Showings and/or FCR Showings, as applicable for that Showing Month, or (b) submission of the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, or if Seller desires to provide the Contract Quantity for any Showing Month from a Replacement Unit, then Seller may, at no additional cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and any Replacement Unit(s) up to an amount equal to the Contract Quantity for the applicable Showing Month; *provided*, in each case, Seller shall notify Buyer of the amount of Product that Seller will not be able to deliver from the Unit and the portion of the Contract Quantity for which Seller intends to provide Buyer with Alternate Capacity from identified Replacement Unit(s) no later than the Notification Deadline.

(c) If Seller fails to provide Buyer the Contract Quantity of Product from the Unit or a Replacement Unit for a given Showing Month during the Delivery Term, then Buyer may, but shall not be required to, purchase replacement Product from a third party.

3.7 Delivery of Product.

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Unit’s Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each

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Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) The Designated RA Capacity is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the Designated RA Capacity from Seller's Supply Plan for any Showing Month during the Delivery Term, has been accepted by the CAISO. If CAISO rejects either the Supply Plan or Buyer's Resource Adequacy Plan with respect to any part of the Designated RA Capacity in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable Notification Deadline for the relevant Showing Month.

(c) Consistent with the Substitution Rules, take all action, or cause each Unit's Scheduling Coordinator to take all action, to allow Buyer or a subsequent purchaser under Article 12 to utilize the Contract Quantity during each Showing Month under the Substitution Rules, including, but not limited to, ensuring that the Designated RA Capacity being provided in the pertinent Showing Month will qualify for substitution under the Substitution Rules and providing Buyer or subsequent purchaser under Article 12 with all information needed to utilize the Substitution Rules.

3.8 Damages for Failure to Provide Designated RA Capacity.

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller; *provided*, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product) ("Replacement Capacity"), in either case, by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer, so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer, on the date payment would otherwise be due in respect of the Showing Month for which the failure occurred, an amount equal to the positive difference, if any, between (A) the product of the Capacity Replacement Price times the amount of the Designated RA Capacity not provided by Seller and (B) the product of the Contract Price times the amount of the Designated RA Capacity not provided by Seller. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller pursuant to Article 6 of this Agreement.

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3.9 Indemnities for Failure to Deliver Contract Quantity.

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

(a) Seller's failure to provide any portion of the Designated RA Capacity for the respective Showing Month for the Delivery Term; or

(b) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right, or a subsequent purchaser's right, to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; *provided*, 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 costs, 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.

3.10 Monthly RA Capacity Payment.

Buyer shall make a Monthly RA Capacity Payment to Seller for the Unit, in arrears, after the applicable Showing Month. The Parties agree that all invoices under this Agreement shall be due and payable on the twentieth (20th) day of the month after the Showing Month; *provided*, if such day is not a Business Day, then such invoice will be due and payable on the next Business Day. The Unit's "Monthly RA Capacity Payment" shall be equal to the product of (i) the applicable Contract Price for that Showing Month, (ii) the Designated RA Capacity of the Product actually delivered by Seller to Buyer for the Showing Month and (iii) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

3.11 Allocation of Other Payments and Costs.

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the storage 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 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.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of the Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.11(a) above).

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(c) In accordance with Section 3.10 of this Agreement:

(i) all such Buyer revenues described in Section 3.11(b) received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). 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.

(ii) all such Seller, or a Unit's Scheduling Coordinator, owner, or operator revenues described in Section 3.11(a)(i)-(v), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Seller (and upon any such payment by Buyer, Buyer shall be subrogated to all rights of Seller against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues. Buyer shall be responsible for any material, incremental costs of offering, bidding, submitting, or re-selling Designated RA Capacity in such centralized capacity market.

(e) 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.

3.12 Force Majeure.

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

ARTICLE 4: CAISO OFFER REQUIREMENTS

During the Delivery Term, except to the extent the Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of the Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO the Unit's Designated RA Capacity in compliance with the Tariff, including compliance with Minimum State of Charge, Day-Ahead Availability, Real-Time Availability, Must Offer Obligation, and Default Energy Bid requirements established in Article 40 of the Tariff and Seller shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Product hereunder. (the "CAISO Offer Requirements"). Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 5: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and such Party does not fully mitigate the adverse consequences as reasonably determined by the other Party of such incorrect representation or warranty to the other Party within thirty (30) days after written notice thereof;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Section 3.8 and 3.9) if such failure is not remedied within thirty (30) Business Days after written notice;
- (d) if at any time, Seller delivers or attempts to deliver Product to the Delivery Point for sale under this Agreement that was not generated by the Unit, except for Alternate Capacity;
- (e) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Term to any party other than Buyer except as expressly permitted under this Agreement;
- (f) such Party becomes Bankrupt;
- (g) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 17.3, if applicable;

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(h) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 14 hereof if such failure is not remedied within ten (10) Business Days after written notice;

(i) 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; or

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

(i) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least [REDACTED] by Moody's;

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

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

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

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

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

(vii) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement (referred to herein as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement; and (iii) suspend performance. If the Early Termination Date occurs before the

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Initial Delivery Date, then no Settlement Amount shall be owed by either Party. If the Early Termination Date occurs after the Initial Delivery Date, then as soon as reasonably practicable, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for 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 Transaction 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). The Gains and Losses for a Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall net out (a) any Settlement Amount that is due to the Non-Defaulting Party, plus, (b) 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 14, plus (c) any or all other amounts due to the Non-Defaulting Party under this Agreement against (d) all amounts that are due to the Defaulting Party, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within ten (10) days after such notice is effective.

5.5 Disputes with Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) 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 Security to the Non-Defaulting Party in an amount equal to the Termination Payment.

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5.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Agreement is not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

ARTICLE 6: PAYMENT AND NETTING

6.1 Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment.

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

6.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party.

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receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

6.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security.

Unless the Party benefiting from Performance Security notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article 5, all amounts netted pursuant to this Article 6 shall not take into account or include any Performance Security which may be in effect to secure a Party's performance under this Agreement.

ARTICLE 7: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages.

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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

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INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8: GOVERNMENTAL CHARGES

8.1 Cooperation.

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

8.2 Governmental Charges.

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

ARTICLE 9: [RESERVED]

ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS

10.1 Mutual Representations and Warranties.

On the Effective Date, each Party represents and warrants to the other Party that:

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- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain the Unit and sell the Product therefrom in the case of Seller;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (e) 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;
- (f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and
- (h) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of Product.

10.2 Buyer and Seller Covenants.

Buyer and Seller shall, throughout the Delivery Term, 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 Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Article 12. Such commercially reasonable actions shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing the Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR, and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Term the ability to deliver the Contract Quantity from the Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability”

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standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform it to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; *provided, however*, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, Unit enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

10.3 Seller Representations, Warranties and Covenants.

Seller represents, warrants and covenants to Buyer that:

(a) Throughout the Delivery Term, the Unit qualifies as a Resource Adequacy Resource that is eligible to provide the Product pursuant to the Tariff and the Resource Adequacy Rulings;

(b) Throughout the Delivery Term, Seller owns or has the exclusive right to the RA Capacity sold under this Agreement, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(c) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

(d) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;

(e) The Unit is within the CAISO Control Area and Seller shall maintain Site Control throughout the Delivery Term;

(f) Throughout the Delivery Term, the owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(g) Throughout the Delivery Term, the respective cumulative amounts of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred from the Unit does not exceed that Unit's RA Capacity;

(h) Throughout the Delivery Term, with respect to the RA Capacity provided under this Agreement, Seller shall, and the Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RAR, LAR, and FCR;

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(i) Seller has notified the Scheduling Coordinator of the Unit that, throughout the Delivery Term, has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with this Agreement and the Tariff;

(j) Seller has notified the Scheduling Coordinator of the Unit that Seller is obligated, throughout the Delivery Term, to cause the Unit's Scheduling Coordinator to provide to the Buyer, at least fifteen (15) Business Days before the Notification Deadline, the Designated RA Capacity of the Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified the Unit's Scheduling Coordinator that, throughout the Delivery Term, Buyer is entitled to the revenues set forth in Section 3.11 of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

10.4 Buyer Representations, Warranties and Covenants.

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

ARTICLE 11: CONFIDENTIALITY

(a) Neither Party shall disclose the terms or conditions of this Agreement or information exchanged between the Parties pursuant to this Agreement ("Confidential Information") to a third party (other than the Party's or its Affiliates' employees, lenders or potential lenders, investors or potential investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to fulfill such Party's obligations under this Agreement or to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; *provided, however*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) Notwithstanding the foregoing, the Parties agree that Buyer may disclose the information pertaining to this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Agreement to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans; *provided*, each disclosing Party shall use reasonable

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efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such information. In addition, in the event Buyer resells all or any portion of the Designated RA Capacity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information to the extent such disclosure is necessary to affect such resale transaction; *provided*, such other party agrees to keep such information confidential.

(c) Seller acknowledges that Buyer is subject to the California Constitution Article 1, Section 3, and the California Public Records Act, Cal. Gov. Code § 6250 *et seq.* (“Public Records Act”) in regard to the documents comprising this Agreement, which items may constitute public records subject to inspection and copying by the public under the authority of the California Constitution and the Public Records Act. Buyer shall, consistent with those laws, use reasonable efforts to provide Seller with notice of any third-party request to inspect or copy any of the documents that comprise this Agreement, which Seller might deem confidential and exempt from disclosure, in order that Seller may timely seek to protect those documents from disclosure to the third party. Seller acknowledges and agrees that Buyer shall not be liable to Seller if Buyer makes disclosure in accordance with the California Constitution and/or the Public Records Act before Seller has timely obtained an order to prevent Buyer from making the requested disclosure to the third party.

ARTICLE 12: BUYER’S RE-SALE OF PRODUCT

No less than fifteen (15) days prior to the Notification Deadline for any Showing Month of the Delivery Term, Buyer may provide written notice to Seller of Buyer’s intent to re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. If Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement in accordance with this Article 12 (“Resold Product”), Seller agrees, and agrees to cause the Unit’s Scheduling Coordinator, to follow Buyer’s reasonable instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller’s obligations under this Agreement. Seller further agrees, and agrees to cause the Unit’s Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer’s rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product directly due to the failure of Seller or the Unit’s Scheduling Coordinator to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Agreement if Buyer had not resold the Product, including without limitation, pursuant to Sections 3.8 and 3.9.

In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Article 12) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale: (i) benefitting load serving entity SC identification number (SCID), (ii) volume (in MW) of Resold Product, and (iii) subsequent sale delivery period for Resold Product.

ARTICLE 13: COMPLIANCE OBLIGATION

The Parties acknowledge and agree that a material purpose of this Agreement is to enable Buyer to satisfy its Compliance Obligation. If, at any time during the Term, the Unit is not qualified to produce Product, including RAR Attributes, LAR Attributes, and FCR Attributes, as applicable, including due to any action by the CPUC, CAISO or any Governmental Body having jurisdiction that results in any change in Applicable Law occurring after the Effective Date that changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Buyer's Compliance Obligation (a "Compliance Issue"), the Parties shall work in good faith to revise this Agreement so that the Parties can perform their obligations regarding the purchase and sale of Product sold hereunder in order to maintain the original intent; *provided, however*, in no event shall Seller be obligated to undertake capital improvements, Unit enhancements, or the construction of new facilities. If a Compliance Issue results in the Product not being able to be counted towards Buyer's Compliance Obligation, and the Parties have not reached agreement on amendments within thirty (30) days after the initiation of discussions regarding the Compliance Issue that would allow the Product to be able to be counted towards Buyer's Compliance Obligation, Buyer may terminate this Agreement upon written notice to Seller, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party, subject to payment of any amounts owing as of the effective date of such termination.

ARTICLE 14: COLLATERAL REQUIREMENTS

14.1 [Reserved].

14.2 Performance Security.

Seller shall deliver Performance Security to Buyer on or before the Initial Delivery Date. Seller shall maintain the Performance Security in full force and effect, and shall within ten (10) Business Days after any draws made by Buyer in accordance with this Agreement replenish the Performance Security, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, termination damages, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

14.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Performance

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Security, any other cash collateral and cash equivalent collateral posted under this Agreement, and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

(b) Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Performance Security, Buyer may do any one or more of the following:

- (i) Exercise any of its rights and remedies with respect to the Performance Security, as applicable, including any such rights and remedies under Applicable Law then in effect;
- (ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Performance Security; and
- (iii) Liquidate Performance Security then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

ARTICLE 15: INSURANCE

15.1 Insurance.

Throughout the Term, Seller shall procure and maintain the following insurance coverage and require and cause its contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of the Seller in this Section 15.1 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability.

- (i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Applicable Laws or statutes, California state or federal, where Seller performs Work.
- (ii) Employers' liability insurance will not be less than [REDACTED] ([REDACTED]) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] ([REDACTED]) policy limit will apply to each employee.

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(b) Commercial General Liability.

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] ([REDACTED]) per occurrence, and an annual aggregate of not less than [REDACTED] ([REDACTED]), endorsed to provide contractual liability in said amount (subject to policy terms and conditions), specifically covering Seller's insurable indemnity obligations under this Agreement and including Buyer as an additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement. Limits may be satisfied through a combination of primary and excess policies.

(ii) An umbrella insurance policy in a minimum limit of liability of [REDACTED] ([REDACTED]).

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) Business Auto.

(i) Business auto insurance for bodily injury and property damage with limits of [REDACTED] ([REDACTED]) per occurrence.

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(d) Construction All-Risk Insurance.

(i) During the construction of the Unit prior to the Initial Delivery Date, construction all-risk form property insurance covering the Unit during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(e) Contractor's Pollution Liability.

(i) If the scope of Work involves areas of known pollutants or contaminants, Seller shall maintain or require to be maintained, pollution liability coverage for bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will be at least [REDACTED] ([REDACTED]) each occurrence for bodily injury and property damage.

(iii) The policy will endorse Buyer as additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement.

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15.2 Evidence of Insurance.

Within ten (10) days after the Effective Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior notice by Seller in the event of any cancellation or termination of coverage, except ten (10) days for nonpayment of premium. With the exception of Workers Compensation/Employers Liability, such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 16: UNIT CONSTRUCTION AND INITIAL DELIVERY DATE

16.1 Construction of the Unit.

(a) Construction Start. “Construction Start” will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Unit, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Unit may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract (or equivalent agreements) and issued thereunder a notice to proceed or its equivalent that authorizes the contractor to mobilize to Site and begin physical construction of the Unit at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit B hereto, and the date certified therein shall be the “Construction Start Date.”

(b) Progress Reports. The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date and (ii) each calendar month from the first calendar month following the Construction Start Date until the Initial Delivery Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit F. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller shall also provide Buyer with any information in Seller’s possession that is reasonably requested by Buyer for Buyer to demonstrate to the CPUC, CAISO, or other Governmental Bodies that Buyer has met its applicable resource adequacy requirements, including providing status reports to the CPUC with respect to the Unit.

16.2 Initial Delivery Date.

(a) Initial Delivery. “Initial Delivery” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided notice to Buyer substantially in the form of Exhibit C. Seller shall cause Initial Delivery for the Unit to occur by the Guaranteed Initial Delivery Date, as such date may be extended by a Development Cure Period pursuant to pursuant to Section 16.2(c) subject to the limitations in Section 16.2(d).

