

AGENDA

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

November 16, 2023 5:00 p.m.

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

Alternate Address: 288 Golf Course Drive W, Rohnert Park, CA 94928

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 <u>Web Comment Form</u>. Please indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided 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 October 26, 2023 Meeting Minutes
- 2. Receive and File Treasurer's Report for Period Ending September 30, 2023
- 3. Receive and File June 30, 2023 Fiscal Year-end Audited Financial Statement
- 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. Approval of 2023 Procurement Counsel Legal Services Request for Proposal Contracts

- a. Approval of Amended and Restated Engagement Letter with Keyes and Fox LLP for up to \$500,000 per year for Legal Services for Power Procurement beginning January 1, 2024
- b. Approval of Engagement Letter with Perkins Coie LLP for up to \$200,000 per year for Legal Services for Power Procurement beginning January 1, 2024
- c. Approval of Engagement Letter with Sunridge Legal, LLP for up to \$200,000 per year for Legal Services for Power Procurement beginning January 1, 2024

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.

12. Update on Quarterly Report for the Community Advisory Committee

Recommendation: Receive and File the update on the quarterly report for the Community Advisory Committee

- 13. Approve the Appointment of CAC Member Representing the City of Imperial Beach
 Recommendation: Approval of Appointment of CAC Member Representing the City of Imperial
 Beach
- 14. Approve the Update to the Energy Proposal Evaluation Criteria
 Recommendation: Approval of the updates to the Energy Proposal Evaluation Criteria
- 15. Approve Arevon Avocet Standalone Storage Energy Storage Services Agreement (ESSA)

 Recommendation: Approval of a 15-Year Arevon Avocet Standalone Storage Energy Storage

 Services Agreement (ESSA) with Avocet Energy Storage, LLC for a 200 MW/800 MWh (4-hour) battery storage project.
- 16. Approve Pomona 2 Standalone Storage Energy Storage Services Agreement (ESSA) Recommendation: Approve a 15-year Standalone Storage Energy Storage Service Agreement (ESSA) with Pomona Energy Storage 2, LLC for a 20 MW/40 MWh (2-hour) battery storage project.

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.

PUBLIC COMMENTS ON CLOSED SESSION ITEMS

CLOSED SESSION

1. CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: Chair LaCava and SDCP CEO Karin Burns Unrepresented employee: General Counsel

2. PUBLIC EMPLOYEE APPOINTMENT (RECRUITMENT UPDATE)

Title: General Counsel

REPORT FROM CLOSED SESSION

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 agenda and agenda packet are available 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, 2305 Historic Decatur Road, Suite 200, 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

October 26, 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 5:16 p.m.

Director Aguirre (Imperial Beach) announced she was attending virtually under the just cause provision of AB 2449 and there were no individuals over the age of 18 present in the room with her.

Director Yamane (National City) announced she was attending virtually under the just cause provision of AB 2449 and there were no individuals over the age of 18 present in the room with her.

ROLL CALL

PRESENT: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San

Diego) (arrived at 5:22 p.m.), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Alternate Director Shu (La Mesa),

and Director Yamane (National City)

ABSENT: None

Also Present: Chief Executive Officer ("CEO") Burns, Chief Operating Officer ("COO") Clark,

Chief Financial Officer ("CFO")/Treasurer Washington, General Counsel Baron,

Board Clerk Isley

PLEDGE OF ALLEGIANCE

Chair LaCava (City of San Diego) led the Pledge of Allegiance.

SPECIAL PRESENTATIONS AND INTRODUCTIONS

Chair LaCava (City of San Diego) acknowledged the Kumeyaay Nation and all the original stewards of the land.

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

Ashley Rodriguez, Local Government Affairs Manager Timothy Treadwell, Senior Program Manager Aaron Lu, Senior Rates and Strategy Analyst Christopher Stephens, Procurement Manager

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 13)

<u>ACTION</u>: Motioned by Director McCann (Chula Vista) and seconded by Director Hinze (Encinitas) to approve Consent Calendar Items 1 through 13. The motion carried by the following vote:

Vote: 7-0

Yes: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego),

Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Peach), Alternate Director Shu (La Maca), and Director Yamana (National City)

Beach), Alternate Director Shu (La Mesa), and Director Yamane (National City)

No: None Abstained: None Absent: None

1. Approval of September 28, 2023 Meeting Minutes

Approved.

2. Receive and File Treasurer's Report for Period Ending August 31, 2023

Received and filed.

3. Receive and File Update on Programs

Received and filed.

4. Receive and File Update on Power Services

Received and filed.

5. Receive and File Update on Human Resources

Received and filed.

6. Receive and File Update on Customer Operations

Received and filed.

7. Receive and File Update on Marketing and Public Relations

Received and filed.

8. Receive and File Update on Community Advisory Committee

Received and filed.

9. Receive and File Update on Legislative and Regulatory Affairs

Received and filed.

10. Approval of Ascend Analytics Pilot Extension Agreement for PowerSIMM Pilot Support Services for \$50,000 through December 31, 2023

Approved.

11. Approval of 10-year, 6MW Resource Adequacy Agreement with EnerSmart Alpine BESS LLC and authorize the CEO to execute the Agreement

Approved.

12. Approval of SDCP New Alternate to the La Mesa Environmental Sustainability Commission

Approved.

13. Approval of Amended and Restated Engagement Letter with Keyes and Fox LLP for up to \$550,000 for Legal Services for Power Procurement through December 31, 2023

Approved.

REGULAR AGENDA

14. Update on Fiscal Year End 2023 Financial Audit Progress Report

CFO/Treasurer Washington provided a PowerPoint presentation on the June 30, 2023 Fiscal Year-end Auditor's Report, highlighting the timeline, the significant areas of focus, and current findings.

Following Board questions and comments, no action was taken.

15. Update on Regional Energy Network (REN) Progress

Director of Programs Santulli and Senior Program Manager Tran provided a PowerPoint presentation on the San Diego Regional Energy Network (SDREN), highlighting the governance structure, core values, the draft programs and budget, stakeholder engagement, timeline, and next steps.

Serena Pelka spoke in support of the San Diego Regional Energy Network.

Following Board questions and comments, no action was taken.

16. Approval of the Net Billing Tariff

COO Clark, Director of Programs Santulli, and Program Manager Lomeli provided a PowerPoint presentation on the Net Billing Tariff (NBT), highlighting the purpose, advantages, and analysis of NBT, analysis of avoided cost calculator rates, generation adders, stakeholder engagement, net surplus compensation, and battery storage pilot program.

Serena Pelka spoke in support of the NBT.

Board questions and comments ensued.

<u>ACTION</u>: Motioned by Director McCann (Chula Vista) and seconded by Director Hinze (Encinitas) to: (1) approve NBT for all new customers and transitioning customers; (2) utilize San Diego Gas and Electric's (SDG&E) Avoided Cost Calculator rates for billing credits; (3) provide Generation Adders for 6 years to all new NBT customers that install generation systems in the next three years, with a higher amount for California Alternate Rates for Energy (CARE)/Family Electric Rate Assistance Program (FERA) customers; and (4) adopt the standard approach to Net Surplus Compensation for NBT customers and do not implement an adjustment. The motion carried by the following vote:

Vote: 7-0

Yes: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego),

Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial

Beach), Alternate Director Shu (La Mesa), and Director Yamane (National City)

No: None Abstained: None Absent: None

17. Approval of Updates to the Existing Net Energy Metering (NEM) Tariff

Senior Director of Data Analytics and Customer Operations Utouh provided a PowerPoint presentation on the existing Net Energy Metering (NEM) policy, highlighting the proposed updates to the NEM policy.

Board questions and comments ensued.

<u>ACTION</u>: Motioned by Director McCann (Chula Vista) and seconded by Vice Chair Lawson-Remer (County of San Diego) to approve the following updates to the existing NEM Tariff: (1) remove \$2,500 Net Surplus Compensation (NSC) limit per account per relevant period; and (2) adopt a new NEM Generation Credit Refund to ensure that customers are not negatively impacted by SDCP's default monthly NEM billing option. The motion carried by the following vote:

Vote: 7-0

Yes: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego),

Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial

Beach), Alternate Director Shu (La Mesa), and Director Yamane (National City)

No: None Abstained: None Absent: None

18. Update on Local Distributed Infill Plan

Power Services Senior Local Development Manager Adam provided a PowerPoint presentation on SDCP Local Distributed Infill Plan, including a wholesale DER overview, recent successes, new local distributed Infill RFO, and upcoming Infill Procurement Initiatives.

Following Board questions and comments, no action was taken.

19. Approval of the NextEra Desert Sands Standalone Storage Energy Storage Services Agreement (ESSA)

Senior Portfolio Manager Torres provided a PowerPoint presentation on Standalone RFO, including Desert Sands Energy Storage: Key Terms, staff analysis, workforce development and community benefits.

Board questions and comments ensued.

<u>ACTION</u>: Motioned by Alternate Director Shu (La Mesa) and seconded by Director McCann (Chula Vista) to approve a 20-Year NextEra Desert Sands Energy Storage Services Agreement (ESSA) with Desert Sands Energy Storage II, LLC for a 60 MW/480 MWh (8-hour) battery storage project. The motion carried by the following vote:

Vote: 7-0

Yes: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego),

Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial

Beach), Alternate Director Shu (La Mesa), and Director Yamane (National City)

No: None Abstained: None Absent: None

20. Approval of the Pattern SunZia Power Purchase Agreement (PPA)

Senior Portfolio Manager Torres provided a PowerPoint presentation on the Long-Term California RPS-Eligible renewable energy request for proposals (RFP) and gave an overview of the SunZia Wind PowerCo LLC, including SunZia Wind key terms, staff analysis, workforce development and community benefits.

Board questions and comments ensued.

<u>ACTION</u>: Motioned by Director Hinze (Encinitas) and seconded by Director Yamane (National City) to approve a 15-Year Pattern SunZia Power Purchase Agreement (PPA) with SunZia Wind PowerCo LLC for a 150 MW portion of an approximately 3,500 MW SunZia Wind project. The motion carried by the following vote:

<u>Vote</u>: 7-0

Yes: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego),

Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial

Beach), Alternate Director Shu (La Mesa), and Director Yamane (National City)

No: None Abstained: None Absent: None

REPORTS BY CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL

CEO Burns reported on SDCP's ongoing efforts and recent activities and events.

DIRECTOR COMMENTS

Directors shared upcoming events and thanked SDCP employees for their great work.

ADJOURNMENT

Chair LaCava (City of San Diego) adjourned the meeting at 7:13 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: Review of Treasurer's Report for Period Ending 9/30/23

Date: November 16, 2023

RECOMMENDATION

Receive and File Treasurer's Report for Period Ending 9/30/23.

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 three-month period ended 9/30/23, 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 presented during monthly Financial and Risk Management Committee (FRMC) meetings.

ANALYSIS AND DISCUSSION

Actual financial results for the three-month period ended 09/30/23: \$517.19 million in net operating revenues were reported compared to \$524.99 million budgeted for the period. \$313.94 million in total expenses were reported (including \$305.36 million in energy costs) compared to \$311.49 million budgeted for the period (including \$296.51 million budgeted for energy costs). After expenses, SDCP's change in net position of \$203.25 million was reported year-to-date through 9/30/23 of Fiscal Year 2023-24. The following is a summary of the actual the 1st quarter results compared to the Fiscal Year 2023-24 Budget.

Table 1: Budget Comparison Versus Actual Results

Budget Comparison							
	YTD FY24 as of FY24 YTD Budget Budget 09/30/23 (3 mos) FY24 YTD Budget Variance (\$)						
Net Operating Revenues	\$	517,196,173	\$	524,986,488	\$	(7,790,315)	99%
Total Expenses	\$	313,942,477	\$	311,491,513	\$	2,450,964	101%
Change in Net Position	\$	203,253,696	\$	213,494,975	\$	(10,241,279)	-5%

- Net operating revenues finished \$7.79 million (or 1.0 percentage points) under the budget and were largely driven by lower-than-expected demand due to milder summer temperatures.
- Operating expenses finished \$2.45 million (or 1.0 percentage points) over the budget and was reflective of rising energy costs directly related to resource adequacy and renewables.

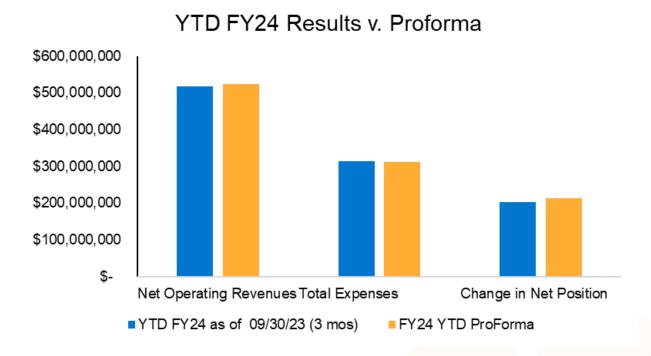
Financial results for the period underperformed the projections presented in the year-to-date proforma. SDCP's change in net position was 12 percentage points under the projections. Rising energy costs and lower than expected customer demand were the contributing factors.

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							
	Y	ΓD FY24 as o <mark>f</mark>	P <mark>roF</mark> orma	Proforma			
	09/	9/30/23 (3 mos)		ProForma		ariance (\$)	(%)
Net Operating Revenues	\$	517,196 <mark>,17</mark> 3	\$	524,986,488	\$	(<mark>7,</mark> 790,315)	-1%
Total Expenses	\$	313,94 <mark>2,47</mark> 7	\$	311,661,197	\$	2,281,280	1%
Change in Net Position	\$	203,25 <mark>3,69</mark> 6	\$	213,325,291	\$	(10,071,595)	-5%

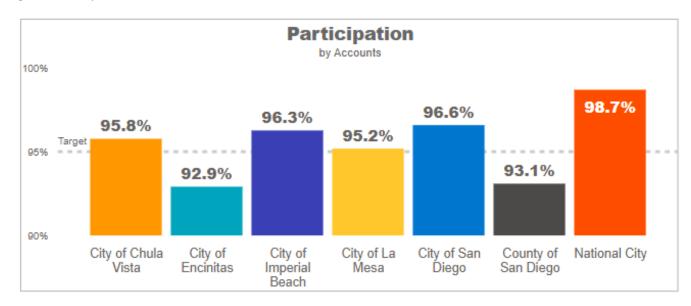
Figure 1: Proforma versus Actual Results



For the three-month period ending 09/30/23, SDCP contributed \$203,253,975 to its reserves. Total SDCP reserves at the end of the period were \$376,732,632 achieving 77% of its 180 days cash on hand reserve target of \$491,079,452 as set by SDCP's Reserve Policy and Strategic Goals. As of 9/30/23, SDCP had access to \$506,002,632 when including availability on its the line of credit.



Figure 2: Participation Rates



Jurisdiction	Active	Eligible	Opt Outs	Participation
City of Chula Vista	93,393	97,520	4,127	95.8%
City of Encinitas	26,440	28,458	2,018	92.9%
City of Imperial Beach	10,543	10,952	409	96.3%
City of La Mesa	28,028	29,446	1,418	95.2%
City of San Diego	599,325	620,518	21,193	96.6%
County of San Diego	150,454	180,553	12,479	93.1%
National City	18,532	19,235	251	98.7%
Total	926,715	986,682	41,895	95.8%

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. Additional metrics can be added by request. The below arrearage data includes SDCP's Receivables aged 120+ Days as of 11/02/2023.

Figure 3: State of SDCP Arrearages Across All Customer Types

Balances over 120 days

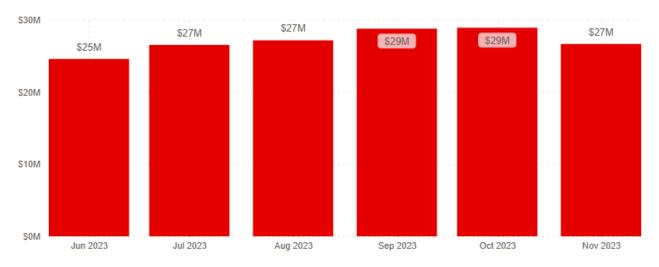
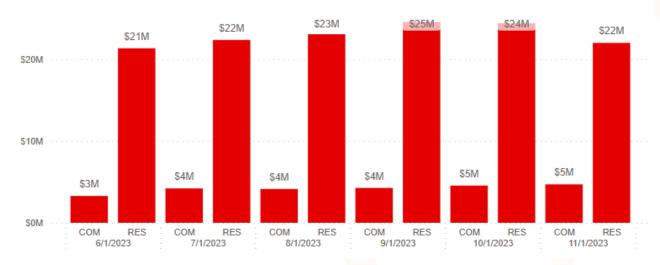


Figure 4: A Breakdown of the State of SDCP Arrearages Between Residential and Commercial

Balances over 120 days - RES vs COM



COMMITTEE REVIEW

The report was reviewed by the Finance and Risk Management Committee (FRMC) on November 9, 2023

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: 2023 Year-to-Date Period Ended 09/30/23 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 September 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 October 30, 2023

SAN DIEGO COMMUNITY POWER STATEMENT OF NET POSITION

As of September 30, 2023

ASSETS

Cash and cash equivalents - restricted 500,000 Cash and cash equivalents - restricted 500,000 Accounts receivable, net of allowance 171,781,140 Accrued revenue 109,531,288 Prepaid expenses 4,993,731 Other receivables 40,446 Deposits 26,033,094 Total current assets 566,279,527 Noncurrent assets 779,690 Capital assets, net of amortization 779,690 Cash and cash equivalents - restricted 11,897,402 Deposits 2,330,000 Total noncurrent assets 15,157,350 Total noncurrent assets 15,157,350 Total assets 581,436,877 LIABILITIES Current liabilities Accrued cost of electricity 162,422,097 Accounts payable 874,543 Other accrued liabilities 4,425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 20,730,000 State surcharges payable 20,730,000	Current assets	
Accounts receivable, net of allowance 171,781,140 Accrued revenue 109,531,288 Prepaid expenses 4,993,731 Other receivables 40,446 Deposits 26,033,094 Total current assets 566,279,527 Noncurrent assets 779,690 Capital assets, net of amortization 779,690 Cash and cash equivalents - restricted 11,897,402 Deposits 2,330,000 Total noncurrent assets 15,157,350 Total assets 581,436,877 LIABILITIES Current liabilities Accrued cost of electricity 162,422,097 Accounts payable 874,543 Other accrued liabilities 4425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 20,730,000 Sank note payable 20,730,000 Supplier security deposits 624,000 Lease liability	Cash and cash equivalents - unrestricted	\$ 253,399,828
Accrued revenue 109,531,288 Prepaid expenses 4,993,731 Other receivables 26,033,094 Total current assets 566,279,527 Noncurrent assets 779,690 Capital assets, net of depreciation 150,258 Cash and cash equivalents - restricted 11,897,402 Deposits 2,330,000 Total noncurrent assets 15,157,350 Total assets 581,436,877 LIABILITIES Current liabilities Accrued cost of electricity 162,422,097 Accounts payable 874,543 Other accrued liabilities 4,425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total liabilities 21,781,012 Total noncurrent liabilities 121,781,012 Total liabilities	Cash and cash equivalents - restricted	500,000
Prepaid expenses 4,993,731 Other receivables 40,446 Deposits 26,033,094 Total current assets 566,279,527 Noncurrent assets 779,690 Capital assets, net of amortization 779,690 Cash and cash equivalents - restricted 11,897,402 Deposits 2,330,000 Total noncurrent assets 15,157,350 LIABILITIES Current liabilities Accrued cost of electricity 162,422,097 Accounts payable 874,543 Other accrued liabilities 4,425,165 State surcharges payable 557,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total iabilities 192,174,367 NET POSITION Net investment in capital assets 132,47	Accounts receivable, net of allowance	171,781,140
Other receivables 40,446 Deposits 26,033,094 Total current assets 566,279,527 Noncurrent assets 779,690 Capital assets, net of depreciation 150,258 Cash and cash equivalents - restricted 11,897,402 Deposits 2,330,000 Total noncurrent assets 15,157,350 Total assets 581,436,877 LIABILITIES Current liabilities Accrued cost of electricity 162,422,097 Accounts payable 874,543 Other accrued liabilities 4,425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476	Accrued revenue	109,531,288
Deposits 26,033,094 Total current assets 566,279,527 Noncurrent assets 779,690 Capital assets, net of depreciation 150,258 Cash and cash equivalents - restricted 11,897,402 Deposits 2,330,000 Total noncurrent assets 15,157,350 Total assets 581,436,877 LIABILITIES Current liabilities Accrued cost of electricity 162,422,097 Accounts payable 874,543 Other accrued liabilities 4,425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,400 Total current liabilities 20,730,000 Supplier security deposits 624,000 Supplier security deposits 21,781,012 Total noncurrent liabilities 21,781,012 Total iabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral <td>Prepaid expenses</td> <td>4,993,731</td>	Prepaid expenses	4,993,731
Total current assets 566,279,527 Noncurrent assets 779,690 Capital assets, net of depreciation 150,258 Cash and cash equivalents - restricted 11,897,402 Deposits 2,330,000 Total noncurrent assets 15,157,350 LIABILITIES Current liabilities Accrued cost of electricity 162,422,097 Accounts payable 874,543 Other accrued liabilities 4,425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 170,393,355 Noncurrent liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total iiabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted </td <td>Other receivables</td> <td>40,446</td>	Other receivables	40,446
Capital assets, net of amortization 779,690 Capital assets, net of depreciation 150,258 Cash and cash equivalents - restricted 11,897,402 Deposits 2,330,000 Total noncurrent assets 151,157,350 Total assets Total assets 581,436,877 Current liabilities	Deposits	26,033,094
Lease asset, net of amortization 779,690 Capital assets, net of depreciation 150,258 Cash and cash equivalents - restricted 11,897,402 Deposits 2,330,000 Total noncurrent assets 15,157,350 Total assets 581,436,877 LIABILITIES Current liabilities Accrued cost of electricity 162,422,097 Accounts payable 874,543 Other accrued liabilities 4,425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Total current assets	566,279,527
Capital assets, net of depreciation 150,258 Cash and cash equivalents - restricted 11,897,402 Deposits 2,330,000 Total noncurrent assets 15,157,350 Total assets 581,436,877 LIABILITIES Current liabilities Accrued cost of electricity 162,422,097 Accounts payable 874,543 Other accrued liabilities 4,425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total inabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Noncurrent assets	
Cash and cash equivalents - restricted 11,897,402 Deposits 2,330,000 Total noncurrent assets 15,157,350 Total assets 581,436,877 LIABILITES Current liabilities Accounts payable 874,543 Other accrued liabilities 4,25,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 170,393,355 Noncurrent liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total iabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Lease asset, net of amortization	779,690
Deposits 2,330,000 Total noncurrent assets 15,157,350 ELIABILITIES Current liabilities Accrued cost of electricity 162,422,097 Accounts payable 874,543 Other accrued liabilities 4,425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 170,393,355 Noncurrent liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Capital assets, net of depreciation	150,258
Total assets 15,157,350 581,436,877	Cash and cash equivalents - restricted	11,897,402
Total assets 581,436,877	Deposits	2,330,000
LIABILITIES Current liabilities Accrued cost of electricity 162,422,097 Accounts payable 874,543 Other accrued liabilities 4,425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 170,393,355 Noncurrent liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Total noncurrent assets	15,157,350
Current liabilities 162,422,097 Accounts payable 874,543 Other accrued liabilities 4,425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 170,393,355 Noncurrent liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Total assets	581,436,877
Current liabilities 162,422,097 Accounts payable 874,543 Other accrued liabilities 4,425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 170,393,355 Noncurrent liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632		
Accrued cost of electricity 162,422,097 Accounts payable 874,543 Other accrued liabilities 4,425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 170,393,355 Noncurrent liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	LIABILITIES	
Accounts payable 874,543 Other accrued liabilities 4,425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 170,393,355 Noncurrent liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Current liabilities	
Other accrued liabilities 4,425,165 State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 170,393,355 Noncurrent liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Accrued cost of electricity	162,422,097
State surcharges payable 657,056 Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 170,393,355 Noncurrent liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Accounts payable	874,543
Deposits - energy suppliers 1,185,000 Interest payable 459,034 Lease liability 370,460 Total current liabilities 170,393,355 Noncurrent liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Other accrued liabilities	4,425,165
Interest payable 459,034 Lease liability 370,460 Total current liabilities 170,393,355 Noncurrent liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	State surcharges payable	657,056
Lease liability 370,460 Total current liabilities 170,393,355 Noncurrent liabilities 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Deposits - energy suppliers	1,185,000
Total current liabilities Noncurrent liabilities 20,730,000 Bank note payable 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Interest payable	459,034
Noncurrent liabilities Bank note payable 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Lease liability	370,460
Bank note payable 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Total current liabilities	170,393,355
Bank note payable 20,730,000 Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632		
Supplier security deposits 624,000 Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632		
Lease liability 427,012 Total noncurrent liabilities 21,781,012 Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632		
Total noncurrent liabilities Total liabilities NET POSITION Net investment in capital assets Restricted for collateral Unrestricted 21,781,012 192,174,367 192,174,367 112,397,402 12,397,402 172,397,402 173,397,402 173,397,402		
Total liabilities 192,174,367 NET POSITION Net investment in capital assets 132,476 Restricted for collateral 12,397,402 Unrestricted 376,732,632	Lease liability	427,012
NET POSITION Net investment in capital assets Restricted for collateral Unrestricted NET POSITION 132,476 12,397,402 376,732,632		21,781,012
Net investment in capital assets132,476Restricted for collateral12,397,402Unrestricted376,732,632	Total liabilities	192,174,367
Net investment in capital assets132,476Restricted for collateral12,397,402Unrestricted376,732,632	NET POSITION	
Restricted for collateral 12,397,402 Unrestricted 376,732,632		132.476
Unrestricted <u>376,732,632</u>	*	
	Total net position	\$ 389,262,510