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(b) Reduction to Contract Quantity. If, on the Initial Delivery Date, Seller shall have obtained an NQC and/or EFC, as applicable, for the Unit from the CPUC that is less than the Contract Quantity of RAR Attributes and/or FCR Attributes set forth on the Cover Sheet as of the Effective Date, as applicable, then the following sections of this Agreement shall be automatically amended: (i) the Unit NQC and/or Unit EFC in Section B of the Cover Sheet shall be revised to equal the maximum amount of NQC and/or EFC, as applicable, established for the Unit by the CPUC; (ii) the Contract Quantities in Section E of the Cover Sheet shall be revised to equal the maximum amount of NQC and/or EFC, as applicable, established for the Unit by the CPUC; (iii) the Contract Quantity of LAR Attributes, if applicable, shall equal the revised Contract Quantity of RAR Attributes; and (iv) the quantity of NQC set forth in Section 2.2(h) shall be revised to equal the maximum amount of NQC established for the Unit by the CPUC, if such amount is less than the amount set forth in Section 2.2(h) as of the Effective Date.

(c)

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(d)

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(e) Termination for Failure to Achieve Initial Delivery Date. If the Unit has not achieved Initial Delivery on or before the Guaranteed Initial Delivery Date, as such date may be extended by a Development Cure Period pursuant to pursuant to Section 16.2(c) subject to the limitations in Section 16.2(d), then Buyer may terminate this Agreement upon written notice to Seller, which termination shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to Seller, subject to payment of any amounts owing as of the effective date of such termination and provided that Seller shall be subject to Section 16.2(f).

(f) Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date. If this Agreement is terminated by either Party prior to the Initial Delivery Date for any reason other than a Buyer Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Unit to a

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party other than Buyer for a period of two (2) years following such termination, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Unit, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Unit) so long as the limitations contained in this Section 16.2(f) apply, unless the transferee agrees to be bound by the terms set forth in this Section 16.2(f) pursuant to a written agreement approved by Buyer in its reasonable discretion. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 16.2(f).

ARTICLE 17: MISCELLANEOUS

17.1 Title and Risk of Loss.

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

17.2 Indemnity.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees associated with damage to third parties resulting from, or arising out of or in any way connected with Seller's operation and/or maintenance of the Unit, including without limitation any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to such third parties, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees associated with damage to third parties resulting from, or arising out of or in any way connected with Buyer's access to the Unit site, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to such third parties, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 17.2(a) and 17.2(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall

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constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

17.3 Assignment.

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; *provided, however*, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; *provided, however*, that in the case of any such assignment pursuant to clause (ii) or clause (iii), any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. In connection with any financing or refinancing of the Unit by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.

17.4 Governing Law and Venue.

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. Each of the Parties irrevocably and unconditionally agrees that any suit, action or other proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof shall be filed in either the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, as appropriate (and agrees not to commence any suit, action or proceeding relating thereto except in such courts). Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof in the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, as appropriate, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment (i.e., judgment after any appeals that may be duly made) in any suit, action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

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17.5 Notices.

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

17.6 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 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), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

Notwithstanding any provision of this Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

17.7 General.

This Agreement (including the exhibits, schedules and any written supplements hereto, if any) constitutes the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any

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third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; *provided, further*, that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

17.8 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. If requested, a Party shall provide to the other Party statements evidencing the Designated RA Capacity delivered hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

17.9 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

17.10 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 17.10) (a “Dispute”), any Party (the “Notifying Party”) may deliver to the other Parties (the “Recipient Party”) notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a “Dispute Notice”). The Dispute Notice shall include a schedule of the availability of the Notifying Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a brief summary of the Recipient Party’s position on the Dispute and a parallel schedule of availability of the Recipient Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers’ schedules of availability, the senior

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officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 17.10(a) and (b) by the expiration of the thirty (30) day period set forth in Section 17.10(b), then a Party may pursue any legal remedy available to it in accordance with this Agreement.

17.11 Execution.

A signature received via facsimile or email shall have the same legal effect as an original.

17.12 Joint Powers Authority.

Seller acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer's members in connection with this Agreement.

17.13 Dodd-Frank Act

The Parties intend this Agreement to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

17.14 Market-Based Rate Authority.

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

17.15 Rules of Interpretation.

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

[Remainder of Page Intentionally Left Blank]

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

**ENERSMART MESA HEIGHTS BESS
LLC, a California limited liability company**

**SAN DIEGO COMMUNITY POWER,
a California joint powers authority**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

[Buyer], a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of [Buyer], a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Agreement dated as of _____ and as amended (the “Agreement”) between [Applicant] and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to *[bank email address]*] (if presented by fax it must be followed up by a phone call to us at [XXXXXX] or [XXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

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We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [Buyer], Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

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[Insert officer title]

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Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [Buyer], a California joint powers authority, [Buyer address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of _____, (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [Buyer], a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [Buyer], a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

[Buyer]

Name and Title of Authorized Representative

Date _____

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EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE

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

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

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

[Seller]

By:_____

Its:_____

Date:_____

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EXHIBIT C: FORM OF INITIAL DELIVER DATE CERTIFICATE

This certification (“Certification”) of Initial Delivery is delivered by [Seller] (“Seller”) to San Diego Community Power, a California joint powers authority (“Buyer”) in accordance with the terms of that Agreement dated [date] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

- a) The Unit is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
- b) Seller has installed equipment for the Unit with a nameplate capacity of no less than 1.5 MW.
- c) The Unit is fully capable of charging, storing and discharging energy up to no less than 1.5 MW and receiving instructions to charge, store and discharge energy.
- d) Seller’s Interconnection Agreement provides for a maximum instantaneous discharge capability of no less than 1.5 MW.
- e) Authorization to parallel the Unit was obtained by the Participating Transmission Owner, SDG&E on _____[DATE]_____.

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

ENGINEER

Signature: _____

Name: _____

Title: _____

Date: _____

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EXHIBIT D: DESCRIPTION OF UNIT

The following describes the Unit to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

Unit name: EnerSmart Mesa Heights

Resource type: Battery Energy Storage

Nameplate capacity: 3MW / 6 MWh

Location: San Diego, CA

Unit physical address: 7986 Dagget Street San Diego, CA

Unit elevation: 450'

Unit latitude: 32 49 26 N

Unit longitude: -117 09'06.1" W

Interconnection: SDG&E

CAISO transmission access charge area (e.g. SDG&E): SDG&E

Point of interconnection: [REDACTED]

Point of interconnection address: [REDACTED]

Existing zone (e.g. SP-15): SP-15

PNode: MESA HGTS_6_N001

CAISO Resource ID: 23NGR25822

Substation: Mesa Heights

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EXHIBIT E: [RESERVED]

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EXHIBIT F: PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Unit description.
3. Site plan of the Unit.
4. Description of any material planned changes to the Unit or the Site.
5. Schedule showing progress on Unit construction generally and achieving each of the Milestones and the Initial Delivery Date.
6. Summary of activities during the previous month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to the Milestones and the Initial Delivery Date, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Milestones and the Initial Delivery Date.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress.
12. Any other documentation reasonably requested by Buyer.

EXHIBIT G: NOTICES

ENERSMART MESA HEIGHTS BESS LLC, a California limited liability company (“Seller”)	SAN DIEGO COMMUNITY POWER, a California joint powers authority (“Buyer”)
All Notices: Street: 400 S. Sierra Ave. Suite 100 City: Solana Beach, CA. 92075 Attn: James Beach Phone: 619-877-8444 Email: james@enersmartstorage.com	All Notices: P.O. Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org
Reference Numbers: Duns: n/a Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Eric Wheatley, VP Finance Phone: 704-763-8642 E-mail: eric.wheatley@enersmartstorage.com	Invoices: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: Eric Wheatley, VP Finance Phone: 704-763-8642 E-mail: eric.wheatley@enersmartstorage.com	Payments: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Wire Transfer: [REDACTED]	Wire Transfer: [REDACTED]

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**RESOURCE ADEQUACY AGREEMENT
COVER SHEET**

A. Parties

Seller: EnerSmart Alpine BESS LLC, a California limited liability company

Buyer: San Diego Community Power, a California joint powers authority

B. Unit Information

Unit Name:	EnerSmart Alpine
Location:	2436 Alpine Blvd Alpine, CA 91901
CAISO Resource ID:	Forthcoming
Unit SCID:	ASMT
Unit NQC:	3 MW
Unit EFC:	3 MW
Resource Type:	Battery Energy Storage System
Resource Category (1, 2, 3 or 4):	4
FCR Category (1, 2 or 3):	2
Path 26 (North or South):	SP26
Local Capacity Area (if any, as of Effective Date):	SDGE
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	TBD
Run Hour Restrictions	N/A

C. RA Product and Attributes

Throughout the Delivery Term, Seller shall provide Buyer with the Designated RA Capacity having the following attributes:

☒ RAR Attributes

☐ RAR Attributes with FCR Attributes

☐ LAR Attributes

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☒ LAR Attributes with FCR Attributes

☐ FCR Attributes

D. Delivery Term

The Delivery Term is ten (10) Contract Years.

E. Contract Quantities

The Contract Quantities for each Showing Month of the Delivery Term shall be:

RAR Attributes: [REDACTED]

LAR Attributes: [REDACTED]

FCR Attributes: [REDACTED]

F. Contract Price

The Contract Price shall be: [REDACTED]

G. Seller's Security Amounts

Performance Security: [REDACTED]

H. Milestones

Milestone	Date for Completion
Site Control obtained	April 2022
Interconnection Agreement executed	forthcoming
Expected Construction Start Date	March 2024
Full Capacity Deliverability Status obtained	July 2024
Guaranteed Initial Delivery Date	February 15, 2025

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PREAMBLE

This Resource Adequacy Agreement (“Agreement”) is entered into between **EnerSmart Alpine BESS LLC**, a California limited liability company (“Seller”) and **San Diego Community Power**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties,” as of [REDACTED] (the “Effective Date”). All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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


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

ARTICLE 1: DEFINITIONS

- 1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2 “Agreement” has the meaning set forth in the Preamble.
- 1.3 “Alternate Capacity” means any replacement RA Capacity having at least equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Product provided by the Unit; *provided*, if any portion of the Designated RA Capacity that Seller is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Seller may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product).
- 1.4 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Agreement, including without limitation, the Tariff.
- 1.5 “Availability Incentive Payments” means Availability Incentive Payments as defined in the Tariff.
- 1.6 “Availability Standards” means Availability Standards as defined in the Tariff.
- 1.7 “Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of

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action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

- 1.8 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.
- 1.9 “Buyer” has the meaning set forth in the Preamble.
- 1.10 “CAISO” means the California Independent System Operator or its successor.
- 1.11 “CAISO Control Area” means the Control Area (as defined in the Tariff) that is operated by the CAISO.
- 1.12 “CAISO Controlled Grid” has the meaning set forth in the Tariff.
- 1.13 “CAISO Offer Requirements” has the meaning set forth in Article 4.
- 1.14 “Capacity Replacement Price” 
- 1.15 “CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.
- 1.16 “Claiming Party” has the meaning set forth in Section 3.12.
- 1.17 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
- 1.18 “Compliance Issue” has the meaning set forth in Article 13.
- 1.19 “Compliance Obligation” means the RAR, Local RAR, FCR, and any other resource adequacy or capacity procurement requirements imposed on LSEs by the CPUC pursuant to the Resource Adequacy Rulings, by the CAISO, by the WECC, or by any other Governmental Body having jurisdiction.

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- 1.20 “Confidential Information” has the meaning set forth in Article 11.
- 1.21 “Construction Start” has the meaning set forth in Section 16.1(a).
- 1.22 “Construction Start Date” has the meaning set forth in Section 16.1(a).
- 1.23 “Contract Price” has the meaning set forth in Section F of the Cover Sheet.
- 1.24 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Term, the amount of Product (in MWs) set forth in Section E of the Cover Sheet, which Seller has agreed to provide to Buyer from the Unit for such Showing Month, which amount may be amended in accordance with Section 16.2(b).
- 1.25 “Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date; and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.
- 1.26 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the Terminated Transaction.
- 1.27 “CPUC” means the California Public Utilities Commission or its successor.
- 1.28 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.29 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.30 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s.
- 1.31 “Defaulting Party” has the meaning set forth in Section 5.1.
- 1.32 “Delivery Point” has the meaning set forth in Section 3.4.

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- 1.33 “Delivery Term” means the period of Contract Years set forth on the Cover Sheet beginning on the Initial Delivery Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.
- 1.34 “Designated RA Capacity” shall be equal to, with respect to each Showing Month of the Delivery Term, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity that Seller has elected to provide as Alternate Capacity from one or more Replacement Units in accordance with Section 3.6.
- 1.35 “Development Cure Period” has the meaning set forth in Section 16.2(c).
- 1.36 “Dispute” has the meaning set forth in Section 17.10(a).
- 1.37 “Dispute Notice” has the meaning set forth in Section 17.10(a).
- 1.38 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.39 “Effective Date” is the date set forth in the Preamble.
- 1.40 “Effective Flexible Capacity” or “EFC” means the capacity of a resource that can be counted towards an LSE’s Flexible Capacity Requirements, as identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or other Governmental Body having jurisdiction.
- 1.41 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.
- 1.42 “EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.
- 1.43 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- 1.44 “Event of Default” has the meaning set forth in Section 5.1.
- 1.45 “FCR Attributes” means, with respect to a Resource Adequacy Resource, any and all flexible resource adequacy attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the Resource Adequacy Rulings, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.
- 1.46 “FCR Showings” 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 Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.

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- 1.47 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.48 “Flexible Capacity Category” has the meaning set forth in the Resource Adequacy Resource.
- 1.49 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.50 “Flexible RA Product” means that the Product includes FCR Attributes, if applicable, as specified in Sections C and E of the Cover Sheet.
- 1.51 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under the Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply (except to the extent due to a Force Majeure); or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider (i) unless such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) except to the extent such curtailment is due to Transmission Provider; *provided, however*, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.
- 1.52 “Full Capacity Deliverability Status” or “FCDS” has the meaning set forth in the Tariff.
- 1.53 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.
- 1.54 “Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Body and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Unit.
- 1.55 “Governmental Body” means (a) any federal, state, local, municipal or other government; (b) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; (c) any court or governmental tribunal, but in all cases, excludes both Parties; and (d) CAISO.

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- 1.56 “Governmental Charges” has the meaning set forth in Section 8.2.
- 1.57 “Guaranteed Initial Delivery Date” is the date set forth in Section H of the Cover Sheet, subject to extension pursuant to Section 16.2(c), but as limited by Section 16.2(d).
- 1.58 “Initial Delivery” has the meaning set forth in Section 16.2(a).
- 1.59 “Initial Delivery Date” means the date on which Initial Delivery is achieved.
- 1.60 “Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Unit and Seller’s Interconnection Facilities will be interconnected with the Transmission System during the Delivery Term.
- 1.61 “Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Unit with the Transmission System in accordance with the Interconnection Agreement.
- 1.62 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.
- 1.63 “Investment Grade” means a Credit Rating of at least [REDACTED] from Moody’s (or, if such entities cease to provide Credit Ratings, from another comparable rating agency that is reasonably acceptable to the Parties).
- 1.64 “Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).
- 1.65 “Joint Powers Agreement” means that certain Joint Powers Agreement dated October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.
- 1.66 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.67 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the Resource Adequacy Rulings, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body,

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defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.