SAN DIEGO COMMUNITY POWER STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

Three Months Ended September 30, 2023

OPERATING REVENUES	
Electricity sales, net	\$ 515,843,773
Grant revenue	631,000
Total operating revenues	516,474,773
OPERATING EXPENSES	
Cost of electricity	305,358,986
Contract services	4,652,735
Staff compensation	2,245,034
Other operating expenses	867,082
Depreciation and amortization	102,386
Total operating expenses	313,226,223
Operating income	203,248,550
NON-OPERATING REVENUES (EXPENSES)	
Investment income	721,400
Interest and financing expense	(719,771)
Nonoperating revenues (expenses), net	1,629
CHANGE IN NET POSITION	203,250,179
Net position at beginning of year	186,012,331
Net position at end of year	\$ 389,262,510

SAN DIEGO COMMUNITY POWER STATEMENT OF CASH FLOWS

Three Months Ended September 30, 2023

CASH FLOWS FROM OPERATING ACTIVITIES	
Receipts from customers	\$ 424,494,916
Receipts of supplier security deposits	14,472,875
Other operating receipts	3,227,290
Payments to suppliers for electricity	(219,148,264)
Payments for goods and services	(4,481,585)
Payments of staff compensation and benefits	(2,240,308)
Payments for deposits and collateral	(2,605,000)
Payments of state surcharges	(500,589)
Net cash provided by operating activities	213,219,335
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES	
Principal payments - bank note	(15,000,000)
Interest and related expense payments	(803,143)
Net cash provided (used) by non-capital	
financing activities	(15,803,143)
CASH FLOWS FROM CAPITAL AND RELATED	
FINANCING ACTIVITIES	
Payments of lease liability	(99,692)
Payments to acquire capital assets	(71,550)
Net cash (used) by capital and related financing activities	(171,242)
CASH FLOWS FROM INVESTING ACTIVITIES	
Interest income received	721,400
Net change in cash and cash equivalents	197,966,350
Cash and cash equivalents at beginning of year	67,830,880
Cash and cash equivalents at end of year	\$ 265,797,230
Reconciliation to the Statement of Net Position	
Cash and cash equivalents (unrestricted)	\$ 253,399,828
Restricted cash - current	500,000
Restricted cash - noncurrent	11,897,402
Cash and cash equivalents	\$ 265,797,230
*	

SAN DIEGO COMMUNITY POWER STATEMENT OF CASH FLOWS (continued)

Three Months Ended September 30, 2023

RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES

Operating income	\$ 203,248,550
Adjustments to reconcile operating income to net	
cash provided by operating activities	
Depreciation and amortization expense	102,386
(Increase) decrease in:	
Accounts receivable, net	(61,267,409)
Accrued revenue	(30,738,504)
Prepaid expenses	25,533,767
Other receivables	193,269
Deposits	(10,706,744)
Increase (decrease) in:	
Accrued cost of electricity	85,076,754
Accounts payable	435,280
Other accrued liabilities	630,518
State surcharges payable	156,467
Supplier security deposits	555,000
Net cash provided by operating activities	\$ 213,219,335



ACCOUNTANTS' COMPILATION REPORT

Board of Directors San Diego Community Power

Management is responsible for the accompanying special purpose operating fund budgetary comparison schedule of San Diego Community Power (SDCP), a California Joint Powers Authority, for the period ended September 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

San Rafael, CA October 30, 2023

SAN DIEGO COMMUNITY POWER OPERATING FUND

BUDGETARY COMPARISON SCHEDULE

Three Months Ended September 30, 2023

	2022/24 1/77	2022/24 NATE	2023/24 YTD Budget	2023/24 YTD	2022/24	2022/24 P. I. 4
	2023/24 YTD Budget	2023/24 YTD Actual	Variance (Under) Over	Actual/ Budget %	2023/24 Annual Budget	2023/24 Budget Remaining
REVENUES AND OTHER SOURCES	8					
Gross Ratepayer Revenues	546,860,925	\$ 537,337,264	(9,523,661)	98%	\$ 1,346,325,552	\$ 808,988,288
Less Uncollectible Customer Accounts	(21,874,437)	(21,493,491)	380,946	98%	(53,853,022)	(32,359,531)
Grant revenue	_ _	631,000	631,000			(631,000)
Total Revenues and Other Sources	524,986,488	516,474,773	(8,511,715)		1,292,472,530	775,997,757
OPERATING EXPENSES						
Cost of Energy	296,513,849	305,358,986	8,845,137	103%	948,529,425	643,170,439
Professional Services and Consultants	6,546,847	4,444,570	(2,102,277)	68%	22,939,626	18,495,056
Personnel Costs	3,453,837	2,245,034	(1,208,803)	65%	13,178,031	10,932,997
Marketing and Outreach	849,665	580,855	(268,810)	68%	2,973,829	2,392,974
General and Administration	2,478,421	527,910	(1,950,511)	21%	7,861,973	7,334,063
Programs	79,500	75,000	(4,500)	94%	278,250	203,250
Total Operating Expenses	309,922,119	313,232,355	3,310,236		995,761,134	682,528,779
Operating Income (Loss)	215,064,369	203,242,418	(11,821,951)		296,711,396	93,468,978
NON-OPERATING REVENUES (EXPENSES)						
Investment income	-	721,400	721,400		-	(721,400)
Interest and related expenses	(609,394)	(710,122)	(100,728)	117%	(2,437,574)	(1,727,452)
Transfer to Capital Investment Program	(960,000)		960,000	0%	(3,840,002)	(3,840,002)
Total Non-Operating Revenues (Expenses)	(1,569,394)	11,278	1,580,672		(6,277,576)	(6,288,854)
NET INCREASE (DECREASE)	\$ 213,494,975	\$ 203,253,696	\$ (10,241,279)		\$ 290,433,820	\$ 87,180,124



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: Fiscal Year End 2023 Financial Audit Report Presentation

Date: November 16, 2023

RECOMMENDATION

Receive and File Fiscal Year End 2023 Financial Audit Report Presentation.

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 4.6.14 of the JPA specifies the Board of Directors (Board) shall arrange for an annual independent fiscal audit.

Section 5.4 of the JPA specifies the Board shall appoint a Treasurer who shall function as the combined offices of Treasurer and Auditor and shall strictly comply with the statutes related to the duties and responsibilities specified in Section 6505.5 of the Act. The section further specifies that the Treasurer shall cause an independent audit(s) of the finances of SDCP to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act.

Section 7.2.2 of the JPA additionally specifies that the SDCP Board shall contract with a certified public accountant to make an annual audit of the financial statements of SDCP, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

On July 1, 2021, SDCP entered into a professional services agreement with Pisenti & Brinker to perform its annual audit for FY 2020-21. On July 1, 2022, SDCP exercised an option in the professional services agreement to extend the term from June 30, 2022, to June 30, 2023. Subsequently, on July 27, 2023, SDCP exercised the last option in the professional services agreement to extend the term from June 30, 2023 to June 30, 2024, to conduct its annual audit for FY 2022-23. Pisenti & Brinker is a firm with extensive experience auditing CCA's throughout California, as well as other local government entities.

On October 19, 2023, Staff presented on the audit process and the preliminary results to the SDCP Financial Risk Management Committee.

On October 26, the auditor presented on the audit process and the preliminary results to the SDCP Board of Direct.

ANALYSIS AND DISCUSSION

Pisenti & Brinker audit results will be presented to FRMC on November 9, 2023, and presented to the Board on November 16, 2023 to receive and file the final 6/30/23 Fiscal Year End Audited Financial Statements.

COMMITTEE REVIEW

The report was reviewed by the Finance and Risk Management Committee (FRMC) on November 9, 2023

FISCAL IMPACT

Not applicable

ATTACHMENTS

Attachment A: Audited Financial Statements for Fiscal Year Ended June 30, 2023

San Diego Community Power

Report to the Board of Directors

For the Year Ended June 30, 2023







To the Board of Directors San Diego Community Power 815 E Street San Diego, CA 92112

We are pleased to present this report related to our audit of the financial statements of San Diego Community Power ("SDCP") as of and for the year ended June 30, 2023. This report summarizes certain matters required by professional standards to be communicated to you in your oversight responsibility for SDCP's financial reporting process.

This report is intended solely for the information and use of the Audit Committee, Board of Directors and management of SDCP and is not intended to be and should not be used by anyone other than these specified parties. It will be our pleasure to respond to any questions you have regarding this report. We appreciate the opportunity to continue to be of service to San Diego Community Power.

. -

Santa Rosa, California November 3, 2023

cc: Tim Manglicmot, Finance Manager

Perente a Brishu LLP



TABLE OF CONTENTS

Required Communications	1
Significant Accounting Estimates	4
Uncorrected Misstatements	5
Exhibits	
Exhibit A—Significant Written Communications Between Management and Our Firm	
Representation Letter	6
Exhibit B—Recent Accounting Pronouncements	q

REQUIRED COMMUNICATIONS

Generally accepted auditing standards (AU-C 260, *The Auditor's Communication With Those Charged With Governance*) require the auditor to promote effective two-way communication between the auditor and those charged with governance. Consistent with this requirement, the following summarizes our responsibilities regarding the financial statement audit as well as observations arising from our audit that are significant and relevant to your responsibility to oversee the financial reporting process.

Our Responsibilities With Regard to the Financial Statement Audit

Our responsibilities under auditing standards generally accepted in the United States of America have been described to you in our arrangement letter dated July 20, 2023. Our audit of the financial statements does not relieve management or those charged with governance of their responsibilities, which are also described in that letter.

Overview of the Planned Scope and Timing of the Financial Statement Audit

We have issued a separate communication dated September 28, 2023 regarding the planned scope and timing of our audit and identified significant risks, if any.

Accounting Policies and Practices

Preferability of Accounting Policies and Practices

Under generally accepted accounting principles, in certain circumstances, management may select among alternative accounting practices. In our view, in such circumstances, management has selected the preferable accounting practice.

Adoption of, or Change in, Accounting Policies

Management has the ultimate responsibility for the appropriateness of the accounting policies used by SDCP. SDCP did not adopt any significant new accounting policies, nor have there been any changes in existing significant accounting policies during the current period.

Significant or Unusual Transactions

We did not identify any significant or unusual transactions or significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

Management's Judgments and Accounting Estimates

Summary information about the process used by management in formulating particularly sensitive accounting estimates and about our conclusions regarding the reasonableness of those estimates is in the attached Summary of Significant Accounting Estimates.

Audit Adjustments and Uncorrected Misstatements

Uncorrected misstatements are summarized in the attached list of Uncorrected Misstatements. Uncorrected misstatements or matters underlying these uncorrected misstatements could potentially cause future-period financial statements to be materially misstated, even if we have concluded that the uncorrected misstatements are immaterial to the financial statements under audit.

Departure From the Auditor's Standard Report

Reporting – Expected Other-Matter Paragraph

Accounting principles generally accepted in the United States of America and the Governmental Accounting Standards Board require that the management's discussion and analysis be presented to supplement the financial statements. We do not express an opinion or provide any assurance on the information. In light of this matter, we will include an other-matter paragraph in the auditor's report. This matter will not modify the opinion. Below is the paragraph included in the auditor's report:

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that management's discussion and analysis be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Information in Documents Containing Audited Financial Statements

Our responsibility for other information in documents containing SDCP's audited financial statements is to read the information and consider whether its content or manner of its presentation is materially inconsistent with the financial information covered by our auditor's report or whether it contains a material misstatement of fact. We read SDCP's Board of Directors meeting packet materials. We did not identify material inconsistencies with the audited financial statements.

Observations About the Audit Process

Disagreements With Management

We encountered no disagreements with management over the application of significant accounting principles, the basis for management's judgments on any significant matters, the scope of the audit or significant disclosures to be included in the financial statements

Observations About the Audit Process (continued)

Consultations With Other Accountants

We are not aware of any consultations management had with other accountants about accounting or auditing matters.

Significant Issues Discussed With Management

No significant issues arising from the audit were discussed or the subject of correspondence with management.

Significant Difficulties Encountered in Performing the Audit

We did not encounter any significant difficulties in dealing with management during the audit.

Significant Written Communications Between Management and Our Firm

Copies of significant written communications between our firm and the management of SDCP, are attached as Exhibit A.

SIGNIFICANT ACCOUNTING ESTIMATES

Accounting estimates are an integral part of the preparation of financial statements and are based upon management's current judgment. The process used by management encompasses their knowledge and experience about past and current events, and certain assumptions about future events. You may wish to monitor throughout the year the process used to determine and record these accounting estimates.

The following summarizes the significant accounting estimates reflected in SDCP's June 30, 2023 financial statements.

Significant Accounting Estimates						
Accrued Revenue						
Accounting policy/ Management's estimation process	Management's estimate of accrued revenue includes historical trends and anticipated energy usage.					
Basis for our conclusion on the reasonableness of the estimate	We tested management's estimate analytically and determined management's estimate to be reasonable in relation to the financial statements taken as a whole.					
Cost of Electricity						
Accounting policy/ Management's estimation process	Management's estimate of accrued cost of electricity includes historical trends and anticipated energy usage.					
Basis for our conclusion on the reasonableness of the estimate	We tested management's estimate through subsequent disbursements and analytical procedures and determined management's estimate to be reasonable in relation to the financial statements taken as a whole.					
Allowance for Uncollectible A	Accounts					
Accounting policy/ Management's estimation process	Management's estimate of the allowance for uncollectible accounts includes historical collection trends and anticipated future collections.					
Basis for our conclusion on the reasonableness of the estimate	We evaluated the key factors and assumptions used to develop the estimate in determining that the allowance is reasonable in relation to the financial statements taken as a whole.					

UNCORRECTED MISSTATEMENTS

We identified the following uncorrected misstatement that management has concluded is not, individually or in the aggregate, material to the basic financial statements. We agree with management's conclusion in that regard.

	Description	Assets	Liabilities	Equity	Income	Expenses
PAJE 01	Over accrual of accrued revenue	(4,826,292)	-	-	4,826,292	_
		(4,826,292)	-	-	4,826,292	-
	Understated/(Overstated)	(4,826,292)	_	-	4,826,292	_

EXHIBIT A

Significant Written Communications Between Management and Our Firm



November 3, 2023

Pisenti & Brinker LLP 3562 Round Barn Circle, Suite 200 Santa Rosa, CA 95403

This representation letter is provided in connection with your audits of the basic financial statements of San Diego Community Power ("SDCP") as of and for the year and period ended June 30, 2023 and 2022, respectively, for the purpose of expressing an opinion on whether the financial statements are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, that as of November 3, 2023:

Financial Statements

- 1. We have fulfilled our responsibilities, as set out in the terms of the audit arrangement letter dated July 20, 2023, for the preparation and fair presentation of the financial statements referred to above in accordance with U.S. GAAP.
- 2. We acknowledge our responsibility for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- 3. We acknowledge our responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud.
- 4. Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable and reflect our judgment based on our knowledge and experience about past and current events, and our assumptions about conditions we expect to exist and courses of action we expect to take.
- 5. Related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.
- 6. All events subsequent to the date of the financial statements, and for which U.S. GAAP requires adjustment or disclosure, have been adjusted or disclosed.
- 7. The effects of all known actual or possible litigation and claims have been accounted for and disclosed in accordance with U.S. GAAP.
- 8. We have no direct or indirect legal or moral obligation for any debt of any organization, public or private, that is not disclosed in the financial statements.
- 9. We have complied with all aspects of laws, regulations and provisions of contracts and agreements that would have a material effect on the financial statements in the event of noncompliance. In connection therewith, we specifically represent that we are responsible for determining that we are not subject to the requirements of the Single Audit Act because we have not received, expended or otherwise been the beneficiary of the required amount of federal awards during the period of this audit.

10. As of and for the year ended June 30, 2023, we believe that the effects of the uncorrected misstatements aggregated by you, if any, both individually and in the aggregate, to the financial statements taken as a whole. For purposes of this representation, we consider items to be material, regardless of their size, if they involve the misstatement or omission of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

Information Provided

- 11. We have provided you with:
- a. Access to all information of which we are aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation and other matters;
- b. Additional information that you have requested from us for the purpose of the audits;
- c. Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence; and
- d. Minutes of the meetings of the governing board and committees, or summaries of actions of recent meetings for which minutes have not yet been prepared.
- 12. All transactions have been recorded in the accounting records and are reflected in the financial statements.
- 13. We have disclosed to you the results of our assessment of risk that the financial statements may be materially misstated as a result of fraud.
- 14. We have no knowledge of allegations of fraud or suspected fraud affecting the entity's financial statements involving:
- a. Management.
- b. Employees who have significant roles in internal control.
- c. Others where the fraud could have a material effect on the financial statements.
- 15. We have no knowledge of any allegations of fraud or suspected fraud affecting the entity's financial statements received in communications from employees, former employees, analysts, regulators, short sellers or others.
- 16. We have no knowledge of noncompliance or suspected noncompliance with laws and regulations.
- 17. We are not aware of any pending or threatened litigation and claims whose effects should be considered when preparing the financial statements, and we have not consulted legal counsel concerning litigation or claims.
- 18. We have disclosed to you the identity of the entity's related parties and all the related-party relationships and transactions of which we are aware.
- 19. We are aware of no significant deficiencies, including material weaknesses, in the design or operation of internal controls that could adversely affect SDCP's ability to record, process, summarize and report financial data.
- 20. We are aware of no communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices.

21. During the course of your audits, you may have accumulated records containing data that should be reflected in our books and records. All such data have been so reflected. Accordingly, copies of such records in your possession are no longer needed by us.

Required Supplementary Information

- 22. With respect to Management's Discussion and Analysis presented as required by the Governmental Accounting Standards Board to supplement the basic financial statements:
- a. We acknowledge our responsibility for the presentation of such required supplementary information.
- b. We believe such required supplementary information is measured and presented in accordance with guidelines prescribed by U.S. GAAP.

San Diego Community Power

Eric W. Washington

Chief Financial Officer

Michael Maher

Michael Maher,

Maher Accountancy

EXHIBIT B

Recent Accounting Pronouncements

RECENT ACCOUNTING PRONOUNCEMENTS

The following accounting pronouncements have been issued as of November 3, 2023 but are not yet effective and may affect the future financial reporting by SDCP.

Pronouncement	Summary
GASB Statement No. 101, Compensated Absences	GASB Statement No. 101, Compensated Absences, is effective for fiscal years beginning July 1, 2023. The objective of this Statement is to better meet the information needs of financial statement users by updating the recognition and measurement guidance for compensated absences. That objective is achieved by aligning the recognition and measurement guidance under a unified model and by amending certain previously required disclosures.

SAN DIEGO COMMUNITY POWER FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 & 2022

WITH REPORT OF

INDEPENDENT AUDITORS

TABLE OF CONTENTS

Independent Auditor's Report	1
Management's Discussion and Analysis	4
Basic Financial Statements:	
Statements of Net Position	10
Statements of Revenues, Expenses and Changes in Net Position	11
Statements of Cash Flows	12
Notes to the Basic Financial Statements	14



Independent Auditor's Report

To the Board of Directors San Diego Community Power San Diego, California

Opinion

We have audited the financial statements of San Diego Community Power (SDCP), which comprise the statements of net position as of June 30, 2023 and 2022, the related statements of revenue, expenses and changes in net position, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of SDCP as of June 30, 2023 and 2022, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of SDCP and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about SDCP's ability to continue as a going concern within one year after the date that the financial statements are issued or available to be issued.



Independent Auditor's Report (continued)

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists.

The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to
 fraud or error, and design and perform audit procedures responsive to those risks. Such procedures
 include examining, on a test basis, evidence regarding the amounts and disclosures in the financial
 statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures
 that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the
 effectiveness of SDCP's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about SDCP's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control—related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Parente a Brinku LLP

Santa Rosa, California November 3, 2023

The Management's Discussion and Analysis provides an overview of San Diego Community Power's (SDCP) financial activities as of and for the years ended June 30, 2023 and 2022. The information presented here should be considered in conjunction with the audited financial statements.

BACKGROUND

The formation of SDCP was made possible in 2002 by the passage of California Assembly Bill 117, enabling communities to purchase power on behalf of their residents and businesses and creating competition in power generation.

SDCP was created as a California Joint Powers Authority (JPA) effective October 1, 2019, and was established to provide electric power at competitive costs as well as to provide other benefits to its members (Unincorporated County of San Diego and the cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, National City, and San Diego), including reducing greenhouse gas emissions related to the use of power, procuring energy with a priority on the use and development of local renewable resources, stimulating local job creation through various programs and development, promote personal and community ownership of renewable resources, as well as promoting long-term electric rate stability and energy reliability for residents and businesses. Governed by a board of directors (Board) consisting of elected representatives from each jurisdiction, SDCP has the rights and powers to set rates for the services it furnishes, incur indebtedness, and issue bonds or other obligations. SDCP is responsible for the acquisition of electric power for its service area.

SDCP began providing electricity to municipal customers in March 2021, with commercial customers starting June 2021 and with residential customers in Imperial Beach starting in February 2022, in La Mesa starting in March 2022, in Encinitas starting in April 2022, in San Diego and Chula Vista starting in May 2022, and in National City and the Unincorporated County of San Diego starting in April 2023.

Financial Reporting

SDCP presents its financial statements as an enterprise fund under the economic resources measurement focus and accrual basis of accounting, in accordance with Generally Accepted Accounting Principles (GAAP) for proprietary funds, as prescribed by the Governmental Accounting Standards Board (GASB).

Contents of this report

This report is divided into the following sections:

- Management discussion and analysis, which provides an overview of the financial operations.
- The basic financial statements:
 - o The *Statements of Net Position* include all of SDCP's assets, liabilities, and net position and provide information about the nature and amount of resources and obligations at a specific point in time.
 - o The Statements of Revenues, Expenses, and Changes in Net Position report all of SDCP's revenue and expenses for the years shown.
 - o The *Statements of Cash Flows* report the cash provided and used by operating activities, as well as other sources and uses, such as debt financing.
 - Notes to the Basic Financial Statements provide additional details and information related to the basic financial statements.