- 1.68 “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 Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.69 “Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least [REDACTED] with an outlook designation of [REDACTED] with an outlook designation of [REDACTED] from Moody’s, in a form as set forth in Exhibit A or as otherwise acceptable to Buyer.
- 1.70 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.
- 1.71 “LRA” has the meaning set forth in the Tariff.
- 1.72 “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).
- 1.73 “Milestones” has the meaning set forth in Section H of the Cover Sheet.
- 1.74 “Monthly RA Capacity Payment” has the meaning specified in Section 3.10(a) hereof.
- 1.75 “Moody’s” means Moody’s Investor Services, Inc. or its successor.
- 1.76 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.77 “Net Qualifying Capacity” or “NQC” has the meaning set forth in the Tariff.
- 1.78 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.79 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.80 “Notification Deadline” has the meaning set forth in Section 3.6.
- 1.81 “Notifying Party” has the meaning set forth in Section 17.10(a).
- 1.82 “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the obligations of the Unit under the CAISO Offer Requirements consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage.
- 1.83 “Participating Transmission Owner” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain

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transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. The Participating Transmission Owner for purposes of this Agreement is San Diego Gas & Electric.

- 1.84 “Performance Security” means collateral in the form of cash or a Letter of Credit in an amount set forth in Section G of the Cover Sheet.
- 1.85 “Planned Outage” means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.86 “Product” has the meaning set forth in Section 3.1.
- 1.87 “Progress Report” means a report substantially in the form set forth in Exhibit F, the requirements for which are further set forth in Section 16.1(c).
- 1.88 “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CPUC, CAISO, or other Governmental Body authorized to make such determination under Applicable Laws, including the Resource Adequacy Rulings. RA Capacity encompasses the applicable RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit.
- 1.89 “RAR” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.90 “RAR Attributes” means, with respect to a Resource Adequacy Resource, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, Resource Adequacy Rulings, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.
- 1.91 “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 Tariff or Resource Adequacy Rulings, or to an LRA having jurisdiction.
- 1.92 “Recipient Party” has the meaning set forth in Section 17.10(a).
- 1.93 “Regulatory Event” has the meaning set forth in Section 17.7.
- 1.94 “Reliability Compensation Services Tariff” has the meaning set forth in the Tariff.
- 1.95 “Replacement Capacity” has the meaning specified in Section 3.8 hereof.

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- 1.96 “Replacement Unit” means a unit meeting the requirements specified in Section 3.6 hereof that is located within the CAISO Control Area and that is capable of providing Alternate Capacity. A Replacement Unit may not be a coal-fired or nuclear generating resource.
- 1.97 “Required TPD Allocation” means an allocation of TP Deliverability from the CAISO that is sufficient for the Unit to obtain Full Capacity Deliverability Status for at least the Contract Quantity.
- 1.98 “Residual Unit Commitment” has the meaning set forth in the Tariff.
- 1.99 “Resource Adequacy Plan” has the meaning specified in the Tariff.
- 1.100 “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.
- 1.101 “Resold Product” has the meaning set forth in Article 12.
- 1.102 “Resource Adequacy Resource” has the meaning set forth in the Tariff.
- 1.103 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.104 “RMR Contracts” has the meaning set forth in the Tariff.
- 1.105 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.106 “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 Term at a specified Delivery Point.
- 1.107 “Scheduling Coordinator” has the same meaning as in the Tariff.
- 1.108 “Security Interest” has the meaning set forth in Section 14.3(a).
- 1.109 “Seller” has the meaning set forth in the Preamble.
- 1.110 “Settlement Amount” means, with respect to the Non-Defaulting Party, the aggregate Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of a Terminated Transaction pursuant to Section 5.2.

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- 1.111 “Showing Month” shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the Resource Adequacy Rulings or Tariff. For illustrative purposes only, pursuant to the Resource Adequacy Rulings in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.112 “Site” means the real property on which the Unit is located as identified in Appendix D.
- 1.113 “Site Control” means that, for the Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.
- 1.114 “Substitution Rules” has the meaning specified in the Tariff.
- 1.115 “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 Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.116 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.117 “Term” has the meaning set forth in Section 2.1(a).
- 1.118 “Terminated Transaction” has the meaning set forth in Section 5.2.
- 1.119 “Termination Payment” has the meaning set forth in Section 5.3.
- 1.120 “TP Deliverability” has the meaning set forth in the CAISO Tariff.
- 1.121 “Transmission Provider” means the CAISO.
- 1.122 “Transmission System” means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Delivery Point.
- 1.123 “Unit” shall mean the storage asset described in Section B of the Cover Sheet and Exhibit D hereof and any Replacement Units, from which Product is provided by Seller to Buyer. A Unit may not include a coal-fired or nuclear generating resource.
- 1.124 “Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

ARTICLE 2: TERM; DELIVERY TERM; CONDITIONS PRECEDENT

2.1 Term.

The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, then-owing indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Performance Security is released and/or returned (the “Term”). Upon Seller’s request, Buyer will promptly confirm in writing the Initial Delivery Date following Seller’s completion of all conditions precedent hereto. All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 17.2 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 11 (Confidentiality) survive the end of the Delivery Term for an additional two (2) years; (iii) all rights and obligations under Section 16.2(f) (Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date) survive early termination of this Agreement for an additional two (2) years; and (iv) all provisions relating to limitations of liability survive without limit.

2.2 Conditions Precedent to Initial Delivery Date.

Seller shall provide notice of expected Initial Delivery Date to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Unit and to enable Seller to deliver the Product to Buyer.

(d) Seller shall have provided to Buyer a certification of Seller and a licensed professional engineer, substantially in the form attached hereto as Exhibit C, demonstrating that the Initial Delivery Date has occurred.

(e) Seller shall have provided Performance Security to Buyer as required by Section 14.2.

(f) As of the Initial Delivery Date, no Event of Default on the part of Seller shall have occurred and be continuing.

(g) Seller shall have obtained Full Capacity Deliverability Status.

(h) Subject to Section 16.2(b), Seller shall have obtained an NQC for the Unit of at least 3 MW.

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(i) In accordance with Section 3.7(a), Seller shall have (i) submitted, or caused the Unit's SC to submit, a notice to Buyer including Seller's proposed Supply Plan for the first Showing Month of the Delivery Term and (ii) submitted, or caused the Unit's SC to submit, a Supply Plan to CAISO for the first Showing Month of the Delivery Term.

(j) Seller shall have delivered to Buyer all insurance documents required under Article 15.

(k) As of the Initial Delivery Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1 Resource Adequacy Capacity Product.

During the Delivery Term, Seller shall provide Buyer with RA Capacity from the Unit in the amount of the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Sections C and E of the Cover Sheet to this Agreement with respect to each Showing Month (the "Product"). Seller's obligation to deliver the Contract Quantity of Product for each day of the Delivery Term is firm and will not be excused for any reason other than Force Majeure.

If the Unit is not available to provide the full amount of the Contract Quantity with respect to an applicable Showing Month for any reason other than Force Majeure, including, without limitation, any Outage or any adjustment of the RA Capacity of any Unit, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 3.6 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 3.6, then Seller shall be liable for damages and/or be required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 3.8 and 3.9 hereof.

Notwithstanding anything to the contrary herein, no energy or ancillary services associated with the Unit is required to be made available to Buyer 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, pursuant to the Tariff, any RA Capacity that is in excess of the Unit's Contract Quantity and any RAR Attributes, LAR Attributes, or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Agreement.

3.2 Seller's and Buyer's Obligations.

Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Designated RA Capacity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price for the Designated RA Capacity. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

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3.3 [Reserved].

3.4 Delivery Point.

The “Delivery Point” for the Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

3.5 Planned Outages.

Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Unit as a Resource Adequacy Resource that is subject to the Availability Standards to qualify for an “Approved Maintenance Outage” under the CAISO Tariff. Seller shall reimburse Buyer for any cost Buyer incurs to provide Replacement RA, as required by the CAISO, during any Planned Outages (including the cost of procuring Replacement RA for a full calendar month during any month in which a Planned Outage is planned or scheduled). Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Unit shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion.

3.6 Alternate Capacity and Replacement Units.

(a) The “Notification Deadline” for a given Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding CPUC RAR Showings, LAR Showings and/or FCR Showings, as applicable for that Showing Month, or (b) submission of the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, or if Seller desires to provide the Contract Quantity for any Showing Month from a Replacement Unit, then Seller may, at no additional cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and any Replacement Unit(s) up to an amount equal to the Contract Quantity for the applicable Showing Month; *provided*, in each case, Seller shall notify Buyer of the amount of Product that Seller will not be able to deliver from the Unit and the portion of the Contract Quantity for which Seller intends to provide Buyer with Alternate Capacity from identified Replacement Unit(s) no later than the Notification Deadline.

(c) If Seller fails to provide Buyer the Contract Quantity of Product from the Unit or a Replacement Unit for a given Showing Month during the Delivery Term, then Buyer may, but shall not be required to, purchase replacement Product from a third party.

3.7 Delivery of Product.

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Unit’s Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each

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Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) The Designated RA Capacity is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the Designated RA Capacity from Seller's Supply Plan for any Showing Month during the Delivery Term, has been accepted by the CAISO. If CAISO rejects either the Supply Plan or Buyer's Resource Adequacy Plan with respect to any part of the Designated RA Capacity in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable Notification Deadline for the relevant Showing Month.

(c) Consistent with the Substitution Rules, take all action, or cause each Unit's Scheduling Coordinator to take all action, to allow Buyer or a subsequent purchaser under Article 12 to utilize the Contract Quantity during each Showing Month under the Substitution Rules, including, but not limited to, ensuring that the Designated RA Capacity being provided in the pertinent Showing Month will qualify for substitution under the Substitution Rules and providing Buyer or subsequent purchaser under Article 12 with all information needed to utilize the Substitution Rules.

3.8 Damages for Failure to Provide Designated RA Capacity.

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller; *provided*, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product) ("Replacement Capacity"), in either case, by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer, so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer, on the date payment would otherwise be due in respect of the Showing Month for which the failure occurred, an amount equal to the positive difference, if any, between (A) the product of the Capacity Replacement Price times the amount of the Designated RA Capacity not provided by Seller and (B) the product of the Contract Price times the amount of the Designated RA Capacity not provided by Seller. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller pursuant to Article 6 of this Agreement.

3.9 Indemnities for Failure to Deliver Contract Quantity.

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

(a) Seller's failure to provide any portion of the Designated RA Capacity for the respective Showing Month for the Delivery Term; or

(b) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right, or a subsequent purchaser's right, to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; *provided*, 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 costs, 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.

3.10 Monthly RA Capacity Payment.

Buyer shall make a Monthly RA Capacity Payment to Seller for the Unit, in arrears, after the applicable Showing Month. The Parties agree that all invoices under this Agreement shall be due and payable on the twentieth (20th) day of the month after the Showing Month; *provided*, if such day is not a Business Day, then such invoice will be due and payable on the next Business Day. The Unit's "Monthly RA Capacity Payment" shall be equal to the product of (i) the applicable Contract Price for that Showing Month, (ii) the Designated RA Capacity of the Product actually delivered by Seller to Buyer for the Showing Month and (iii) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

3.11 Allocation of Other Payments and Costs.

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the storage 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 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.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of the Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.11(a) above).

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(c) In accordance with Section 3.10 of this Agreement:

(i) all such Buyer revenues described in Section 3.11(b) received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). 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.

(ii) all such Seller, or a Unit's Scheduling Coordinator, owner, or operator revenues described in Section 3.11(a)(i)-(v), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Seller (and upon any such payment by Buyer, Buyer shall be subrogated to all rights of Seller against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues. Buyer shall be responsible for any material, incremental costs of offering, bidding, submitting, or re-selling Designated RA Capacity in such centralized capacity market.

(e) 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.

3.12 Force Majeure.

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

ARTICLE 4: CAISO OFFER REQUIREMENTS

During the Delivery Term, except to the extent the Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of the Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO the Unit's Designated RA Capacity in compliance with the Tariff, including compliance with Minimum State of Charge, Day-Ahead Availability, Real-Time Availability, Must Offer Obligation, and Default Energy Bid requirements established in Article 40 of the Tariff and Seller shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Product hereunder. (the "CAISO Offer Requirements"). Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 5: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and such Party does not fully mitigate the adverse consequences as reasonably determined by the other Party of such incorrect representation or warranty to the other Party within thirty (30) days after written notice thereof;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Section 3.8 and 3.9) if such failure is not remedied within thirty (30) Business Days after written notice;
- (d) if at any time, Seller delivers or attempts to deliver Product to the Delivery Point for sale under this Agreement that was not generated by the Unit, except for Alternate Capacity;
- (e) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Term to any party other than Buyer except as expressly permitted under this Agreement;
- (f) such Party becomes Bankrupt;
- (g) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 17.3, if applicable;

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(h) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 14 hereof if such failure is not remedied within ten (10) Business Days after written notice;

(i) 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; or

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

(i) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least [REDACTED] by Moody's;

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

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

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

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

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

(vii) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement (referred to herein as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement; and (iii) suspend performance. If the Early Termination Date occurs before the

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Initial Delivery Date, then no Settlement Amount shall be owed by either Party. If the Early Termination Date occurs after the Initial Delivery Date, then as soon as reasonably practicable, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for 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 Transaction 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). The Gains and Losses for a Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall net out (a) any Settlement Amount that is due to the Non-Defaulting Party, plus, (b) 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 14, plus (c) any or all other amounts due to the Non-Defaulting Party under this Agreement against (d) all amounts that are due to the Defaulting Party, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within ten (10) days after such notice is effective.

5.5 Disputes with Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) 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 Security to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Agreement is not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

ARTICLE 6: PAYMENT AND NETTING

6.1 Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment.

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

6.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party.

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receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

6.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security.

Unless the Party benefiting from Performance Security notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article 5, all amounts netted pursuant to this Article 6 shall not take into account or include any Performance Security which may be in effect to secure a Party's performance under this Agreement.

ARTICLE 7: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages.

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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

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INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8: GOVERNMENTAL CHARGES

8.1 Cooperation.

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

8.2 Governmental Charges.

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

ARTICLE 9: [RESERVED]

ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS

10.1 Mutual Representations and Warranties.

On the Effective Date, each Party represents and warrants to the other Party that:

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- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain the Unit and sell the Product therefrom in the case of Seller;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (e) 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;
- (f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and
- (h) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of Product.

10.2 Buyer and Seller Covenants.

Buyer and Seller shall, throughout the Delivery Term, 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 Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Article 12. Such commercially reasonable actions shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing the Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR, and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Term the ability to deliver the Contract Quantity from the Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability”

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standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform it to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; *provided, however*, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, Unit enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

10.3 Seller Representations, Warranties and Covenants.

Seller represents, warrants and covenants to Buyer that:

(a) Throughout the Delivery Term, the Unit qualifies as a Resource Adequacy Resource that is eligible to provide the Product pursuant to the Tariff and the Resource Adequacy Rulings;

(b) Throughout the Delivery Term, Seller owns or has the exclusive right to the RA Capacity sold under this Agreement, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(c) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

(d) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;

(e) The Unit is within the CAISO Control Area and Seller shall maintain Site Control throughout the Delivery Term;

(f) Throughout the Delivery Term, the owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(g) Throughout the Delivery Term, the respective cumulative amounts of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred from the Unit does not exceed that Unit's RA Capacity;

(h) Throughout the Delivery Term, with respect to the RA Capacity provided under this Agreement, Seller shall, and the Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RAR, LAR, and FCR;

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(i) Seller has notified the Scheduling Coordinator of the Unit that, throughout the Delivery Term, has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with this Agreement and the Tariff;

(j) Seller has notified the Scheduling Coordinator of the Unit that Seller is obligated, throughout the Delivery Term, to cause the Unit's Scheduling Coordinator to provide to the Buyer, at least fifteen (15) Business Days before the Notification Deadline, the Designated RA Capacity of the Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified the Unit's Scheduling Coordinator that, throughout the Delivery Term, Buyer is entitled to the revenues set forth in Section 3.11 of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

10.4 Buyer Representations, Warranties and Covenants.

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

ARTICLE 11: CONFIDENTIALITY

(a) Neither Party shall disclose the terms or conditions of this Agreement or information exchanged between the Parties pursuant to this Agreement ("Confidential Information") to a third party (other than the Party's or its Affiliates' employees, lenders or potential lenders, investors or potential investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to fulfill such Party's obligations under this Agreement or to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; *provided, however*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) Notwithstanding the foregoing, the Parties agree that Buyer may disclose the information pertaining to this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Agreement to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans; *provided*, each disclosing Party shall use reasonable

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efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such information. In addition, in the event Buyer resells all or any portion of the Designated RA Capacity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information to the extent such disclosure is necessary to affect such resale transaction; *provided*, such other party agrees to keep such information confidential.

(c) Seller acknowledges that Buyer is subject to the California Constitution Article 1, Section 3, and the California Public Records Act, Cal. Gov. Code § 6250 *et seq.* (“Public Records Act”) in regard to the documents comprising this Agreement, which items may constitute public records subject to inspection and copying by the public under the authority of the California Constitution and the Public Records Act. Buyer shall, consistent with those laws, use reasonable efforts to provide Seller with notice of any third-party request to inspect or copy any of the documents that comprise this Agreement, which Seller might deem confidential and exempt from disclosure, in order that Seller may timely seek to protect those documents from disclosure to the third party. Seller acknowledges and agrees that Buyer shall not be liable to Seller if Buyer makes disclosure in accordance with the California Constitution and/or the Public Records Act before Seller has timely obtained an order to prevent Buyer from making the requested disclosure to the third party.

ARTICLE 12: BUYER’S RE-SALE OF PRODUCT

No less than fifteen (15) days prior to the Notification Deadline for any Showing Month of the Delivery Term, Buyer may provide written notice to Seller of Buyer’s intent to re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. If Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement in accordance with this Article 12 (“Resold Product”), Seller agrees, and agrees to cause the Unit’s Scheduling Coordinator, to follow Buyer’s reasonable instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller’s obligations under this Agreement. Seller further agrees, and agrees to cause the Unit’s Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer’s rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product directly due to the failure of Seller or the Unit’s Scheduling Coordinator to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Agreement if Buyer had not resold the Product, including without limitation, pursuant to Sections 3.8 and 3.9.

In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Article 12) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale: (i) benefitting load serving entity SC identification number (SCID), (ii) volume (in MW) of Resold Product, and (iii) subsequent sale delivery period for Resold Product.

ARTICLE 13: COMPLIANCE OBLIGATION

The Parties acknowledge and agree that a material purpose of this Agreement is to enable Buyer to satisfy its Compliance Obligation. If, at any time during the Term, the Unit is not qualified to produce Product, including RAR Attributes, LAR Attributes, and FCR Attributes, as applicable, including due to any action by the CPUC, CAISO or any Governmental Body having jurisdiction that results in any change in Applicable Law occurring after the Effective Date that changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Buyer's Compliance Obligation (a "Compliance Issue"), the Parties shall work in good faith to revise this Agreement so that the Parties can perform their obligations regarding the purchase and sale of Product sold hereunder in order to maintain the original intent; *provided, however*, in no event shall Seller be obligated to undertake capital improvements, Unit enhancements, or the construction of new facilities. If a Compliance Issue results in the Product not being able to be counted towards Buyer's Compliance Obligation, and the Parties have not reached agreement on amendments within thirty (30) days after the initiation of discussions regarding the Compliance Issue that would allow the Product to be able to be counted towards Buyer's Compliance Obligation, Buyer may terminate this Agreement upon written notice to Seller, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party, subject to payment of any amounts owing as of the effective date of such termination.

ARTICLE 14: COLLATERAL REQUIREMENTS

14.1 [Reserved].

14.2 Performance Security.

Seller shall deliver Performance Security to Buyer on or before the Initial Delivery Date. Seller shall maintain the Performance Security in full force and effect, and shall within ten (10) Business Days after any draws made by Buyer in accordance with this Agreement replenish the Performance Security, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, termination damages, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

14.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Performance

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Security, any other cash collateral and cash equivalent collateral posted under this Agreement, and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

(b) Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Performance Security, Buyer may do any one or more of the following:

- (i) Exercise any of its rights and remedies with respect to the Performance Security, as applicable, including any such rights and remedies under Applicable Law then in effect;
- (ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Performance Security; and
- (iii) Liquidate Performance Security then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

ARTICLE 15: INSURANCE

15.1 Insurance.

Throughout the Term, Seller shall procure and maintain the following insurance coverage and require and cause its contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of the Seller in this Section 15.1 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability.

- (i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Applicable Laws or statutes, California state or federal, where Seller performs Work.
- (ii) Employers' liability insurance will not be less than [REDACTED] ([REDACTED]) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] ([REDACTED]) policy limit will apply to each employee.

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(b) Commercial General Liability.

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] ([REDACTED]) per occurrence, and an annual aggregate of not less than [REDACTED] ([REDACTED]), endorsed to provide contractual liability in said amount (subject to policy terms and conditions), specifically covering Seller's insurable indemnity obligations under this Agreement and including Buyer as an additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement. Limits may be satisfied through a combination of primary and excess policies.

(ii) An umbrella insurance policy in a minimum limit of liability of [REDACTED] ([REDACTED]).

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) Business Auto.

(i) Business auto insurance for bodily injury and property damage with limits of [REDACTED] ([REDACTED]) per occurrence.

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(d) Construction All-Risk Insurance.

(i) During the construction of the Unit prior to the Initial Delivery Date, construction all-risk form property insurance covering the Unit during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(e) Contractor's Pollution Liability.

(i) If the scope of Work involves areas of known pollutants or contaminants, Seller shall maintain or require to be maintained, pollution liability coverage for bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will be at least [REDACTED] ([REDACTED]) each occurrence for bodily injury and property damage.

(iii) The policy will endorse Buyer as additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement.

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15.2 Evidence of Insurance.

Within ten (10) days after the Effective Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior notice by Seller in the event of any cancellation or termination of coverage, except ten (10) days for nonpayment of premium. With the exception of Workers Compensation/Employers Liability, such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 16: UNIT CONSTRUCTION AND INITIAL DELIVERY DATE

16.1 Construction of the Unit.

(a) Construction Start. “Construction Start” will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Unit, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Unit may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract (or equivalent agreements) and issued thereunder a notice to proceed or its equivalent that authorizes the contractor to mobilize to Site and begin physical construction of the Unit at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit B hereto, and the date certified therein shall be the “Construction Start Date.”

(b) Progress Reports. The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date and (ii) each calendar month from the first calendar month following the Construction Start Date until the Initial Delivery Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit F. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller shall also provide Buyer with any information in Seller’s possession that is reasonably requested by Buyer for Buyer to demonstrate to the CPUC, CAISO, or other Governmental Bodies that Buyer has met its applicable resource adequacy requirements, including providing status reports to the CPUC with respect to the Unit.

16.2 Initial Delivery Date.

(a) Initial Delivery. “Initial Delivery” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided notice to Buyer substantially in the form of Exhibit C. Seller shall cause Initial Delivery for the Unit to occur by the Guaranteed Initial Delivery Date, as such date may be extended by a Development Cure Period pursuant to pursuant to Section 16.2(c) subject to the limitations in Section 16.2(d).

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(b) Reduction to Contract Quantity. If, on the Initial Delivery Date, Seller shall have obtained an NQC and/or EFC, as applicable, for the Unit from the CPUC that is less than the Contract Quantity of RAR Attributes and/or FCR Attributes set forth on the Cover Sheet as of the Effective Date, as applicable, then the following sections of this Agreement shall be automatically amended: (i) the Unit NQC and/or Unit EFC in Section B of the Cover Sheet shall be revised to equal the maximum amount of NQC and/or EFC, as applicable, established for the Unit by the CPUC; (ii) the Contract Quantities in Section E of the Cover Sheet shall be revised to equal the maximum amount of NQC and/or EFC, as applicable, established for the Unit by the CPUC; (iii) the Contract Quantity of LAR Attributes, if applicable, shall equal the revised Contract Quantity of RAR Attributes; and (iv) the quantity of NQC set forth in Section 2.2(h) shall be revised to equal the maximum amount of NQC established for the Unit by the CPUC, if such amount is less than the amount set forth in Section 2.2(h) as of the Effective Date.

(c)

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(d)

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(e) Termination for Failure to Achieve Initial Delivery Date. If the Unit has not achieved Initial Delivery on or before the Guaranteed Initial Delivery Date, as such date may be extended by a Development Cure Period pursuant to pursuant to Section 16.2(c) subject to the limitations in Section 16.2(d), then Buyer may terminate this Agreement upon written notice to Seller, which termination shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to Seller, subject to payment of any amounts owing as of the effective date of such termination and provided that Seller shall be subject to Section 16.2(f).

(f) Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date. If this Agreement is terminated by either Party prior to the Initial Delivery Date for any reason other than a Buyer Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Unit to a

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party other than Buyer for a period of two (2) years following such termination, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Unit, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Unit) so long as the limitations contained in this Section 16.2(f) apply, unless the transferee agrees to be bound by the terms set forth in this Section 16.2(f) pursuant to a written agreement approved by Buyer in its reasonable discretion. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 16.2(f).

ARTICLE 17: MISCELLANEOUS

17.1 Title and Risk of Loss.

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

17.2 Indemnity.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees associated with damage to third parties resulting from, or arising out of or in any way connected with Seller's operation and/or maintenance of the Unit, including without limitation any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to such third parties, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees associated with damage to third parties resulting from, or arising out of or in any way connected with Buyer's access to the Unit site, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to such third parties, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 17.2(a) and 17.2(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall

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constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

17.3 Assignment.

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; *provided, however*, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; *provided, however*, that in the case of any such assignment pursuant to clause (ii) or clause (iii), any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. In connection with any financing or refinancing of the Unit by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.

17.4 Governing Law and Venue.

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. Each of the Parties irrevocably and unconditionally agrees that any suit, action or other proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof shall be filed in either the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, as appropriate (and agrees not to commence any suit, action or proceeding relating thereto except in such courts). Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof in the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, as appropriate, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment (i.e., judgment after any appeals that may be duly made) in any suit, action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

17.5 Notices.

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

17.6 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 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), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

Notwithstanding any provision of this Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

17.7 General.

This Agreement (including the exhibits, schedules and any written supplements hereto, if any) constitutes the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any

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third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; *provided, further*, that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

17.8 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. If requested, a Party shall provide to the other Party statements evidencing the Designated RA Capacity delivered hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

17.9 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

17.10 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 17.10) (a “Dispute”), any Party (the “Notifying Party”) may deliver to the other Parties (the “Recipient Party”) notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a “Dispute Notice”). The Dispute Notice shall include a schedule of the availability of the Notifying Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a brief summary of the Recipient Party’s position on the Dispute and a parallel schedule of availability of the Recipient Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers’ schedules of availability, the senior

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officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 17.10(a) and (b) by the expiration of the thirty (30) day period set forth in Section 17.10(b), then a Party may pursue any legal remedy available to it in accordance with this Agreement.

17.11 Execution.

A signature received via facsimile or email shall have the same legal effect as an original.

17.12 Joint Powers Authority.

Seller acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer's members in connection with this Agreement.

17.13 Dodd-Frank Act

The Parties intend this Agreement to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

17.14 Market-Based Rate Authority.

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

17.15 Rules of Interpretation.

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

[Remainder of Page Intentionally Left Blank]

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

**ENERSMART ALPINE BESS LLC, a
California limited liability company**

**SAN DIEGO COMMUNITY POWER,
a California joint powers authority**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

[Buyer], a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of [Buyer], a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Agreement dated as of _____ and as amended (the “Agreement”) between [Applicant] and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to *[bank email address]*] (if presented by fax it must be followed up by a phone call to us at [XXXXXX] or [XXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

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We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [Buyer], Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

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[Insert officer title]

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Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [Buyer], a California joint powers authority, [Buyer address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of _____, (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [Buyer], a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [Buyer], a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

[Buyer]

Name and Title of Authorized Representative

Date _____

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EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE

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

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

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

[Seller]

By:_____

Its:_____

Date:_____

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EXHIBIT C: FORM OF INITIAL DELIVER DATE CERTIFICATE

This certification (“Certification”) of Initial Delivery is delivered by [Seller] (“Seller”) to San Diego Community Power, a California joint powers authority (“Buyer”) in accordance with the terms of that Agreement dated [date] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

- a) The Unit is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
- b) Seller has installed equipment for the Unit with a nameplate capacity of no less than 3 MW.
- c) The Unit is fully capable of charging, storing and discharging energy up to no less than 3 MW and receiving instructions to charge, store and discharge energy.
- d) Seller’s Interconnection Agreement provides for a maximum instantaneous discharge capability of no less than 3 MW.
- e) Authorization to parallel the Unit was obtained by the Participating Transmission Owner, SDG&E on _____[DATE]_____.

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

ENGINEER

Signature: _____

Name: _____

Title: _____

Date: _____

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EXHIBIT D: DESCRIPTION OF UNIT

The following describes the Unit to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

Unit name: EnerSmart Alpine

Resource type: Battery Energy Storage

Nameplate capacity: 6MW / 24 MWh

Location: Alpine, CA

Unit physical address: 2436 Alpine Blvd Alpine, CA 91901

Unit elevation: 1,800'

Unit latitude: 32 50' 07" N

Unit longitude: -116 45' 33"W

Interconnection: SDG&E

CAISO transmission access charge area (e.g. SDG&E): SDG&E

Point of interconnection: [REDACTED]

Point of interconnection address: [REDACTED]

Existing zone (e.g. SP-15): SP-15

PNode: ALPINE_6_N005

CAISO Resource ID: Forthcoming

Substation: Alpine

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EXHIBIT E: [RESERVED]

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EXHIBIT F: PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Unit description.
3. Site plan of the Unit.
4. Description of any material planned changes to the Unit or the Site.
5. Schedule showing progress on Unit construction generally and achieving each of the Milestones and the Initial Delivery Date.
6. Summary of activities during the previous month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to the Milestones and the Initial Delivery Date, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Milestones and the Initial Delivery Date.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress.
12. Any other documentation reasonably requested by Buyer.