FINANCIAL HIGHLIGHTS

The following is a summary of SDCP's assets, liabilities, and net position and a discussion of significant changes during the years ending June 30:

2023	2022	2021
\$ 300,522,958	\$165,105,688	\$ 20,750,268
6,064,334	15,950,000	11,250,000
306,587,292	181,055,688	32,000,268
83,699,768	106,666,913	40,531,164
36,875,193	31,857,823	5,517,741
120,574,961	138,524,736	46,048,905
73,268	-	-
2,147,000	2,500,000	-
183,792,063	40,030,952	(14,048,637)
\$ 186,012,331	\$ 42,530,952	\$ (14,048,637)
	\$ 300,522,958 6,064,334 306,587,292 83,699,768 36,875,193 120,574,961 73,268 2,147,000 183,792,063	\$300,522,958 6,064,334 15,950,000 181,055,688 83,699,768 36,875,193 120,574,961 138,524,736 73,268 2,147,000 183,792,063 \$165,105,688 106,666,913 31,857,823 138,524,736

Current assets

Current assets were approximately \$300,523,000 at the end of 2023 and were comprised of the following major categories: cash of \$65,684,000, accounts receivable from customers of \$110,514,000, accrued revenue of \$78,793,000, and prepaid expenses and deposits of \$45,299,000, each of which mark an increase from 2022. Much of the increase in current assets was driven by large enrollments of commercial and residential customers throughout 2022 that were in effect for the entirety of 2023, as well as the enrollment of National City and the unincorporated County of San Diego in April 2023. In addition to these enrollments, SDCP increased customer rates during 2023 which had the result of increasing the net position for the year. Accrued revenue differs from accounts receivable in that it represents electricity provided to SDCP customers that had not been invoiced as of the statement of net position date. Prepaid expenses and deposits saw large increases in 2023 as many of SDCP's energy suppliers required advance payments and collateral prior to delivery.

Noncurrent assets

Noncurrent assets are comprised of restricted cash and deposits in SDCP's name held by other parties, and capital and lease assets. Noncurrent assets decreased in 2023 as approximately \$10,000,000 of restricted cash related to a loan was released when the loan was paid off.

Current liabilities

The largest component of current liabilities is the cost of electricity delivered to customers that is not yet due to paid by SDCP until after year end. Another significant component of current liabilities is security deposits held by SDCP from energy suppliers. Various contracts entered into by SDCP require the supplier to provide SDCP with a security deposit. These deposits are returned by SDCP at the completion of the related contract or as other milestones are met.

Accrued cost of electricity increased year-over-year due to operating activities associated with a major enrollment of residential customers starting in May 2022. Security deposit liabilities decreased from \$42,624,000 in 2022 to \$630,000 in 2023. This change was caused by return of collateral to various energy suppliers after either certain contract milestones were met, or the relevant market exposure declined.

During 2023, private debt of \$5,000,000 became due and was paid off by SDCP.

Noncurrent liabilities

During 2023, SDCP entered into a revolving credit agreement with a new bank. As part of this process, SDCP terminated and paid off the balance of its existing revolving letter of credit. The maturity date on the new agreement falls in 2028 and the entire note payable as of June 30, 2023, is included in noncurrent liabilities. Additionally, SDCP increased its borrowings as described in Note 4 to the financial statements.

Other noncurrent liabilities of \$518,000 for start-up related costs owed primarily to the City of San Diego were paid off in 2023.

Net position

SDCP ended 2023 with a net position of \$186,012,000, driven by positive margins from a full year of delivering energy to its expanded customer base.

The following is a summary of SDCP's results of operations and a discussion of significant changes for the years ended June 30:

	2023	2022	2021
Operating revenues	\$891,178,064	\$386,237,698	\$ 14,809,010
Investment income	433,366	14,603	
Total income	891,611,430	386,252,301	14,809,010
Operating expenses	746,131,125	328,966,597	27,551,819
Nonoperating expenses	1,998,926	706,115	235,718
Total expenses	748,130,051	329,672,712	27,787,537
Change in net position	\$ 143,481,379	\$ 56,579,589	\$ (12,978,527)

Operating revenues

SDCP's operating revenues are derived from the sale of electricity to commercial and residential customers throughout its territory. SDCP began selling electricity to a relatively small number of municipal and commercial accounts toward the end of 2021. In 2022, its commercial customer base came entirely online and residential customers began to phase in during late 2022. This expansion accounts for the large change in revenues in 2022 compared to 2021. In April 2023, SDCP expanded into National City as well as the unincorporated County of San Diego. Providing service to these additional customers, as well as providing service for a full year to the customers enrolled during 2022, accounted for much of the increased revenues in 2023. In addition to customer base growth, SDCP increased its average rates, which had the effect of increasing revenues.

Operating expenses

SDCP's largest expense each year was the purchase of electricity delivered to its customers. SDCP procures energy from a variety of sources and focuses on maintaining a balanced renewable power portfolio at competitive costs. Operating expenses increased each year due to operating activities associated with enrollment of customer accounts.

Expenses for staff compensation, contract services, and other general and administrative expenses increased in 2023 as the SDCP grew to operational capacity.

Nonoperating expenses

Interest expense on borrowings during the years are included as nonoperating expenses. Interest expense increased each year as a result of increased borrowings and changing interest rates.

ECONOMIC OUTLOOK

SDCP began providing electricity to its municipal customers in March 2021. SDCP has grown rapidly and is committed to providing its customers with cleaner energy at competitive rates. Delivery of electricity to its commercial and industrial customers began in June 2021 with plans to continue enrollment over four phases. During fiscal year 2023, the enrollment of all customers (municipal, commercial and industrial, and residential) from all seven member jurisdictions was substantially completed for the Unincorporated County of San Diego and the cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, National City, and San Diego. Therefore, fiscal year 2024 will reflect a full fiscal cycle of revenue and expenses with substantially all customers from all member jurisdictions enrolled. Prior to adding new cities, SDCP performs a thorough cost benefit analysis to determine whether the addition would be mutually beneficial.

In the normal course of business, SDCP enters into various agreements, including renewable energy agreements and other power purchase agreements to purchase power and electric capacity. SDCP enters into power purchase agreements in order to comply with state law and voluntary targets for renewable and greenhouse gas (GHG) free products.

SDCP has grown rapidly and is committed to providing its customers with cleaner energy at competitive rates. The agency has nearly completed full enrollment of its member jurisdictions having enrolled unincorporated County of San Diego and the cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, National City, and San Diego. The agency is well-positioned to achieve its goals of increasing its renewable energy portfolio, helping to electrify the San Diego region, expanding its energy efficiency programs, reducing its carbon footprint, and creating jobs and economic benefits for the San Diego region.

REQUEST FOR INFORMATION

This financial report is designed to provide SDCP's customers and creditors with an overview of the SDCP's finances and to demonstrate SDCP's accountability for the funds under its stewardship.

Please address any questions about this report or requests for additional financial information to 815 E Street, Unit 12716, San Diego, CA 92112.

Respectfully submitted,

Karin Burns, CEO



SAN DIEGO COMMUNITY POWER STATEMENTS OF NET POSITION JUNE 30, 2023 AND 2022

	2023	2022
ASSETS		
Current assets		
Cash and cash equivalents - unrestricted	\$ 65,683,880	\$ 57,076,718
Accounts receivable, net of allowance	110,513,731	50,386,990
Accrued revenue	78,792,784	46,939,615
Prepaid expenses	30,527,498	4,461,308
Other receivables	233,715	-
Deposits	14,771,350	6,241,057
Total current assets	300,522,958	165,105,688
Noncurrent assets		
Lease asset, net of amortization	873,251	-
Capital assets, net of depreciation	159,083	-
Cash and cash equivalents - restricted	2,147,000	12,500,000
Deposits	2,885,000	3,450,000
Total noncurrent assets	6,064,334	15,950,000
Total assets	306,587,292	181,055,688
LIABILITIES		
Current liabilities		
Accrued cost of electricity	77,345,343	57,231,504
Accounts payable	510,812	624,955
Other accrued liabilities	3,794,647	740,006
State surcharges payable	500,589	332,586
Deposits - energy suppliers	630,000	42,624,000
Interest payable	552,054	113,862
Loans payable	332,034	5,000,000
Lease liability	366,323	5,000,000
Total current liabilities	83,699,768	106,666,913
Total current habilities	83,099,708	100,000,913
Noncurrent liabilities		
Bank note payable	35,730,000	31,340,082
Due to cities	-	517,741
Deposits - energy suppliers	624,000	-
Lease liability	521,193	_
Total noncurrent liabilities	36,875,193	31,857,823
Total liabilities	120,574,961	138,524,736
NET POSITION		
Net investment in capital assets	73,268	_
Restricted for collateral	2,147,000	2,500,000
Unrestricted	183,792,063	40,030,952
Total net position	\$ 186,012,331	\$ 42,530,952
Tour net position	Ψ 100,012,331	Ψ 12,550,752

SAN DIEGO COMMUNITY POWER STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION YEARS ENDED JUNE 30, 2023 AND 2022

	2023	2022		
OPERATING REVENUES				
Electricity sales, net	\$ 891,178,064	\$ 383,800,198		
Liquidated damages	-	2,437,500		
Total operating revenues	891,178,064	386,237,698		
OPERATING EXPENSES				
Cost of electricity	720,327,704	319,686,027		
Contract services	15,957,376	3,520,098		
Staff compensation	6,726,270	3,662,441		
Other operating expenses	2,866,222	2,098,031		
Depreciation and amortization	253,553	-		
Total operating expenses	746,131,125	328,966,597		
Operating income	145,046,939	57,271,101		
NON-OPERATING REVENUES (EXPENSES)				
Investment income	433,366	14,603		
Interest and financing expense	(1,998,926)	(706,115)		
Nonoperating revenues (expenses), net	(1,565,560)	(691,512)		
CHANGE IN NET POSITION	143,481,379	56,579,589		
Net position at beginning of year	42,530,952	(14,048,637)		
Net position at end of year	\$ 186,012,331	\$ 42,530,952		

SAN DIEGO COMMUNITY POWER STATEMENTS OF CASH FLOWS YEARS ENDED JUNE 30, 2023 AND 2022

	2023	2022
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from customers	\$801,265,394	\$300,940,324
Receipts from liquidated damages	-	2,437,500
Receipts from supplier security deposits	47,431,731	42,204,000
Other operating receipts	10,964,074	6,801,249
Payments to suppliers for electricity	(753,820,919)	(284,842,750)
Payments for goods and services	(16,547,960)	(5,114,220)
Payments for staff compensation and benefits	(6,302,492)	(3,407,133)
Payments for deposits and collateral	(80,254,418)	(7,212,708)
Payments of state surcharges	(1,899,237)	(808,996)
Net cash provided by operating activities	836,173	50,997,266
CASH FLOWS FROM NON-CAPITAL		
FINANCING ACTIVITIES		
Proceeds from bank note	55,910,000	8,500,000
Principal payments - loans and advance from cities	(5,517,741)	-
Principal payments - bank note	(51,520,082)	-
Interest and related expense payments	(1,560,734)	(655,717)
Net cash provided (used) by non-capital		
financing activities	(2,688,557)	7,844,283
CASH FLOWS FROM CAPITAL AND RELATED		
FINANCING ACTIVITIES		
Payments of lease liability	(235,232)	-
Payments to acquire capital assets	(91,588)	-
Net cash used by capital and related financing activities	(326,820)	
CASH FLOWS FROM INVESTING ACTIVITIES		
Investment income received	433,366	14,603
Net change in cash and cash equivalents	(1,745,838)	58,856,152
Cash and cash equivalents at beginning of period	69,576,718	10,720,566
Cash and cash equivalents at end of period	\$ 67,830,880	\$ 69,576,718
Reconciliation to the Statement of Net Position		
Cash and cash equivalents (unrestricted)	\$ 65,683,880	\$ 57,076,718
Restricted cash	2,147,000	12,500,000
Cash and cash equivalents	\$ 67,830,880	\$ 69,576,718
-		
SUPPLEMENTAL CASH FLOW INFORMATION:		
Capital acquisitions included in accounts payable	\$ 71,550	-

SAN DIEGO COMMUNITY POWER STATEMENTS OF CASH FLOWS (CONTINUED) YEARS ENDED JUNE 30, 2023 AND 2022

RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES

	2023	2022
Operating income	\$ 145,046,939	\$ 57,271,101
Adjustments to reconcile operating income to net		
cash provided by operating activities		
Depreciation and amortization expense	253,553	-
(Increase) decrease in:		
Accounts receivable, net	(60,126,741)	(49,270,869)
Accrued revenue	(31,853,169)	(34,719,306)
Prepaid expenses	(26,066,190)	(4,461,308)
Other receivables	(233,715)	4,043,272
Deposits	(7,965,293)	(5,791,057)
Increase (decrease) in:		
Accrued cost of electricity	20,113,838	41,086,784
Accounts payable	(185,693)	262,672
Other accrued liabilities	3,054,641	650,672
State surcharges payable	168,003	321,305
Supplier security deposits	(41,370,000)	41,604,000
Net cash provided by operating activities	\$ 836,173	\$ 50,997,266

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

REPORTING ENTITY

San Diego Community Power (SDCP) is a California Joint Powers Authority created on October 1, 2019. As of June 30, 2023, parties to its Joint Powers Agreement consist of the following local governments:

County	Cities	
San Diego (Unincorporated)	Chula Vista	La Mesa
	Encinitas	National City
	Imperial Beach	San Diego

SDCP is separate from and derives no financial support from its members. SDCP is governed by a Board of Directors whose membership is composed of elected officials or other representatives of the member governments.