EXHIBIT G: NOTICES

ENERSMART ALPINE BESS LLC, a California limited liability company ("Seller")	SAN DIEGO COMMUNITY POWER, a California joint powers authority ("Buyer")
All Notices: Street: 400 S. Sierra Ave. Suite 100 City: Solana Beach, CA. 92075 Attn: James Beach Phone: 619-877-8444 Email: james@enersmartstorage.com	All Notices: P.O. Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org
Reference Numbers: Duns: n/a Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Eric Wheatley, VP Finance Phone: 704-763-8642 E-mail: eric.wheatley@enersmartstorage.com	Invoices: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: Eric Wheatley, VP Finance Phone: 704-763-8642 E-mail: eric.wheatley@enersmartstorage.com	Payments: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Wire Transfer: [REDACTED]	Wire Transfer: [REDACTED]

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**RESOURCE ADEQUACY AGREEMENT
COVER SHEET**

A. Parties

Seller: EnerSmart Los Coches BESS LLC, a California limited liability company

Buyer: San Diego Community Power, a California joint powers authority

B. Unit Information

Unit Name:	EnerSmart Los Coches
Location:	14223 E Highway 8 El Cajon, CA
CAISO Resource ID:	Forthcoming
Unit SCID:	AESM
Unit NQC:	1.5 MW
Unit EFC:	1.5 MW
Resource Type:	Battery Energy Storage System
Resource Category (1, 2, 3 or 4):	4
FCR Category (1, 2 or 3):	2
Path 26 (North or South):	SP26
Local Capacity Area (if any, as of Effective Date):	SDGE
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	TBD
Run Hour Restrictions	N/A

C. RA Product and Attributes

Throughout the Delivery Term, Seller shall provide Buyer with the Designated RA Capacity having the following attributes:

- ☒ RAR Attributes
- ☐ RAR Attributes with FCR Attributes
- ☐ LAR Attributes

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☒ LAR Attributes with FCR Attributes

☐ FCR Attributes

D. Delivery Term

The Delivery Term is ten (10) Contract Years.

E. Contract Quantities

The Contract Quantities for each Showing Month of the Delivery Term shall be:

RAR Attributes: [REDACTED]

LAR Attributes: [REDACTED]

FCR Attributes: [REDACTED]

F. Contract Price

The Contract Price shall be: [REDACTED]

G. Seller's Security Amounts

Performance Security: [REDACTED]

H. Milestones

Milestone	Date for Completion
Site Control obtained	August 2020
Interconnection Agreement executed	In draft form
Expected Construction Start Date	March 2024
Full Capacity Deliverability Status obtained	July 2024
Guaranteed Initial Delivery Date	February 15, 2025

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PREAMBLE

This Resource Adequacy Agreement (“Agreement”) is entered into between **EnerSmart Los Coches BESS LLC**, a California limited liability company (“Seller”) and **San Diego Community Power**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties,” as of [REDACTED] (the “Effective Date”). All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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


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

ARTICLE 1: DEFINITIONS

- 1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2 “Agreement” has the meaning set forth in the Preamble.
- 1.3 “Alternate Capacity” means any replacement RA Capacity having at least equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Product provided by the Unit; *provided*, if any portion of the Designated RA Capacity that Seller is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Seller may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product).
- 1.4 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Agreement, including without limitation, the Tariff.
- 1.5 “Availability Incentive Payments” means Availability Incentive Payments as defined in the Tariff.
- 1.6 “Availability Standards” means Availability Standards as defined in the Tariff.
- 1.7 “Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of

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action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

- 1.8 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.
- 1.9 “Buyer” has the meaning set forth in the Preamble.
- 1.10 “CAISO” means the California Independent System Operator or its successor.
- 1.11 “CAISO Control Area” means the Control Area (as defined in the Tariff) that is operated by the CAISO.
- 1.12 “CAISO Controlled Grid” has the meaning set forth in the Tariff.
- 1.13 “CAISO Offer Requirements” has the meaning set forth in Article 4.
- 1.14 “Capacity Replacement Price” 
- 1.15 “CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.
- 1.16 “Claiming Party” has the meaning set forth in Section 3.12.
- 1.17 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
- 1.18 “Compliance Issue” has the meaning set forth in Article 13.
- 1.19 “Compliance Obligation” means the RAR, Local RAR, FCR, and any other resource adequacy or capacity procurement requirements imposed on LSEs by the CPUC pursuant to the Resource Adequacy Rulings, by the CAISO, by the WECC, or by any other Governmental Body having jurisdiction.

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- 1.20 “Confidential Information” has the meaning set forth in Article 11.
- 1.21 “Construction Start” has the meaning set forth in Section 16.1(a).
- 1.22 “Construction Start Date” has the meaning set forth in Section 16.1(a).
- 1.23 “Contract Price” has the meaning set forth in Section F of the Cover Sheet.
- 1.24 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Term, the amount of Product (in MWs) set forth in Section E of the Cover Sheet, which Seller has agreed to provide to Buyer from the Unit for such Showing Month, which amount may be amended in accordance with Section 16.2(b).
- 1.25 “Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date; and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.
- 1.26 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the Terminated Transaction.
- 1.27 “CPUC” means the California Public Utilities Commission or its successor.
- 1.28 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.29 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.30 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s.
- 1.31 “Defaulting Party” has the meaning set forth in Section 5.1.
- 1.32 “Delivery Point” has the meaning set forth in Section 3.4.

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- 1.33 “Delivery Term” means the period of Contract Years set forth on the Cover Sheet beginning on the Initial Delivery Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.
- 1.34 “Designated RA Capacity” shall be equal to, with respect to each Showing Month of the Delivery Term, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity that Seller has elected to provide as Alternate Capacity from one or more Replacement Units in accordance with Section 3.6.
- 1.35 “Development Cure Period” has the meaning set forth in Section 16.2(c).
- 1.36 “Dispute” has the meaning set forth in Section 17.10(a).
- 1.37 “Dispute Notice” has the meaning set forth in Section 17.10(a).
- 1.38 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.39 “Effective Date” is the date set forth in the Preamble.
- 1.40 “Effective Flexible Capacity” or “EFC” means the capacity of a resource that can be counted towards an LSE’s Flexible Capacity Requirements, as identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or other Governmental Body having jurisdiction.
- 1.41 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.
- 1.42 “EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.
- 1.43 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- 1.44 “Event of Default” has the meaning set forth in Section 5.1.
- 1.45 “FCR Attributes” means, with respect to a Resource Adequacy Resource, any and all flexible resource adequacy attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the Resource Adequacy Rulings, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.
- 1.46 “FCR Showings” 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 Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.

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- 1.47 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.48 “Flexible Capacity Category” has the meaning set forth in the Resource Adequacy Resource.
- 1.49 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.50 “Flexible RA Product” means that the Product includes FCR Attributes, if applicable, as specified in Sections C and E of the Cover Sheet.
- 1.51 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under the Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply (except to the extent due to a Force Majeure); or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider (i) unless such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) except to the extent such curtailment is due to Transmission Provider; *provided, however*, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.
- 1.52 “Full Capacity Deliverability Status” or “FCDS” has the meaning set forth in the Tariff.
- 1.53 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.
- 1.54 “Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Body and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Unit.
- 1.55 “Governmental Body” means (a) any federal, state, local, municipal or other government; (b) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; (c) any court or governmental tribunal, but in all cases, excludes both Parties; and (d) CAISO.

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- 1.56 “Governmental Charges” has the meaning set forth in Section 8.2.
- 1.57 “Guaranteed Initial Delivery Date” is the date set forth in Section H of the Cover Sheet, subject to extension pursuant to Section 16.2(c), but as limited by Section 16.2(d).
- 1.58 “Initial Delivery” has the meaning set forth in Section 16.2(a).
- 1.59 “Initial Delivery Date” means the date on which Initial Delivery is achieved.
- 1.60 “Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Unit and Seller’s Interconnection Facilities will be interconnected with the Transmission System during the Delivery Term.
- 1.61 “Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Unit with the Transmission System in accordance with the Interconnection Agreement.
- 1.62 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.
- 1.63 “Investment Grade” means a Credit Rating of at least [REDACTED] from Moody’s (or, if such entities cease to provide Credit Ratings, from another comparable rating agency that is reasonably acceptable to the Parties).
- 1.64 “Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).
- 1.65 “Joint Powers Agreement” means that certain Joint Powers Agreement dated October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.
- 1.66 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.67 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the Resource Adequacy Rulings, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body,

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defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.

- 1.68 “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 Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.69 “Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least [REDACTED] with an outlook designation of [REDACTED] with an outlook designation of [REDACTED] from Moody’s, in a form as set forth in Exhibit A or as otherwise acceptable to Buyer.
- 1.70 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.
- 1.71 “LRA” has the meaning set forth in the Tariff.
- 1.72 “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).
- 1.73 “Milestones” has the meaning set forth in Section H of the Cover Sheet.
- 1.74 “Monthly RA Capacity Payment” has the meaning specified in Section 3.10(a) hereof.
- 1.75 “Moody’s” means Moody’s Investor Services, Inc. or its successor.
- 1.76 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.77 “Net Qualifying Capacity” or “NQC” has the meaning set forth in the Tariff.
- 1.78 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.79 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.80 “Notification Deadline” has the meaning set forth in Section 3.6.
- 1.81 “Notifying Party” has the meaning set forth in Section 17.10(a).
- 1.82 “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the obligations of the Unit under the CAISO Offer Requirements consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage.
- 1.83 “Participating Transmission Owner” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain

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transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. The Participating Transmission Owner for purposes of this Agreement is San Diego Gas & Electric.

- 1.84 “Performance Security” means collateral in the form of cash or a Letter of Credit in an amount set forth in Section G of the Cover Sheet.
- 1.85 “Planned Outage” means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.86 “Product” has the meaning set forth in Section 3.1.
- 1.87 “Progress Report” means a report substantially in the form set forth in Exhibit F, the requirements for which are further set forth in Section 16.1(c).
- 1.88 “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CPUC, CAISO, or other Governmental Body authorized to make such determination under Applicable Laws, including the Resource Adequacy Rulings. RA Capacity encompasses the applicable RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit.
- 1.89 “RAR” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.90 “RAR Attributes” means, with respect to a Resource Adequacy Resource, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, Resource Adequacy Rulings, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.
- 1.91 “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 Tariff or Resource Adequacy Rulings, or to an LRA having jurisdiction.
- 1.92 “Recipient Party” has the meaning set forth in Section 17.10(a).
- 1.93 “Regulatory Event” has the meaning set forth in Section 17.7.
- 1.94 “Reliability Compensation Services Tariff” has the meaning set forth in the Tariff.
- 1.95 “Replacement Capacity” has the meaning specified in Section 3.8 hereof.

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- 1.96 “Replacement Unit” means a unit meeting the requirements specified in Section 3.6 hereof that is located within the CAISO Control Area and that is capable of providing Alternate Capacity. A Replacement Unit may not be a coal-fired or nuclear generating resource.
- 1.97 “Required TPD Allocation” means an allocation of TP Deliverability from the CAISO that is sufficient for the Unit to obtain Full Capacity Deliverability Status for at least the Contract Quantity.
- 1.98 “Residual Unit Commitment” has the meaning set forth in the Tariff.
- 1.99 “Resource Adequacy Plan” has the meaning specified in the Tariff.
- 1.100 “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.
- 1.101 “Resold Product” has the meaning set forth in Article 12.
- 1.102 “Resource Adequacy Resource” has the meaning set forth in the Tariff.
- 1.103 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.104 “RMR Contracts” has the meaning set forth in the Tariff.
- 1.105 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.106 “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 Term at a specified Delivery Point.
- 1.107 “Scheduling Coordinator” has the same meaning as in the Tariff.
- 1.108 “Security Interest” has the meaning set forth in Section 14.3(a).
- 1.109 “Seller” has the meaning set forth in the Preamble.
- 1.110 “Settlement Amount” means, with respect to the Non-Defaulting Party, the aggregate Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of a Terminated Transaction pursuant to Section 5.2.

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- 1.111 “Showing Month” shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the Resource Adequacy Rulings or Tariff. For illustrative purposes only, pursuant to the Resource Adequacy Rulings in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.112 “Site” means the real property on which the Unit is located as identified in Appendix D.
- 1.113 “Site Control” means that, for the Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.
- 1.114 “Substitution Rules” has the meaning specified in the Tariff.
- 1.115 “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 Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.116 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.117 “Term” has the meaning set forth in Section 2.1(a).
- 1.118 “Terminated Transaction” has the meaning set forth in Section 5.2.
- 1.119 “Termination Payment” has the meaning set forth in Section 5.3.
- 1.120 “TP Deliverability” has the meaning set forth in the CAISO Tariff.
- 1.121 “Transmission Provider” means the CAISO.
- 1.122 “Transmission System” means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Delivery Point.
- 1.123 “Unit” shall mean the storage asset described in Section B of the Cover Sheet and Exhibit D hereof and any Replacement Units, from which Product is provided by Seller to Buyer. A Unit may not include a coal-fired or nuclear generating resource.
- 1.124 “Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

ARTICLE 2: TERM; DELIVERY TERM; CONDITIONS PRECEDENT

2.1 Term.

The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, then-owing indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Performance Security is released and/or returned (the “Term”). Upon Seller’s request, Buyer will promptly confirm in writing the Initial Delivery Date following Seller’s completion of all conditions precedent hereto. All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 17.2 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 11 (Confidentiality) survive the end of the Delivery Term for an additional two (2) years; (iii) all rights and obligations under Section 16.2(f) (Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date) survive early termination of this Agreement for an additional two (2) years; and (iv) all provisions relating to limitations of liability survive without limit.

2.2 Conditions Precedent to Initial Delivery Date.

Seller shall provide notice of expected Initial Delivery Date to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Unit and to enable Seller to deliver the Product to Buyer.

(d) Seller shall have provided to Buyer a certification of Seller and a licensed professional engineer, substantially in the form attached hereto as Exhibit C, demonstrating that the Initial Delivery Date has occurred.

(e) Seller shall have provided Performance Security to Buyer as required by Section 14.2.

(f) As of the Initial Delivery Date, no Event of Default on the part of Seller shall have occurred and be continuing.

(g) Seller shall have obtained Full Capacity Deliverability Status.

(h) Subject to Section 16.2(b), Seller shall have obtained an NQC for the Unit of at least 1.5 MW.

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(i) In accordance with Section 3.7(a), Seller shall have (i) submitted, or caused the Unit's SC to submit, a notice to Buyer including Seller's proposed Supply Plan for the first Showing Month of the Delivery Term and (ii) submitted, or caused the Unit's SC to submit, a Supply Plan to CAISO for the first Showing Month of the Delivery Term.

(j) Seller shall have delivered to Buyer all insurance documents required under Article 15.

(k) As of the Initial Delivery Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1 Resource Adequacy Capacity Product.

During the Delivery Term, Seller shall provide Buyer with RA Capacity from the Unit in the amount of the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Sections C and E of the Cover Sheet to this Agreement with respect to each Showing Month (the "Product"). Seller's obligation to deliver the Contract Quantity of Product for each day of the Delivery Term is firm and will not be excused for any reason other than Force Majeure.

If the Unit is not available to provide the full amount of the Contract Quantity with respect to an applicable Showing Month for any reason other than Force Majeure, including, without limitation, any Outage or any adjustment of the RA Capacity of any Unit, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 3.6 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 3.6, then Seller shall be liable for damages and/or be required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 3.8 and 3.9 hereof.

Notwithstanding anything to the contrary herein, no energy or ancillary services associated with the Unit is required to be made available to Buyer 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, pursuant to the Tariff, any RA Capacity that is in excess of the Unit's Contract Quantity and any RAR Attributes, LAR Attributes, or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Agreement.

3.2 Seller's and Buyer's Obligations.

Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Designated RA Capacity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price for the Designated RA Capacity. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

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3.3 [Reserved].

3.4 Delivery Point.

The “Delivery Point” for the Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

3.5 Planned Outages.

Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Unit as a Resource Adequacy Resource that is subject to the Availability Standards to qualify for an “Approved Maintenance Outage” under the CAISO Tariff. Seller shall reimburse Buyer for any cost Buyer incurs to provide Replacement RA, as required by the CAISO, during any Planned Outages (including the cost of procuring Replacement RA for a full calendar month during any month in which a Planned Outage is planned or scheduled). Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Unit shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion.

3.6 Alternate Capacity and Replacement Units.

(a) The “Notification Deadline” for a given Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding CPUC RAR Showings, LAR Showings and/or FCR Showings, as applicable for that Showing Month, or (b) submission of the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, or if Seller desires to provide the Contract Quantity for any Showing Month from a Replacement Unit, then Seller may, at no additional cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and any Replacement Unit(s) up to an amount equal to the Contract Quantity for the applicable Showing Month; *provided*, in each case, Seller shall notify Buyer of the amount of Product that Seller will not be able to deliver from the Unit and the portion of the Contract Quantity for which Seller intends to provide Buyer with Alternate Capacity from identified Replacement Unit(s) no later than the Notification Deadline.

(c) If Seller fails to provide Buyer the Contract Quantity of Product from the Unit or a Replacement Unit for a given Showing Month during the Delivery Term, then Buyer may, but shall not be required to, purchase replacement Product from a third party.

3.7 Delivery of Product.

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Unit’s Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each

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Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) The Designated RA Capacity is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the Designated RA Capacity from Seller's Supply Plan for any Showing Month during the Delivery Term, has been accepted by the CAISO. If CAISO rejects either the Supply Plan or Buyer's Resource Adequacy Plan with respect to any part of the Designated RA Capacity in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable Notification Deadline for the relevant Showing Month.

(c) Consistent with the Substitution Rules, take all action, or cause each Unit's Scheduling Coordinator to take all action, to allow Buyer or a subsequent purchaser under Article 12 to utilize the Contract Quantity during each Showing Month under the Substitution Rules, including, but not limited to, ensuring that the Designated RA Capacity being provided in the pertinent Showing Month will qualify for substitution under the Substitution Rules and providing Buyer or subsequent purchaser under Article 12 with all information needed to utilize the Substitution Rules.

3.8 Damages for Failure to Provide Designated RA Capacity.

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller; *provided*, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product) ("Replacement Capacity"), in either case, by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer, so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer, on the date payment would otherwise be due in respect of the Showing Month for which the failure occurred, an amount equal to the positive difference, if any, between (A) the product of the Capacity Replacement Price times the amount of the Designated RA Capacity not provided by Seller and (B) the product of the Contract Price times the amount of the Designated RA Capacity not provided by Seller. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller pursuant to Article 6 of this Agreement.

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3.9 Indemnities for Failure to Deliver Contract Quantity.

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

(a) Seller's failure to provide any portion of the Designated RA Capacity for the respective Showing Month for the Delivery Term; or

(b) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right, or a subsequent purchaser's right, to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; *provided*, 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 costs, 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.

3.10 Monthly RA Capacity Payment.

Buyer shall make a Monthly RA Capacity Payment to Seller for the Unit, in arrears, after the applicable Showing Month. The Parties agree that all invoices under this Agreement shall be due and payable on the twentieth (20th) day of the month after the Showing Month; *provided*, if such day is not a Business Day, then such invoice will be due and payable on the next Business Day. The Unit's "Monthly RA Capacity Payment" shall be equal to the product of (i) the applicable Contract Price for that Showing Month, (ii) the Designated RA Capacity of the Product actually delivered by Seller to Buyer for the Showing Month and (iii) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

3.11 Allocation of Other Payments and Costs.

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the storage 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 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.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of the Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.11(a) above).

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(c) In accordance with Section 3.10 of this Agreement:

(i) all such Buyer revenues described in Section 3.11(b) received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). 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.

(ii) all such Seller, or a Unit's Scheduling Coordinator, owner, or operator revenues described in Section 3.11(a)(i)-(v), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Seller (and upon any such payment by Buyer, Buyer shall be subrogated to all rights of Seller against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues. Buyer shall be responsible for any material, incremental costs of offering, bidding, submitting, or re-selling Designated RA Capacity in such centralized capacity market.

(e) 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.

3.12 Force Majeure.

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

ARTICLE 4: CAISO OFFER REQUIREMENTS

During the Delivery Term, except to the extent the Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of the Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO the Unit's Designated RA Capacity in compliance with the Tariff, including compliance with Minimum State of Charge, Day-Ahead Availability, Real-Time Availability, Must Offer Obligation, and Default Energy Bid requirements established in Article 40 of the Tariff and Seller shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Product hereunder. (the "CAISO Offer Requirements"). Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 5: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and such Party does not fully mitigate the adverse consequences as reasonably determined by the other Party of such incorrect representation or warranty to the other Party within thirty (30) days after written notice thereof;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Section 3.8 and 3.9) if such failure is not remedied within thirty (30) Business Days after written notice;
- (d) if at any time, Seller delivers or attempts to deliver Product to the Delivery Point for sale under this Agreement that was not generated by the Unit, except for Alternate Capacity;
- (e) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Term to any party other than Buyer except as expressly permitted under this Agreement;
- (f) such Party becomes Bankrupt;
- (g) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 17.3, if applicable;

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(h) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 14 hereof if such failure is not remedied within ten (10) Business Days after written notice;

(i) 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; or

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

(i) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least [REDACTED] by Moody's;

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

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

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

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

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

(vii) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement (referred to herein as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement; and (iii) suspend performance. If the Early Termination Date occurs before the

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Initial Delivery Date, then no Settlement Amount shall be owed by either Party. If the Early Termination Date occurs after the Initial Delivery Date, then as soon as reasonably practicable, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for 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 Transaction 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). The Gains and Losses for a Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall net out (a) any Settlement Amount that is due to the Non-Defaulting Party, plus, (b) 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 14, plus (c) any or all other amounts due to the Non-Defaulting Party under this Agreement against (d) all amounts that are due to the Defaulting Party, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within ten (10) days after such notice is effective.

5.5 Disputes with Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) 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 Security to the Non-Defaulting Party in an amount equal to the Termination Payment.

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5.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Agreement is not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

ARTICLE 6: PAYMENT AND NETTING

6.1 Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment.

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

6.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party.

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receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

6.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security.

Unless the Party benefiting from Performance Security notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article 5, all amounts netted pursuant to this Article 6 shall not take into account or include any Performance Security which may be in effect to secure a Party's performance under this Agreement.

ARTICLE 7: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages.

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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

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INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8: GOVERNMENTAL CHARGES

8.1 Cooperation.

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

8.2 Governmental Charges.

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

ARTICLE 9: [RESERVED]

ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS

10.1 Mutual Representations and Warranties.

On the Effective Date, each Party represents and warrants to the other Party that:

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- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain the Unit and sell the Product therefrom in the case of Seller;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (e) 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;
- (f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and
- (h) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of Product.

10.2 Buyer and Seller Covenants.

Buyer and Seller shall, throughout the Delivery Term, 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 Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Article 12. Such commercially reasonable actions shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing the Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR, and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Term the ability to deliver the Contract Quantity from the Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability”

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standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform it to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; *provided, however*, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, Unit enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

10.3 Seller Representations, Warranties and Covenants.

Seller represents, warrants and covenants to Buyer that:

(a) Throughout the Delivery Term, the Unit qualifies as a Resource Adequacy Resource that is eligible to provide the Product pursuant to the Tariff and the Resource Adequacy Rulings;

(b) Throughout the Delivery Term, Seller owns or has the exclusive right to the RA Capacity sold under this Agreement, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(c) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

(d) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;

(e) The Unit is within the CAISO Control Area and Seller shall maintain Site Control throughout the Delivery Term;

(f) Throughout the Delivery Term, the owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(g) Throughout the Delivery Term, the respective cumulative amounts of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred from the Unit does not exceed that Unit's RA Capacity;

(h) Throughout the Delivery Term, with respect to the RA Capacity provided under this Agreement, Seller shall, and the Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RAR, LAR, and FCR;

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(i) Seller has notified the Scheduling Coordinator of the Unit that, throughout the Delivery Term, has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with this Agreement and the Tariff;

(j) Seller has notified the Scheduling Coordinator of the Unit that Seller is obligated, throughout the Delivery Term, to cause the Unit's Scheduling Coordinator to provide to the Buyer, at least fifteen (15) Business Days before the Notification Deadline, the Designated RA Capacity of the Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified the Unit's Scheduling Coordinator that, throughout the Delivery Term, Buyer is entitled to the revenues set forth in Section 3.11 of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

10.4 Buyer Representations, Warranties and Covenants.

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

ARTICLE 11: CONFIDENTIALITY

(a) Neither Party shall disclose the terms or conditions of this Agreement or information exchanged between the Parties pursuant to this Agreement ("Confidential Information") to a third party (other than the Party's or its Affiliates' employees, lenders or potential lenders, investors or potential investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to fulfill such Party's obligations under this Agreement or to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; *provided, however*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) Notwithstanding the foregoing, the Parties agree that Buyer may disclose the information pertaining to this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Agreement to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans; *provided*, each disclosing Party shall use reasonable

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efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such information. In addition, in the event Buyer resells all or any portion of the Designated RA Capacity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information to the extent such disclosure is necessary to affect such resale transaction; *provided*, such other party agrees to keep such information confidential.

(c) Seller acknowledges that Buyer is subject to the California Constitution Article 1, Section 3, and the California Public Records Act, Cal. Gov. Code § 6250 *et seq.* (“Public Records Act”) in regard to the documents comprising this Agreement, which items may constitute public records subject to inspection and copying by the public under the authority of the California Constitution and the Public Records Act. Buyer shall, consistent with those laws, use reasonable efforts to provide Seller with notice of any third-party request to inspect or copy any of the documents that comprise this Agreement, which Seller might deem confidential and exempt from disclosure, in order that Seller may timely seek to protect those documents from disclosure to the third party. Seller acknowledges and agrees that Buyer shall not be liable to Seller if Buyer makes disclosure in accordance with the California Constitution and/or the Public Records Act before Seller has timely obtained an order to prevent Buyer from making the requested disclosure to the third party.

ARTICLE 12: BUYER’S RE-SALE OF PRODUCT

No less than fifteen (15) days prior to the Notification Deadline for any Showing Month of the Delivery Term, Buyer may provide written notice to Seller of Buyer’s intent to re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. If Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement in accordance with this Article 12 (“Resold Product”), Seller agrees, and agrees to cause the Unit’s Scheduling Coordinator, to follow Buyer’s reasonable instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller’s obligations under this Agreement. Seller further agrees, and agrees to cause the Unit’s Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer’s rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product directly due to the failure of Seller or the Unit’s Scheduling Coordinator to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Agreement if Buyer had not resold the Product, including without limitation, pursuant to Sections 3.8 and 3.9.

In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Article 12) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale: (i) benefitting load serving entity SC identification number (SCID), (ii) volume (in MW) of Resold Product, and (iii) subsequent sale delivery period for Resold Product.

ARTICLE 13: COMPLIANCE OBLIGATION

The Parties acknowledge and agree that a material purpose of this Agreement is to enable Buyer to satisfy its Compliance Obligation. If, at any time during the Term, the Unit is not qualified to produce Product, including RAR Attributes, LAR Attributes, and FCR Attributes, as applicable, including due to any action by the CPUC, CAISO or any Governmental Body having jurisdiction that results in any change in Applicable Law occurring after the Effective Date that changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Buyer's Compliance Obligation (a "Compliance Issue"), the Parties shall work in good faith to revise this Agreement so that the Parties can perform their obligations regarding the purchase and sale of Product sold hereunder in order to maintain the original intent; *provided, however*, in no event shall Seller be obligated to undertake capital improvements, Unit enhancements, or the construction of new facilities. If a Compliance Issue results in the Product not being able to be counted towards Buyer's Compliance Obligation, and the Parties have not reached agreement on amendments within thirty (30) days after the initiation of discussions regarding the Compliance Issue that would allow the Product to be able to be counted towards Buyer's Compliance Obligation, Buyer may terminate this Agreement upon written notice to Seller, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party, subject to payment of any amounts owing as of the effective date of such termination.

ARTICLE 14: COLLATERAL REQUIREMENTS

14.1 [Reserved].

14.2 Performance Security.

Seller shall deliver Performance Security to Buyer on or before the Initial Delivery Date. Seller shall maintain the Performance Security in full force and effect, and shall within ten (10) Business Days after any draws made by Buyer in accordance with this Agreement replenish the Performance Security, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, termination damages, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

14.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Performance

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Security, any other cash collateral and cash equivalent collateral posted under this Agreement, and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

(b) Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Performance Security, Buyer may do any one or more of the following:

- (i) Exercise any of its rights and remedies with respect to the Performance Security, as applicable, including any such rights and remedies under Applicable Law then in effect;
- (ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Performance Security; and
- (iii) Liquidate Performance Security then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

ARTICLE 15: INSURANCE

15.1 Insurance.

Throughout the Term, Seller shall procure and maintain the following insurance coverage and require and cause its contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of the Seller in this Section 15.1 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability.

- (i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Applicable Laws or statutes, California state or federal, where Seller performs Work.
- (ii) Employers' liability insurance will not be less than [REDACTED] ([REDACTED]) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the one million dollar (\$1,000,000) policy limit will apply to each employee.

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(b) Commercial General Liability.

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] ([REDACTED]) per occurrence, and an annual aggregate of not less than [REDACTED] ([REDACTED]), endorsed to provide contractual liability in said amount (subject to policy terms and conditions), specifically covering Seller's insurable indemnity obligations under this Agreement and including Buyer as an additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement. Limits may be satisfied through a combination of primary and excess policies.

(ii) An umbrella insurance policy in a minimum limit of liability of [REDACTED] ([REDACTED]).

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) Business Auto.

(i) Business auto insurance for bodily injury and property damage with limits of [REDACTED] ([REDACTED]) per occurrence.

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(d) Construction All-Risk Insurance.

(i) During the construction of the Unit prior to the Initial Delivery Date, construction all-risk form property insurance covering the Unit during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(e) Contractor's Pollution Liability.

(i) If the scope of Work involves areas of known pollutants or contaminants, Seller shall maintain or require to be maintained, pollution liability coverage for bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will be at least [REDACTED] ([REDACTED]) each occurrence for bodily injury and property damage.

(iii) The policy will endorse Buyer as additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement.

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15.2 Evidence of Insurance.

Within ten (10) days after the Effective Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior notice by Seller in the event of any cancellation or termination of coverage, except ten (10) days for nonpayment of premium. With the exception of Workers Compensation/Employers Liability, such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 16: UNIT CONSTRUCTION AND INITIAL DELIVERY DATE

16.1 Construction of the Unit.

(a) Construction Start. “Construction Start” will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Unit, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Unit may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract (or equivalent agreements) and issued thereunder a notice to proceed or its equivalent that authorizes the contractor to mobilize to Site and begin physical construction of the Unit at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit B hereto, and the date certified therein shall be the “Construction Start Date.”

(b) Progress Reports. The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date and (ii) each calendar month from the first calendar month following the Construction Start Date until the Initial Delivery Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit F. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller shall also provide Buyer with any information in Seller’s possession that is reasonably requested by Buyer for Buyer to demonstrate to the CPUC, CAISO, or other Governmental Bodies that Buyer has met its applicable resource adequacy requirements, including providing status reports to the CPUC with respect to the Unit.