A core function of SDCP is to provide electric service that includes the use of renewable sources under the Community Choice Aggregation Program under California Public Utilities Code Section 366.2.

SDCP began its energy delivery operations in March 2021. Electricity is acquired from commercial suppliers and delivered through existing physical infrastructure and equipment managed by San Diego Gas and Electric.

BASIS OF ACCOUNTING

SDCP's financial statements are prepared in accordance with generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements.

SDCP's operations are accounted for as a governmental enterprise fund and are reported using the economic resources measurement focus and the accrual basis of accounting – similar to business enterprises. Accordingly, revenues are recognized when they are earned, and expenses are recognized at the time liabilities are incurred. Enterprise fund-type operating statements present increases (revenues) and decreases (expenses) in total net position. Reported net position is segregated into three categories, if applicable – net investment in capital assets, restricted and unrestricted.

When both restricted and unrestricted resources are available for use, it is SDCP's policy to use restricted resources first, then unrestricted resources as they are needed.

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

CASH AND CASH EQUIVALENTS

For the purpose of the Statements of Cash Flows, SDCP defines cash and cash equivalents to include cash on hand, demand deposits, and short-term investments with an original maturity of three months or less. For the purpose of the Statements of Net Position, restricted cash balances are presented separately. Restricted cash reported on the Statements of Net Position includes collateral on a bank loan, as well as a required minimum balance to be maintained in one of its bank accounts.

PREPAID EXPENSES AND DEPOSITS

Contracts to purchase energy may require SDCP to provide a supplier with advanced payments or security deposits. Security deposits are generally held for the term of the contract and are classified as current or noncurrent assets depending on the length of the time the deposits will be outstanding. Also included are prepaid expenses and deposits for regulatory and other operating purposes.

CAPITAL ASSETS AND DEPRECIATION

SDCP's policy is to capitalize furniture and equipment valued over \$5,000 that is expected to be in service for over one year. Depreciation is computed according to the straight-line method over estimated useful lives of three years for electronic equipment, five years for furniture and seven years for leasehold improvements, unless limited by the length of the original lease term. SDCP does not own any electric generation assets.

LEASE ASSET AND LEASE LIABILITY

SDCP recognizes an asset and liability when it enters into certain leasing arrangements. The leased asset is amortized over the term of the lease. The lease liability is the present value of payments expected to be paid to the lessor during the lease term. SDCP's only leased asset and liability relate to its office premises.

DEPOSITS - ENERGY SUPPLIERS

Various energy contracts entered into by SDCP require the supplier to provide SDCP with a security deposit. These deposits are generally held for the term of the contract or until the completion of certain benchmarks. Deposits are classified as current or noncurrent depending on the length of time the deposits will be held.

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

NET POSITION

Net position is presented in the following components:

Net Investment in capital assets: This component of net position consists of capital and lease assets, net of accumulated depreciation and amortization, and reduced by outstanding borrowings that are attributable to the acquisition, construction, or improvement of those assets.

Restricted: This component of net position consists of restraints placed on net asset use through external constraints imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments or constraints imposed by law through constitutional provisions or enabling legislation.

Unrestricted: This component of net position consists of net position that does not meet the definition of "net investment in capital assets" or "restricted."

OPERATING AND NONOPERATING REVENUE

Operating revenues include revenue derived from the provision of energy to retail and wholesale customers, as well as liquidated damages resulting from counterparties who are unable to fulfill certain contractual obligations.

Investment income is considered "nonoperating revenue."

REVENUE RECOGNITION

SDCP recognizes revenue on an accrual basis. This includes invoices issued to customers during the reporting period and electricity estimated to have been delivered but not yet billed. Management estimates that a portion of the billed amounts will be uncollectible. Accordingly, an allowance for uncollectible accounts has been recorded.

OPERATING AND NONOPERATING EXPENSES

Operating expenses include the costs of energy and services, administrative expenses, and depreciation of capital assets. Expenses not meeting this definition are reported as nonoperating expenses.

ELECTRICAL POWER PURCHASED

During the normal course of business, SDCP purchases electrical power from numerous suppliers. Electricity costs include the cost of energy and capacity arising from bilateral contracts with energy suppliers as well as generation credits, and load and other charges arising from SDCP's participation in the California Independent System Operator's centralized market. The cost of electricity and capacity is recognized as "Cost of Electricity" in the Statements of Revenues, Expenses and Changes in Net Position.

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

ELECTRICAL POWER PURCHASED (CONTINUED)

To comply with the State of California's Renewable Portfolio Standards (RPS) and self-imposed benchmarks, SDCP acquires RPS eligible renewable energy evidenced by Renewable Energy Certificates (Certificates) recognized by the Western Renewable Energy Generation Information System (WREGIS). SDCP obtains Certificates with the intent to retire them and does not sell or build surpluses of Certificates with a profit motive. SDCP recognizes an expense on a monthly basis that corresponds to the volume sold to its customers for its various renewable and carbon free products. This expense recognition increases accrued cost of energy reported on the Statements of Net Position. Payments made to suppliers reduce accrued cost of electricity.

SDCP purchases capacity commitments from qualifying generators to comply with the California Public Utilities Commission's Resource Adequacy Program. The goals of the Resource Adequacy Program are to provide sufficient resources to the California Independent System Operator to ensure the safe and reliable operation of the grid in real-time and to provide appropriate incentives for the siting and construction of new resources needed for reliability in the future.

STAFFING COSTS

SDCP fully pays employees semi-monthly and fully pays its obligation for health benefits and contributions to its defined contribution retirement plan each month. SDCP is not obligated to provide post-employment healthcare or other fringe benefits and, accordingly, no related liability is recorded in these financial statements. SDCP provides compensated time off, and the related liability is recorded in these financial statements.

INCOME TAXES

SDCP is a joint powers authority under the provision of the California Government Code and is not subject to federal or state income or franchise taxes.

ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

RECLASSIFICATIONS

Certain amounts in the prior-year financial statements have been reclassified for comparative purposes to conform to the presentation of the current-year financial statements. These reclassifications did not result in any change in previously reported net position or change in net position.

2. CASH AND CASH EQUIVALENTS

SDCP maintains its cash in accounts at River City Bank in Sacramento, CA and at JP Morgan Chase in New York, NY. SDCP's deposits are subject to California Government Code Section 16521 which requires that its banks collateralize public funds in excess of the Federal Deposit Insurance Corporation limit of \$250,000 by 110%.

On May 25, 2023, SDCP adopted its investment policy that prioritized safety of principle, liquidity, return on investments and standard of care. Additionally, the policy defined acceptable investment types, prohibited investment types, diversification and risk. SDCP additionally monitors its banking risk exposure on an ongoing basis.

3. ACCOUNTS RECEIVABLE

Accounts receivable were as follows as of June 30:

	2023	2022
Accounts receivable from customers	\$ 132,721,648	\$ 54,413,346
Allowance for uncollectible accounts	(22,207,917)	(4,026,356)
Net accounts receivable	\$ 110,513,731	\$ 50,386,990

The majority of account collections occur within the first few months following customer invoicing. SDCP estimates that a portion of the billed accounts will not be collected. SDCP continues collection efforts on accounts in excess of *de minimis* balances regardless of the age of the account. Although collection success generally decreases with the age of the receivable, SDCP continues to have success in collecting older accounts. The allowance for uncollectible accounts at the end of a year includes amounts billed during the current and prior fiscal years. The increase in the allowance from 2022 to 2023 is a result of the large growth in customers during the same period. Bad debt is reported as a reduction in electricity sales on the Statement of Revenues, Expenses, and Changes in Net Position.

4. CAPITAL ASSETS AND LEASE ASSET

Capital asset activity for the years ended June 30, 2023 and 2022 was as follows:

	rniture & quipment	umulated preciation	Total
Balances at June 30, 2022	\$ -	\$ -	\$ -
Additions	 163,138	 (4,055)	 159,083
Balances at June 30, 2023	\$ 163,138	\$ (4,055)	\$ 159,083

4. CAPITAL ASSETS AND LEASE ASSET (continued)

Lease asset activity for the years ended June 30, 2023 and 2022 was as follows:

			Ac	cumulated	
	L	ease Asset	An	nortization	 Total
Balances at June 30, 2022	\$	-	\$	-	\$ -
Additions		1,122,749		(249,498)	873,251
Balances at June 30, 2023	\$	1,122,749	\$	(249,498)	\$ 873,251

5. DEBT

BANK NOTE PAYABLE

In May 2020, SDCP arranged to borrow up to \$35,000,000 through a revolving credit agreement from River City Bank (RCB) to provide cash for working capital before sufficient revenue is to be collected from customers. In March 2022, the agreement was amended and the amount available to SDCP increased to \$50,000,000. At June 30, 2022, SDCP borrowed a total of \$31,340,000. During 2023, SDCP terminated this agreement and paid off its debt with RCB and entered into a new revolving credit agreement with JPMorgan (JPM) to borrow up to \$150,000,000. As security, SDCP assigned a security interest in all customer accounts receivable, revenues, debt service reserve accounts, and cash collateral accounts. Principal can be drawn as needed and interest is accrued on the outstanding balance. SDCP borrowed a total of \$35,730,000 from JPM during 2023. The stated maturity date is February 28, 2028, with interest payable each month. The interest rate at June 30, 2023, was computed at the One-Month CME Term SOFR plus 1.525-1.600% per annum depending on the utilized balance. In the event of default, the note becomes immediately due and payable. In addition to these borrowings, SDCP issued a Standby Letter of Credit secured by the line of credit agreement. At June 30, 2023, this Letter of Credit reduced the available portion of the line by approximately \$5,000,000, but is not considered debt to SDCP.

LOANS PAYABLE

In May 2020, SDCP borrowed \$5,000,000 in total from two private lenders for the purpose of funding a collateral account to be held by River City Bank. Each loan was due on May 21, 2023. The notes bear interest equal to the one-month LIBOR, or its replacement rate, plus 2% per annum. Interest payments were due quarterly, commencing when SDCP began selling electricity to customers. In August 2022, SDCP repaid both private loans in full.