16.2 Initial Delivery Date.

(a) Initial Delivery. “Initial Delivery” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided notice to Buyer substantially in the form of Exhibit C. Seller shall cause Initial Delivery for the Unit to occur by the Guaranteed Initial Delivery Date, as such date may be extended by a Development Cure Period pursuant to pursuant to Section 16.2(c) subject to the limitations in Section 16.2(d).

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(b) Reduction to Contract Quantity. If, on the Initial Delivery Date, Seller shall have obtained an NQC and/or EFC, as applicable, for the Unit from the CPUC that is less than the Contract Quantity of RAR Attributes and/or FCR Attributes set forth on the Cover Sheet as of the Effective Date, as applicable, then the following sections of this Agreement shall be automatically amended: (i) the Unit NQC and/or Unit EFC in Section B of the Cover Sheet shall be revised to equal the maximum amount of NQC and/or EFC, as applicable, established for the Unit by the CPUC; (ii) the Contract Quantities in Section E of the Cover Sheet shall be revised to equal the maximum amount of NQC and/or EFC, as applicable, established for the Unit by the CPUC; (iii) the Contract Quantity of LAR Attributes, if applicable, shall equal the revised Contract Quantity of RAR Attributes; and (iv) the quantity of NQC set forth in Section 2.2(h) shall be revised to equal the maximum amount of NQC established for the Unit by the CPUC, if such amount is less than the amount set forth in Section 2.2(h) as of the Effective Date.

(c)



(d)



(e) Termination for Failure to Achieve Initial Delivery Date. If the Unit has not achieved Initial Delivery on or before the Guaranteed Initial Delivery Date, as such date may be extended by a Development Cure Period pursuant to pursuant to Section 16.2(c) subject to the limitations in Section 16.2(d), then Buyer may terminate this Agreement upon written notice to Seller, which termination shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to Seller, subject to payment of any amounts owing as of the effective date of such termination and provided that Seller shall be subject to Section 16.2(f).

(f) Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date. If this Agreement is terminated by either Party prior to the Initial Delivery Date for any reason other than a Buyer Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Unit to a

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party other than Buyer for a period of two (2) years following such termination, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Unit, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Unit) so long as the limitations contained in this Section 16.2(f) apply, unless the transferee agrees to be bound by the terms set forth in this Section 16.2(f) pursuant to a written agreement approved by Buyer in its reasonable discretion. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 16.2(f).

ARTICLE 17: MISCELLANEOUS

17.1 Title and Risk of Loss.

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

17.2 Indemnity.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees associated with damage to third parties resulting from, or arising out of or in any way connected with Seller's operation and/or maintenance of the Unit, including without limitation any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to such third parties, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees associated with damage to third parties resulting from, or arising out of or in any way connected with Buyer's access to the Unit site, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to such third parties, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 17.2(a) and 17.2(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall

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constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

17.3 Assignment.

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; *provided, however*, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; *provided, however*, that in the case of any such assignment pursuant to clause (ii) or clause (iii), any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. In connection with any financing or refinancing of the Unit by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.

17.4 Governing Law and Venue.

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. Each of the Parties irrevocably and unconditionally agrees that any suit, action or other proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof shall be filed in either the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, as appropriate (and agrees not to commence any suit, action or proceeding relating thereto except in such courts). Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof in the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, as appropriate, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment (i.e., judgment after any appeals that may be duly made) in any suit, action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

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17.5 Notices.

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

17.6 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 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), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

Notwithstanding any provision of this Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

17.7 General.

This Agreement (including the exhibits, schedules and any written supplements hereto, if any) constitutes the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any

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third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; *provided, further*, that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

17.8 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. If requested, a Party shall provide to the other Party statements evidencing the Designated RA Capacity delivered hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

17.9 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

17.10 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 17.10) (a “Dispute”), any Party (the “Notifying Party”) may deliver to the other Parties (the “Recipient Party”) notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a “Dispute Notice”). The Dispute Notice shall include a schedule of the availability of the Notifying Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a brief summary of the Recipient Party’s position on the Dispute and a parallel schedule of availability of the Recipient Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers’ schedules of availability, the senior

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officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 17.10(a) and (b) by the expiration of the thirty (30) day period set forth in Section 17.10(b), then a Party may pursue any legal remedy available to it in accordance with this Agreement.

17.11 Execution.

A signature received via facsimile or email shall have the same legal effect as an original.

17.12 Joint Powers Authority.

Seller acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer's members in connection with this Agreement.

17.13 Dodd-Frank Act

The Parties intend this Agreement to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

17.14 Market-Based Rate Authority.

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

17.15 Rules of Interpretation.

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

[Remainder of Page Intentionally Left Blank]

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

**EnerSmart Los Coches BESS LLC, a
California limited liability company**

**SAN DIEGO COMMUNITY POWER,
a California joint powers authority**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

[Buyer], a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of [Buyer], a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Agreement dated as of _____ and as amended (the “Agreement”) between [Applicant] and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to *[bank email address]*] (if presented by fax it must be followed up by a phone call to us at [XXXXXX] or [XXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

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We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [Buyer], Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

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[Insert officer title]

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Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [Buyer], a California joint powers authority, [Buyer address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of _____, (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [Buyer], a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [Buyer], a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

[Buyer]

Name and Title of Authorized Representative

Date _____

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EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE

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

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

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

[Seller]

By:_____

Its:_____

Date:_____

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EXHIBIT C: FORM OF INITIAL DELIVER DATE CERTIFICATE

This certification (“Certification”) of Initial Delivery is delivered by [Seller] (“Seller”) to San Diego Community Power, a California joint powers authority (“Buyer”) in accordance with the terms of that Agreement dated [date] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

- a) The Unit is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
- b) Seller has installed equipment for the Unit with a nameplate capacity of no less than 1.5 MW.
- c) The Unit is fully capable of charging, storing and discharging energy up to no less than 1.5 MW and receiving instructions to charge, store and discharge energy.
- d) Seller’s Interconnection Agreement provides for a maximum instantaneous discharge capability of no less than 1.5 MW.
- e) Authorization to parallel the Unit was obtained by the Participating Transmission Owner, SDG&E on _____[DATE]_____.

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

ENGINEER

Signature: _____

Name: _____

Title: _____

Date: _____

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EXHIBIT D: DESCRIPTION OF UNIT

The following describes the Unit to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

Unit name: EnerSmart Los Coches

Resource type: Battery Energy Storage

Nameplate capacity: 3MW, 6 MWh

Location: El Cajon, CA

Unit physical address: 14223 E Highway 8 El Cajon, CA

Unit elevation: 400'

Unit latitude: 32 50' 41" N

Unit longitude: 116 52' 36" W

Interconnection: SDG&E

CAISO transmission access charge area (e.g. SDG&E): SDG&E

Point of interconnection: [REDACTED]

Point of interconnection address: [REDACTED]

Existing zone (e.g. SP-15): SP-15

PNode: LOSCOCHS_6_N001

CAISO Resource ID: Forthcoming

Substation: Los Coches

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EXHIBIT E: [RESERVED]

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EXHIBIT F: PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Unit description.
3. Site plan of the Unit.
4. Description of any material planned changes to the Unit or the Site.
5. Schedule showing progress on Unit construction generally and achieving each of the Milestones and the Initial Delivery Date.
6. Summary of activities during the previous month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to the Milestones and the Initial Delivery Date, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Milestones and the Initial Delivery Date.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress.
12. Any other documentation reasonably requested by Buyer.

EXHIBIT G: NOTICES

ENERSMART LOS COCHES BESS LLC, a California limited liability company ("Seller")	SAN DIEGO COMMUNITY POWER, a California joint powers authority ("Buyer")
All Notices: Street: 400 S. Sierra Ave. Suite 100 City: Solana Beach, CA. 92075 Attn: James Beach Phone: 619-877-8444 Email: james@enersmartstorage.com	All Notices: P.O. Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org
Reference Numbers: Duns: N/A Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Eric Wheatley, VP Finance Phone: 704-763-8642 E-mail: eric.wheatley@enersmartstorage.com	Invoices: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: Eric Wheatley, VP Finance Phone: 704-763-8642 E-mail: eric.wheatley@enersmartstorage.com	Payments: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Wire Transfer: [REDACTED]	Wire Transfer: [REDACTED]

GLOSSARY OF TERMS

AB – Assembly Bill - An Assembly Bill is a piece of legislation that is introduced in the Assembly. In other words, the Assembly, rather than the Senate, is the house of origin in the legislature for the legislation. In California, it is common for legislation to be referred to by its house of origin number (such as, AB 32) even once it becomes law.

AL – Advice Letter - An Advice Letter is a request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief.

ALJ – Administrative Law Judge - ALJs preside over CPUC cases to develop the evidentiary record and draft proposed decisions for Commission action.

ARB – Air Resources Board - The California Air Resources Board (CARB or ARB) is the "clean air agency" in the government of California. CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change.

AReM – Alliance for Retail Energy Markets - a not for profit corporation that advocates for continued development of successful customer choice in retail energy markets and provides a focused voice for competitive energy retailers and their customers in selected public policy forums on the state level. AREM represented direct access providers such as Constellation NewEnergy and Direct Energy.

BayREN – Bay Area Regional Energy Network - BayREN offers region-wide energy programs, services and resources to members of the public by promoting energy efficient buildings, reducing carbon emissions and building government capacity.

CAISO – California Independent System Operator - a non-profit independent system operator that oversees the operation of the California bulk electric power system, transmission lines and electricity market generated and transmitted by its members (~80% of California's electric flow). Its stated mission is to "operate the grid reliably and efficiently, provide fair and open transmission access, promote environmental stewardship and facilitate effective markets and promote infrastructure development." CAISO is regulated by FERC and governed by a five-member governing board appointed by the governor.

CALCCA – California Community Choice Association - Association made up of Community Choice Aggregation (CCA) groups which represents the interests of California's community choice electricity providers.

CALSEIA – California Solar Energy Industries - CALSEIA represents more than 200 companies doing solar-related business in California, including manufacturers, distributors, installation contractors, consultants, and educators. Members' annual dues support professional staff and a lobbyist who represent the common interests of California's solar industry at the Legislature, Governor's Office, and state and local agencies.

CALSLA – California City County Street Light Association - statewide association representing cities, counties and towns before the CPUC that is committed to maintaining fair and equitable street light electric rates and facilities charges, and disseminating street light related information.

CAM – Cost Allocation Mechanism - the cost recovery mechanism to cover procurement costs incurred in serving the central procurement function.

CARB – California Air Resources Board – The CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change in California.

CARE – California Alternative Rates for Energy - A State program for low-income households that provides a 30% discount on monthly energy bills and a 20% discount on natural gas bills. CARE is funded through a rate surcharge paid by all other utility customers.

CBE – Communities for a Better Environment - environmental justice organization that was founded in 1978. The mission of CBE is to build people's power in California's communities of color and low-income communities to achieve environmental health and justice by preventing and reducing pollution and building green, healthy and sustainable communities and environments.

CCA – Community Choice Aggregator - A community choice aggregator, sometimes referred to as community choice aggregation, allows local governments to procure power on behalf of their residents, businesses, and municipal accounts from an alternative supplier while still receiving transmission and distribution service from their existing utility provider. CCAs are an attractive option for communities that want more local control over their electricity sources, more green power than is offered by the default utility, and/or lower electricity prices. By aggregating demand, communities gain leverage to negotiate better rates with competitive suppliers and choose greener power sources.

CCSF – City and County of San Francisco - The City and County of San Francisco often engage in joint advocacy before the CPUC. San Francisco operates CleanPowerSF, a CCA.

CEC – California Energy Commission - the primary energy policy and planning agency for California, whose core responsibilities include advancing state energy policy, achieving energy efficiency, investing in energy innovation, developing renewable energy, transforming transportation, overseeing energy infrastructure and preparing for energy emergencies.

CEE – Coalition for Energy Efficiency - non-profit comprised of US and Canadian energy efficiency administrators working together to accelerate the development and availability of energy efficient products and services.

CLECA – California Large Energy Consumers Association - an organization of large, high load factor industrial customers located throughout the state; the members are in the cement, steel, industrial gas, pipeline, beverage, cold storage, food packaging, and mining industries, and share the fact that electricity costs comprise a significant portion of their costs of production. Some members are bundled customers, others are Direct Access (DA) customers, and some are served by Community Choice Aggregators (CCAs); a few members have onsite renewable generation.

CPUC – California Public Utility Commission - state agency that regulates privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies, in addition to authorizing video franchises.



C&I – Commercial and Industrial – Business customers. C&I customers generally consume much higher volumes of electricity and gas. Many utilities segment their C&I customers by energy consumption (small, medium and large).

CP – Compliance Period – Time period to become RPS compliant, set by the CPUC (California Public Utilities Commission)

DA – Direct Access – An option that allows eligible customers to purchase their electricity directly from third party providers known as Electric Service Providers (ESP).

DA Cap – the maximum amount of electric usage that may be allocated to Direct Access customers in California, or more specifically, within an Investor-Owned Utility service territory.

DACC – Direct Access Customer Coalition a regulatory advocacy group comprised of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements

DA Lottery – a random drawing by which DA waitlist customers become eligible to enroll in DA service under the currently-applicable Direct Access Cap.

DA Waitlist – customers that have officially registered their interest in becoming a DA customer but are not yet able to enroll in service because of DA cap limitations.

DAC – Disadvantaged Community - Disadvantaged communities refers to the areas throughout California which most suffer from a combination of economic, health, and environmental burdens. These burdens include poverty, high unemployment, air and water pollution, presence of hazardous wastes as well as high incidence of asthma and heart disease. One way that the state identifies these areas is by collecting and analyzing information from communities all over the state. CalEnviroScreen, an analytical tool created by the California Environmental Protection Agency (CalEPA), combines different types of census tract-specific information into a score to determine which communities are the most burdened or "disadvantaged."

DASR – Direct Access Service Request – Request submitted by C&I customers to become direct access eligible.

Demand - The rate at which electric energy is delivered to or by a system or part of a system, generally expressed in kilowatts (kW), megawatts (MW), or gigawatts (GW), at a given instant or averaged over any designated interval of time. Demand should not be confused with Load or Energy.

DER – Distributed Energy Resource – A small-scale physical or virtual asset (e.g. EV charger, smart thermostat, behind-the-meter solar/storage, energy efficiency) that operates locally and is connected to a larger power grid at the distribution level.

Distribution - The delivery of electricity to the retail customer's home or business through low voltage distribution lines.

DLAP – Default Load Aggregation Point – In the CAISO's electricity optimization model, DLAP is the node at which all bids for demand should be submitted and settled.



DR – Demand Response - An opportunity for consumers to play a significant role in the operation of the electric grid by reducing or shifting their electricity usage during peak periods in response to time-based rates or other forms of financial incentives.

DRP – Distributed Resource Plans - plans that are required by statute that are intended to identify optimal locations for the deployment of distributed resources.

DWR – Department of Water Resources – DWR manages California’s water resources, systems, and infrastructure in a responsible, sustainable way.

ECR – Enhanced Community Renewable - An IOU program that reflects the "Community Solar" model of renewable energy purchasing. Customers sign up to purchase a portion of a local solar project directly from a Developer at a level that meets at least 25% of their monthly electricity demand, but up to 100%. The customer will pay the Developer for the subscribed output, and receive a credit on their utility bill that reflects their enrollment level.

ED – Energy Division - The CPUC's Energy Division develops and administers energy policy and programs to serve the public interest, advise the Commission, and ensure compliance with the Commission decisions and statutory mandates.

EE – Energy Efficiency- the use of less energy to perform the same task or produce the same result. Energy-efficient homes and buildings use less energy to heat, cool, and run appliances and electronics, and energy-efficient manufacturing facilities use less energy.

ELCC – Effective Load Carrying Capacity – The additional load met by an incremental generator while maintaining the same level of system reliability. For solar and wind resources the ELCC is the amount of capacity which can be counted for Resource Adequacy purposes.

EPIC – Electric Program Investment Charge – The EPIC program was created by the CPUC to support investments in clean energy technologies that provide benefits to the electricity ratepayers of PG&E, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE)

ERRA – Energy Resource Recovery Account – ERRA proceedings are used to determine fuel and purchased power costs which can be recovered in rates. The utilities do not earn a rate of return on these costs, and only recover actual costs. The costs are forecast for the year ahead. If the actual costs are lower than forecast, then the utility gives money back, and vice versa.

ES – Energy Storage - the capture of energy produced at one time for use at a later time to reduce imbalances between energy demand and energy production.

ESA – Energy Storage Agreement - means a battery services contract, a capacity contract, demand response contract or similar agreement.

ESP – Energy Service Provider - An energy entity that provides service to a retail or end-use customer.

EV – Electric Vehicle - a vehicle that uses one or more electric motors for propulsion.

FCR – Flexible Capacity Requirements - “Flexible capacity need” is defined as the quantity of resources needed by the CAISO to manage grid reliability during the greatest three-hour continuous ramp in each month. Resources will be considered as “flexible capacity” if they can sustain or increase output, or reduce ramping needs, during the hours of “flexible need.” “FCR”



means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions.

GHG – Greenhouse gas - water vapor, carbon dioxide, tropospheric ozone, nitrous oxide, methane, and chlorofluorocarbons (CFCs). A gas that causes the atmosphere to trap heat radiating from the earth. The most common GHG is Carbon Dioxide, though Methane and others have this effect as well.

GRC – General Rate Case – Proceedings used to address the costs of operating and maintaining the utility system and the allocation of those costs among customer classes. For California's three large IOUs, the GRCs are parsed into two phases. Phase I of a GRC determines the total amount the utility is authorized to collect, while Phase II determines the share of the cost each customer class is responsible and the rate schedules for each class. Each large electric utility files a GRC application every three years for review by the Public Advocates Office and interested parties and approval by the CPUC.

GTSR – Green Tariff Shared Renewables - The GTSR program enables customers to receive 50 to 100 percent of their electricity demand from renewable sources. The GTSR program has two components: the Green Tariff (GT) component and the Enhanced Community Renewables (ECR) component. Through GT, a customer may pay the difference between their current generation charge and the cost of procuring 50 to 100 percent renewables. With ECR, a customer agrees to purchase a share of a community renewable (typically solar) project directly from a developer, and in exchange will receive a credit from their utility for the customer's avoided generation procurement.

GWh – Gigawatt-hour - The unit of energy equal to that expended in one hour at a rate of one billion watts. One GWh equals 1,000 megawatt-hours.

ICA – Integration Capacity Analysis - The enhanced integrated capacity and locational net benefit analysis quantifies the capability of the system to integrate Distributed Energy Resources (DERs) within the distribution system. Results are dependent on the most limiting element of the various power system criteria such as thermal ratings, power quality, system protection limits and safety standards of existing equipment.

IDER – Integrated Distributed Energy Resources – A CPUC proceeding that aims to more effectively coordinate the integration of demand-side resources in order to better meet customer and grid needs, while enabling California to attain its greenhouse gas reduction goals.

IDSMD – Integrated Demand-Side Management - an approach that joins together all the resources utilities have at their disposal to plan, generate and supply electricity in the most efficient manner possible.

IEP – Independent Energy Producers – California's oldest and leading nonprofit trade association, representing the interest of developers and operators of independent energy facilities and independent power marketers.

IMD – Independent Marketing Division - Under state law, IOUs are prohibited from lobbying or marketing on community choice unless the IOU forms an independent marketing division funded by shareholders rather than ratepayers. SDG&E' and its parent company Sempra were permitted by the CPUC to create such an independent marketing division, which allowed SDG&E to lobby against plans to create a CCA program.

IOU – Investor-Owned Utility – A private electricity and natural gas provider, such as SDG&E, PG&E or SCE, which are the three largest IOUs in California.



IRP – Integrated Resource Plan – A plan which outlines an electric utility’s resource needs in order to meet expected electricity demand long-term.

kW – Kilowatt – Measure of power where power (watts) = voltage (volts) x amperage (amps) and 1 kW = 1000 watts

kWh – Kilowatt-hour – This is a measure of consumption. It is the amount of electricity that is used over some period of time, typically a one-month period for billing purposes. Customers are charged a rate per kWh of electricity used.

LCE – Lancaster Choice Energy - the CCA that serves the City of Lancaster, California.

LCFS – Low Carbon Fuel Standard – A CARB program designed to encourage the use of cleaner low-carbon fuels in California, encourage the production of those fuels, and therefore, reduce greenhouse gas emissions.

LCR – Local (RA) Capacity Requirements – The amount of Resource Adequacy capacity required to be demonstrated in a specific location or zone.

LMP – Locational Marginal Price – Each generator unit and load pocket is assigned a node in the CAISO optimization model. The model will assign a LMP to the node in both the day-ahead and real time market as it balances the system using the least cost. The LMP is comprised of three components: the marginal cost of energy, congestion and losses. The LMP is used to financially settle transactions in the CAISO.

LNBA – Locational Net Benefits Analysis - a cost-benefit analysis of distributed resources that incorporates location-specific net benefits to the electric grid.

Load - An end use device or customer that receives power from an energy delivery system. Load should not be confused with Demand, which is the measure of power that a load receives or requires. See Demand.

LSE – Load-serving Entity – Entities that have been granted authority by state, local law or regulation to serve their own load directly through wholesale energy purchases and have chosen to exercise that authority.

LTPP – Long-Term Procurement Rulemaking - This is an “umbrella” proceeding to consider, in an integrated fashion, all of the Commission’s electric procurement policies and programs.

MCE – Marin Clean Energy - the first CCA in California that began serving customers in 2010. They serve customers in Contra Costa, Marin, Napa and Solano counties in Northern California.

MEO – Marketing Education and Outreach - a term generally used to describe various strategies to inform customers, such as to motivate consumers to take action on energy efficiency or conservation measures and change their behavior.

MW – Megawatt – measure of power. A megawatt equals 1,000 kilowatts or 1 million watts.

MWH – Megawatt-hour – measure of energy

NAESCO – National Association of Energy Service Companies - – an advocacy and accreditation organization for energy service companies (ESCOs). Energy Service Companies



contract with private and public sector energy users to provide cost-effective energy efficiency retrofits across a wide spectrum of client facilities.

NBC – Non-Bypassable Charge - fees that are paid on every kilowatt-hour of electricity that is consumed from the grid. These charges can be used to fund things like energy assistance programs for low-income households and energy efficiency programs. These charges apply even if customers buy grid-supplied power from an outside power company such as a CCA.

NDA – Non-Disclosure Agreement - a contract by which one or more parties agree not to disclose confidential information that they have shared with each other.

NEM – Net Energy Metering – A program in which solar customers receive credit for excess electricity generated by solar panels.

NRDC – Natural Resources Defense Council - non-profit international environmental advocacy group.

NP-15 – North Path 15 – NP-15 is a CAISO pricing zone usually used to approximate wholesale electricity prices in northern California in PG&E's service territory.

OIR – Order Instituting Rulemaking - A procedural document that is issued by the CPUC to start a formal proceeding. A draft OIR is issued for comment by interested parties and made final by vote of the five Commissioners of the CPUC.

OSC – Order to Show Cause - order requiring an individual or entity to explain, justify, or prove something.

ORA – Office of Ratepayer Advocates - the independent consumer advocate within the CPUC, now called Public Advocates office.

PA – Program Administrator (for EE Business Plans) IOUs and local government agencies authorized to implement CPUC-directed Energy Efficiency programs.

PCE – Peninsula Clean Energy Authority - CCA serving San Mateo County and all 20 of its cities and towns as well as the City of Los Banos.

PCC1 – RPS Portfolio Content Category 1 – Bundled renewables where the energy and REC are dynamically scheduled into a California Balancing Authority (CBA) such as the CAISO. Also known as "in-state" renewables.

PCC2 – RPS Portfolio Content Category 2 – Bundled renewables where the energy and REC are from out-of-state and not dynamically scheduled to a CBA.

PCC3 – RPS Portfolio Content Category 3 – Unbundled REC

PCIA or "exit fee" - Power Charge Indifference Adjustment (PCIA) is an "exit fee" based on stranded costs of utility generation set by the California Public Utilities Commission. It is calculated annually and assessed to customers of CCAs and paid to the IOU that lost those customers as a result of the formation of a CCA.

PCL – Power Content Label – A user-friendly way of displaying information to California consumers about the energy resources used to generate the electricity they sell, as required by AB 162 (Statute of 2009) and Senate Bill 1305 (Statutes of 1997).



PD – Proposed Decision – A procedural document in a CPUC Rulemaking that is formally commented on by parties to the proceeding. A PD is a precursor to a final Decision voted on by the five Commissioners of the CPUC.

PG&E – Pacific Gas & Electric - the IOU that serves 16 million people over a 70,000 square mile service area in Northern California.

PHC – Prehearing Conference - CPUC hearing to discuss the scope of a proceeding among other matters. Interested stakeholders can request party status during these.

Pnode – Pricing Node – In the CAISO optimization model, it is a point where a physical injection or withdrawal of energy is modeled and for which a LMP is calculated.

PPA – Power Purchase Agreement – A contract used to purchase the energy, capacity and attributes from a renewable resource project.

PRP – Priority Review Project - transportation electrification pilot projects approved by the CPUC pursuant to SB 350.

PRRR – Progress on Residential Rate Reform – Pursuant to a CPUC decision, the IOUs must submit to the CPUC and parties periodic updates on the progress of their efforts to assist customers with residential rate design changes related to rate reform, including tier collapse and transition to a default time of use rate.

PUC – Public Utilities Code - California statute that contains 33 Divisions, and the range of topics within this Code includes natural gas restructuring, private energy producers, telecommunication services, and specific municipal utility districts and transit authorities. Primary statute for governance of utilities as well as CCAs in California.

PURPA – Public Utilities Regulatory Policy Act - federal statute passed by Congress to encourage fuel diversity via alternative energy sources and to introduce competition into the electric sector. It was meant to promote energy conservation (reduce demand) and promote greater use of domestic energy and renewable energy (increase supply). The law was created in response to the 1973 energy crisis.

RA – Resource Adequacy - Under its Resource Adequacy (RA) program, the California Public Utilities Commission (CPUC) requires load-serving entities—both independently owned utilities and electric service providers—to demonstrate in both monthly and annual filings that they have purchased capacity commitments of no less than 115% of their peak loads.

RAM – Renewables Auction Mechanism - a procurement program the Investor-owned Utilities (IOUs) may use to procure RPS eligible generation. The IOUs may use RAM to satisfy authorized procurement needs, for example, system Resource Adequacy needs, local Resource Adequacy needs, RPS needs, reliability needs, Local Capacity Requirements, Green Tariff Shared Renewables needs, and any need arising from Commission or legislative mandates.

RE – Renewable Energy - Energy from a source that is not depleted when used, such as wind or solar power.

REC - Renewable Energy Certificate - A REC is the property right to the environmental benefits associated with generating renewable electricity. For instance, homeowners who generate solar



electricity are credited with 1 solar REC for every MWh of electricity they produce. Utilities obligated to fulfill an RPS requirement can purchase these RECs on the open market.

RES-BCT – Renewables Energy Self-Generation Bill Credit Transfer - This program enables local governments and universities to share generation credits from a system located on one government-owned property with billing accounts at other government-owned properties. The system size limit under RES-BCT is 5 MW, and bill credits are applied at the generation-only portion of a customer's retail rate.

RFO – Request for Offers a competitive procurement process used by organizations to solicit the submission of proposals from interested parties in response to a scope of services.

RPS - Renewable Portfolio Standard - Law that requires CA utilities and other load serving entities (including CCAs) to provide an escalating percentage of CA qualified renewable power (culminating at 33% by 2020) in their annual energy portfolio.

SB – Senate Bill - a piece of legislation that is introduced in the Senate. In other words, the Senate, rather than the Assembly, is the house of origin in the legislature for the legislation.

SCE – Southern California Edison - the large IOU that serves the Los Angeles and Orange County area.

SCP – Sonoma Clean Power Authority - CCA serving Sonoma County and surrounding areas in Northern California.

SDG&E – San Diego Gas & Electric - the IOU that serves San Diego county, they own the infrastructure that delivers SDCP energy to customers.

SGIP – Self-Generation Incentive Program – A program which provides incentives to support existing, new, and emerging distributed energy resources (storage, wind turbines, waste heat to power technologies, etc.)

SUE – Super User Electric - electric surcharge that's intended to penalize consumers for excessive energy use.

SVCE – Silicon Valley Clean Energy - CCA serving Silicon Valley Area.

TCR EPS Protocol – The Climate Registry Electric Power Sector Protocol – Online tools and resources provided by The Climate Registry to assist organizations to measure, report, and reduce carbon emissions.

TE – Transportation Electrification - For the transportation sector, electrification means replacing fossil fuels with electricity as the means of powering light-duty vehicles, medium- and heavy-duty trucks, and buses. The primary goal is to reduce greenhouse gas (GHG) emissions and, ultimately, contribute to mitigating the effects of climate change on the planet.

Time-of-Use (TOU) Rates — The pricing of delivered electricity based on the estimated cost of electricity during a particular time-block. Time-of-use rates are usually divided into three or four time-blocks per 24 hour period (on-peak, mid-peak, off-peak and sometimes super off-peak) and by seasons of the year (summer and winter). Real time pricing differs from TOU rates in that it is based on actual (as opposed to forecasted) prices that may fluctuate many times a day and are weather sensitive, rather than varying with a fixed schedule.



TM – Tree Mortality - refers to the death of forest trees and provides a measure of forest health. In the context of energy, the CPUC is tasked with utilizing its authority to extend contracts and take actions to authorize new contracts on bioenergy facilities that receive feedstock from high hazard zones.

TURN – The Utility Reform Network - A ratepayer advocacy group charged with ensuring that California IOUs implement just and reasonable rates.

Unbundled RECs - Renewable energy certificates that verify a purchase of a MWH unit of renewable power where the actual power and the certificate are “unbundled” and sold to different buyers.

VPP – Virtual Power Plant – A cloud-based network that leverages an aggregation of distributed energy resources (DERs) to shift energy demand or provide services to the grid. For example, thousands of EV chargers could charge at a slower speed and hundreds of home batteries could discharge to the grid during a demand peak to significantly reduce the procurement of traditional supply resources.

VAMO – Voluntary Allocation, Market Offer - the process for SDG&E to allocate a proportional share of their renewable portfolio to SDCP and other LSEs within the service territory.