5. DEBT (continued)

Note and loan principal activity and balances were as follows for the following direct borrowings:

Beginning	Additions	Payments	Ending
			_
\$ -	\$ 35,730,000	\$ -	\$ 35,730,000
31,340,082	20,180,000	(51,520,082)	-
5,000,000		(5,000,000)	-
\$ 36,340,082	\$ 55,910,000	\$ (56,520,082)	35,730,000
			-
			\$ 35,730,000
Beginning	Additions	Payments	Ending
\$ 22,840,082	\$ 8,500,000	\$ -	\$ 31,340,082
5,000,000	-	-	5,000,000
\$ 27,840,082	\$ 8,500,000	\$ -	36,340,082
			5,000,000
			\$ 31,340,082
	\$ - 31,340,082 5,000,000 \$ 36,340,082 Beginning \$ 22,840,082 5,000,000	\$ - \$35,730,000 31,340,082 20,180,000 5,000,000 - \$36,340,082 \$55,910,000 Beginning Additions \$22,840,082 \$8,500,000 5,000,000 -	\$ - \$35,730,000 \$ - 31,340,082 20,180,000 (51,520,082) 5,000,000 - (5,000,000) \$36,340,082 \$55,910,000 \$(56,520,082) **Beginning** **Additions** **Payments** \$22,840,082 \$8,500,000 \$ - 5,000,000

The following is a summary of SDCP's estimated future annual payment obligations, assuming the outstanding balance at June 30, 2023 continues for the remainder of the credit agreement. A rate of 6.59%, equal to the interest rate charge as of the year ended June 30, 2023, was used to calculate future interest. Also included in the calculation of future interest are charges associated with the unutilized portion of the loan. The rate used to calculate the unutilized portion was 0.62%, equal to the rate charged as of the year ended June 30, 2023. Future changes in market interest rates and outstanding principal balance will affect the actual future interest paid by SDCP.

	Principal	Interest	Total	
Year ended June 30,				
2024	\$ -	\$ 3,063,181	\$ 3,063,181	
2025	-	3,063,181	3,063,181	
2026	-	3,063,181	3,063,181	
2027	-	3,063,181	3,063,181	
2028	35,730,000	2,042,121	37,772,121	
Total	\$ 35,730,000	\$ 14,294,845	\$ 50,024,845	

6. DUE TO CITIES

Included in noncurrent liabilities as of June 30, 2022 are amounts advanced by the Cities of San Diego, La Mesa, and Encinitas (the Cities) to SDCP for start-up related costs. Interest does not accrue on the liabilities to the Cities. SDCP repaid this obligation during 2023.

The following is a schedule of changes in the balance due to cities during the period:

	В	eginning	Addit	ions	P	ayments	Ending
Year ended June 30, 2023							
Start-up funds							
advanced from Cities	\$	517,741	\$	-	\$	(517,741)	\$
Total	\$	517,741	\$	-	\$	(517,741)	-
Amounts due within one year							
Amounts due after one year							\$ -
	В	eginning	Addit	ions	P	ayments	Ending
Year ended June 30, 2022	<u>B</u>	eginning	Addit	ions	P	ayments	Ending
Year ended June 30, 2022 Start-up funds	<u>B</u>	eginning	Addit	ions	P	ayments	Ending
· · · · · · · · · · · · · · · · · · ·		eginning 517,741	Addit	ions -	**************************************	ayments	\$ Ending 517,741
Start-up funds				ions - -		ayments	\$
Start-up funds advanced from Cities	\$	517,741	\$	- -	\$	ayments	\$ 517,741

7. LEASE

A lease asset is reported in accordance with Governmental Accounting Standards Board No. 87 (GASB 87). According to GASB, the Statement aims to increase the usefulness of governments' financial statements by requiring reporting of certain lease assets and liabilities that previously were not recognized on the statement of net position. In November 2022, SDCP entered into a 24-month non-cancelable lease for its office premises. The rental agreement includes an option to renew the lease for an additional year. Rental payments under this lease were \$268,000 for the year ended June 30, 2023.

As of June 30, 2023, future minimum lease payments under this lease were projected as follows:

	F	Principal	Interest		Total	
Year ended June 30,		_		_		
2024	\$	366,323	\$	32,444	\$	398,767
2025		383,152		15,615		398,767
2026		138,041		1,333		139,374
Total	\$	887,516	\$	49,392	\$	936,908

8. RISK MANAGEMENT

SDCP is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; and errors and omissions. During the year, SDCP purchased insurance policies from investment-grade commercial carriers to mitigate risks that include those associated with earthquakes, theft, general liability, errors and omissions, and property damage. There were no significant reductions in coverage compared to the prior year. SDCP has general liability coverage of \$10,000,000 with a deductible of \$100,000. From time to time, SDCP may be party to various pending claims and legal proceedings. Although the outcome of such matters cannot be forecasted with certainty, it is the opinion of management and SDCP's legal counsel that the likelihood is remote that any such claims or proceedings will have a material adverse effect on SDCP's financial position or results of operations.

SDCP maintains risk management policies, procedures and systems that help mitigate credit, liquidity, market, operating, regulatory and other risks that arise from participation in the California energy market. Credit guidelines include a preference for transacting with investment-grade counterparties, evaluating counterparties' financial condition and assigning credit limits as applicable. These credit limits are established based on risk and return considerations under terms customarily available in the industry. In addition, SDCP enters into netting arrangements whenever possible and where appropriate obtains collateral and other performance assurances from counter parties.

9. PURCHASE COMMITMENTS

In the ordinary course of business, SDCP enters into various power purchase agreements in order to acquire renewable and other energy and electric capacity. The price and volume of purchased power may be fixed or variable. Variable pricing is generally based on the market price of electricity at the date of delivery. Variable volume is generally associated with contracts to purchase energy from as-available resources such as solar, wind, and hydro-electric facilities.

The following table represents the expected, undiscounted, contractual obligations outstanding as of June 30, 2023:

Year ending June 30,		
2024	\$	628,800,000
2025		544,800,000
2026		330,600,000
2027		178,500,000
2028		124,400,000
2029-2047]	1,052,500,000
Total	\$ 2	2,859,600,000

10. FUTURE GASB PRONOUNCEMENTS

The requirements of the following GASB Statements are effective for years ending after June 30, 2023:

GASB has approved GASB Statement No. 100, Accounting Changes and Error Corrections – Amendment of GASB Statement No. 62, and GASB Statement No. 101, Compensated Absences. When they become effective, application of these standards may restate portions of these financial statements.



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: November 16, 2023

RECOMMENDATIONS

Receive and file update on customer energy programs.

BACKGROUND

Staff will provide regular updates to the Board of Directors ("Board") regarding the following SDCP customer energy programs: Building Electrification, Energy Education, Energy Efficiency, Energy Storage, Flexible Load, Grant Programs, and Solar.

ANALYSIS AND DISCUSSION

Updates on customer energy programs are detailed below.

Building Electrification

California Energy Commission ("CEC") Equitable Building Decarbonization Program

Status: Since May 2023, Staff have been working with a coalition of Southern California agencies led by the Southern California Regional Energy Network ("SoCalREN") to prepare for the CEC's Equitable Building Decarbonization Direct Install program. The program is directed towards under resourced communities that are located in disadvantaged communities as designated by CalEnviroScreen 4.0 and/or designated as low-income where median household incomes are at or below 80 percent of the statewide median income or at/or below the threshold designated as low-income by the Department of Housing and Community Development. The program will directly replace existing gasfired space heating and cooling equipment, water heaters, clothes dryers, and ranges or cooktops, and will upgrade electric panels to support the new electric equipment. Additionally, the program will cover some remediation and safety measures such as remediation of galvanized pipe, lead paint, asbestos, and/or mold, and energy efficiency work like air sealing and insulation. Since 13.6 million people live in the Southern California region, 58% of the \$689 million dollar budget will be allocated to the region.

The CEC is seeking three program administrators to implement the program. The CEC recently finalized and adopted the Program Guidelines and will soon be releasing a Request for Proposals ("RFP") to select the program administrators. Staff are working with the coalition to have SoCalREN respond to the RFP.

<u>Next Steps</u>: Staff are waiting for the CEC to release the RFP and are meeting with SoCalREN and the coalition to iron out the details of the proposal and identify community-based organizations that can help with program promotion and identifying potential participants. Staff anticipate that this program will launch in late-2024, potentially early 2025.

Energy Education

Energy Education Website

<u>Status</u>: Staff recently launched the <u>Power Your Life</u> webpage to provide education on the benefits of electrification. The <u>Electrify Your Life</u> webpage provides additional details on the various reasons to electrify and includes information on the benefits of different electrification technologies.

Within the next couple of weeks, a new marketplace will be available where residents can get quotes from vetted contractors on the installation of three technologies: solar systems, batteries, and heat pump water heaters. The marketplace is powered by Electrum. It will allow residents to learn more about the cost to install solar and batteries and/or heat pump water heaters and be connected to an energy advisor to receive support and assistance to complete a project. A sign-up form will be provided for local contractors who are interested in joining the network.

<u>Next Steps</u>: Staff will update the two webpages with links to the marketplace and start on a marketing campaign to promote the marketplace.

Energy Efficiency

Regional Energy Network ("REN") Formation

<u>Status</u>: Staff presented a detailed update on the progress of the REN Formation at the October Board Meeting.

<u>Next Steps</u>: Staff will continue to develop the <u>Business Plan Application and supporting</u> documents. Staff will request approval of the final application from the SDCP Board of Directors at the December Board meeting, prior to CPUC submittal. Staff expect to submit the completed Business Plan Application to the CPUC in December 2023.

Grant Programs

Community Grant Program

<u>Status</u>: SDCP's Community Grant Program aims to support clean energy projects that provide economic, environmental, and health benefits to SDCP's communities. At the November Community Advisory Committee ("CAC") meeting, Staff presented an update

on the program and solicited feedback on potential improvements for the next grant cycle in addition to suggestions for program promotion.

<u>Next Steps</u>: Staff will begin developing the program guidelines with San Diego Foundation in Q4 2023 and plan on opening the FY 2023-24 grant program in Q1 2024.

Member Agency Grant Program

<u>Status</u>: SDCP's Member Agency Grant Program aims to support SDCP member agencies' climate action goals such as through projects that promote clean energy, reduce carbon emissions, support climate equity, and advance local economic development. Staff presented an update on the program at the November CAC meeting. SDCP is currently in contract negotiations with a firm that will provide program administration support.

<u>Next Steps</u>: Once the program administrator is under contract, next steps will include developing program materials and working with staff from SDCP's member agencies to identify eligible projects. Staff plan on launching the inaugural grant program in Q1 2024.

Solar

Net Energy Metering ("NEM") and Net Billing Tariff ("NBT")

Status: In October 2023, the Board of Directors adopted SDCP's Net Billing Tariff, one of the most customer centric tariffs in the State. The Board also adopted changes to the existing NEM policy to remove the net surplus compensation cap and implement a generation enhancement for monthly billing customers. Staff finalized the tariff and will be starting engagement with stakeholders to provide them with an update and share the final tariff. Staff are also working closely with Calpine Energy Solutions to implement the tariff and support the billing mechanics before the December 2023 transition to NBT.

Next Steps: Staff continue to monitor the development of NBT for virtual and aggregation customers currently with the California Public Utilities Commission ("CPUC"). Staff anticipate coming back to the Board with a virtual and aggregation tariff once adopted by the CPUC. SDCP Public Affairs Staff are working to create a new webpage on the SDCP website with information on NBT.

AD-HOC COMMITTEE AND/OR SUBCOMITTEE 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: November 16, 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, having recently hired a Compliance Analyst and a Contract Management Associate, is now ten people strong.

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 upfront 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. Since the October 2023 Board meeting, SDCP has fully executed the Board-approved Pattern SunZia PPA, which was sourced via the October 2022 Long-Term RPS RFP. Staff has begun tracking PPA obligations as the project nears construction.

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 RFO

In addition to the two aforementioned Renewable Energy RFPs, staff have also launched an RFO 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. Since the October 2023 Board meeting, SDCP has fully executed the Board-approved NextEra Desert Sands energy storage service agreement, which was sourced from this standalone storage RFO. Staff has begun tracking PPA obligations.

Local Development

SDCP's rolling Local RFI remains open and has already brought in multiple projects under negotiation and contract, including the 35 MW Arrowleaf Solar+Storage facility (Imperial County, executed June 2023) and 19.5MW of long-term agreements recently executed with EnerSmart for Local RA from battery storage facilities in San Diego County. SDCP also released an RFO for distributed renewable energy resources (DERs) on October

25th, which focuses on a broad range of distribution-level renewable projects within San Diego County. SDCP expects to bring a handful of resulting PPAs to the Board in Q1 for consideration. Additional ongoing local initiatives include a Feed-in-Tariff Program revamp and expansion, expected in Q1, and continued collaboration with member agency staff to identify strategic opportunities to further infill development in 2024.

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 has hosted three webinars to aid bidders with the solicitation process.

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, 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: November 16th, 2023

RECOMMENDATION

Receive and File the Update on Human Resources.

BACKGROUND

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

Implementing Career Ladders in Lattice: We are currently on track with designing career tracks in Lattice inclusive of role competencies for each of our staff members.

We enjoyed a staff and family picnic where we had a chance to mingle with new and veteran employees and recharge after many busy months of hard work and hiring.

This month, SDCP welcomes several new employees:

Erin Hudak, Compliance Analyst

Diana Gonzalez, Risk Manager

Kiran Singh, Director of Data Analytics, and IT

Current open positions include:

General Counsel
Key Accounts
Legislative or Sr. Legislative Manager
Senior Executive Assistant

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: November 9, 2023

RECOMMENDATION

Receive and file an update on various customer operations.

BACKGROUND

Staff will provide regular updates to the Community Advisory Committee 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 customer 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 November 2, 2023, SDCP is serving a cumulative total count of **926,990** active accounts correlating to **1,095,757** meters. There are **151,916** active accounts already enrolled in Unincorporated County of San Diego and **18,515** in National City.

Accounts on Net Energy Metering (NEM) within Phase 4 in National City and County of San Diego began enrollment into SDCP service 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.



B) 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 October 30th, 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 Q3	2023-10	Total
City of Chula Vista	266	3,472	244	102	242	79	4,405
City of Encinitas	66	1,886	94	31	70	17	2,164
City of Imperial Beach	32	345	27	6	38	7	455
City of La Mesa	85	1,272	77	30	77	28	1,568
City of San Diego	1,077	19,278	1,042	543	945	293	23,176
County of San Diego			6,920	2,667	2,119	779	12,484
National City			137	69	44	14	264
Total	1,526	26,253	8,541	3,448	3,535	1,217	44,516

Opt Outs by Class Code	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023-10	Total ▼
Residential	36	25,717	7,717	3,091	3,272	1,151	40,980
Commercial/Industrial	1,490	536	824	357	263	66	3,536
Total	1,526	26,253	8,541	3,448	3,535	1,217	44,516

Opt Outs by Reason	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023-10	Total
Concerns about government-run power agency	24	1,496	503	213	151	36	2,423
Concerns about lack of equivalent CCA programs		132	53	12	13	5	215
Decline to provide	227	3,596	1,397	435	343	147	6,145
Dislike being automatically enrolled	203	7,214	2,754	1,056	924	327	12,478
Existing relationship with the utility	2	2,394	1,005	393	305	108	4,207
Have grid reliability concerns	1	292	169	46	19	9	536
Have renewable Energy Reliability Concerns	6						6
Other	818	2,653	706	393	244	79	4,893
Rate or additional cost concerns	6	7,754	1,693	792	1,385	445	12,073
Rate or Cost Concerns	233						233
Service or billing concerns	6	724	262	108	151	61	1,312
Total	1,526	26,253	8,541	3,448	3,535	1,217	44,516

Opt Outs by Method	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023-10	Total
Customer Service Rep (CSR)	1,098	7,002	1,846	876	966	315	12,102
Interactive Voice Response (IVR)	101	4,899	1,493	735	922	276	8,426
Web	327	14,353	5,202	1,837	1,647	626	23,991
Total	1,526	26,253	8,541	3,448	3,535	1,217	44,516

^{*}Historical opt outs including inactive accounts as of 10/30/2023.



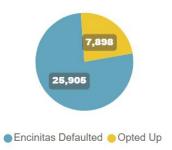
II. Opt Ups to Power 100

Opt Ups by Jurisdiction	2021	2022	2023 Q1	2023 Q2	2023 Q4	2023-10	Total
City of Chula Vista	701	168	18	15	15	4	921
City of Encinitas	18	1	1				20
City of Imperial Beach	60	29		1	9		99
City of La Mesa	148	118	6	5	2	3	282
City of San Diego	3,163	2,868	181	114	107	31	6,451
County of San Diego			48	91	38	9	186
National City			1	9		1	11
Total	4,090	3,184	255	235	171	48	7,969
Opt Ups by Class Code	2021	2022	2023 Q1	2023 Q2	2023 Q4	2023-10	Total
The state of the s		- Constant and Constant Consta	The state of the state of	Section and a Section 1			1000
Residential	3	2,895	181	136	131	43	3,387
							_
Residential	3	2,895	181	136	131	43	3,387
Residential Commercial/Industrial	3 4,087	2,895 290	181 74	136 99 235	131 40	43 5	3,387 4,583
Residential Commercial/Industrial Total	3 4,087 4,090	2,895 290 3,184	181 74 255	136 99 235	131 40 171	43 5 48	3,387 4,583 7,969
Residential Commercial/Industrial Total Opt Ups by Method	3 4,087 4,090 2021	2,895 290 3,184 2022	181 74 255 2023 Q1	136 99 235 2023 Q2	131 40 171 2023 Q4	43 5 48 2023-10	3,387 4,583 7,969
Residential Commercial/Industrial Total Opt Ups by Method Customer Service Rep (CSR)	3 4,087 4,090 2021 4,059	2,895 290 3,184 2022 1,369	181 74 255 2023 Q1 97	136 99 235 2023 Q2 118	131 40 171 2023 Q4 54	43 5 48 2023-10	3,387 4,583 7,969 Total 5,700

Cumulative Power100 Accounts

Opt Ups by Jurisdiction	Active
City of Encinitas	25,905
City of San Diego	6,412
City of Chula Vista	916
City of La Mesa	280
County of San Diego	181
City of Imperial Beach	98
City of National City	11
Total	33,803

Power100 Opt vs Defaulted



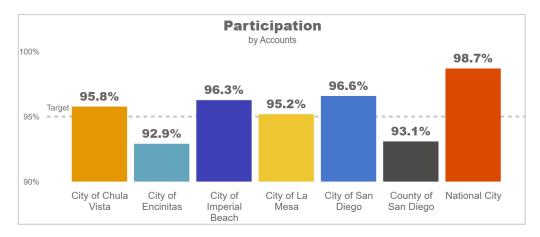
III. Opt Downs from Power100

Opt Downs by Jurisdiction	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023-10	Total
City of Chula Vista		1	3			1	5
City of Encinitas	35	425	27	17	20	2	526
City of Imperial Beach		1					1
City of La Mesa		2					2
City of San Diego		26	5	5	1	2	39
County of San Diego			1	1	2	1	5
Total	35	455	36	23	23	6	578

Opt Downs by Class Code	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023-10	Total
Residential	-	433	36	15	22	6	512
Commercial/Industrial	35	22		8	1		66
Total	35	455	36	23	23	6	578

Opt Downs by Method	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023-10	Total
Customer Service Rep (CSR)	31	305	21	19	15	3	394
Interactive Voice Response (IVR)	4	26	2		1		33
Web		124	13	4	7	3	151
Total	35	455	36	23	23	6	578





Jurisdiction	Active	Eligible	Opt Outs	Participation
City of Chula Vista	93,393	97,520	4,127	95.8%
City of Encinitas	26,440	28,458	2,018	92.9%
City of Imperial Beach	10,543	10,952	409	96.3%
City of La Mesa	28,028	29,446	1,418	95.2%
City of San Diego	599,325	620,518	21,193	96.6%
County of San Diego	150,454	180,553	12,479	93.1%
National City	18,532	19,235	251	98.7%
Total	926,715	986,682	41,895	95.8%

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.



C) Contact Center Metrics

As anticipated, call volumes began to noticeably increase in August, which was expected as customers started noticing bills with summer rates. 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 have been fielded and a modest uptick in opt outs ensued. With the transition to winter rates effective as of November 1st, call volumes are expected to go down.

The chart below summarizes contact made by customers into our Contact Center broken down by month through October 30th, 2023:

V. Contact Center Metrics



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

	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023-10	Total
Total Calls to IVR	2,289	47,118	15,229	10,356	14,628	4,952	94,572
Total Calls Connected to Agents	1,401	30,174	9,641	6,735	9,589	3,236	60,776
Avg Seconds to Answer	20	12	8	3	7	16	13
Avg Call Duration (Minutes)	8.5	9.8	9.4	9.5	10.3	9.7	9.4
Calls Answered within 60 Seconds (75% SLA)	96.23%	95.50%	96.80%	99.69%	97.22%	92.34%	96.31%
Abandon Rate	0.57%	0.36%	0.26%	0.00%	0.17%	0.83%	0.37%

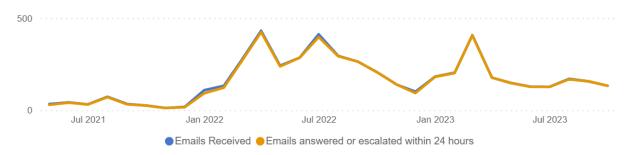
Similar to other CCAs' service territories, we are anticipating the trend of our customers calling into our Contact Center's Interactive Voice Response (IVR) system tree and being able to self-serve their opt actions using the recorded prompts as well as utilizing our website for processing opt actions 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.



D) Customer Service Email Trends



Customer Service Emails

	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023-10	Total
Emails Received	272	2,894	795	453	455	133	5,002
Emails answered or escalated within 24 hours	257	2,821	790	452	452	133	4,905
Completion (%)	94%	96%	99%	100%	99%	100%	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.

E) Transition from Summer to Winter Rates

November 1 marks the transition from Summer to Winter pricing. Prices are generally higher in the Summer when electricity is used the most relative to Winter. To view our rates, please access them via our website through:

Residential rates: https://sdcommunitypower.org/billing-rates/residential-rates/
Non-Residential rates: https://sdcommunitypower.org/billing-rates/commercial-rates/

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

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 Customer Operations

Date: November 16, 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

The Public Affairs team had a very busy September as it ramped up its in-person engagement efforts with the expansion of its Community Engagement division and prepared a variety of SDCP representatives for speaking engagements that reached thousands of people in San Diego and beyond.

Recent and Upcoming Public Engagement Events

- Oct. 1, 2023 Paddle for Clean Water
- Oct. 3, 2023 Cleantech San Diego: Holding Power
- Oct. 4, 2023 California Clean Air Day with Power100 Champion Illumina
- Oct. 5, 2023 Encinitas Small Business Resource Fair
- Oct. 7, 2023 Casa Fest 2023: Casa Familiar's 50th Anniversary Celebration
- Oct. 11, 2023 North San Diego County Chamber of Commerce Regional Connect
- Oct. 14, 2023 Environmental Health Coalition's Clean Air Congreso
- Oct. 15, 2023 San Diego Wave Fútbol Club game
- Oct. 17, 2023 San Diego Regional Chamber of Commerce October Meeting
- Oct. 21, 2023 Imperial Beach Sun Coast Farmers Market
- Oct. 21, 2023 Beautify Chula Vista
- Oct. 25 and Oct. 26, 2023 Tribal EPA & U.S. EPA Region 9 Conference



Oct. 27, 2023 – 2023 San Diego Green Building Conference & Expo

Nov. 3, 2023 – Lesley K. McAllister Symposium on Climate and Energy Law

Nov. 3, 2023 – Chula Vista Chamber of Commerce First Friday Breakfast

Nov. 4, 2023 – La Mesa Parks Appreciation Day

Nov. 7, 2023 – California Efficiency + Demand Management Council

Nov. 8, 2023 – La Mesa Library

Nov. 8, 2023 – North San Diego Chamber Regional Connect

Nov. 9, 2023 – Business for Good Summit

Nov. 9, 2023 - San Diego Regional Chamber of Commerce Legislative Lounge

Nov. 14, 2023 – Encinitas Chamber of Commerce Moonlight Mixer

Nov. 15, 2023 - Volatility Conference

Nov. 15, 2023 – Mission Valley Branch Library

Nov. 18, 2023 – Imperial Beach Sun Coast Farmers Market

Nov. 28. 2023 – National City Library

Nov. 30, 2023 – Chula Vista Library

Marketing, Communications and Outreach

The Public Affairs team has been working diligently behind the scenes to support programmatic efforts including the launch of "Solar for Our Communities" green tariff programs, a soon-to-be launched electrification education hub, and updating information around the recently approved Net Billing Tariff. The Public Affairs team is working closely with internal and external stakeholders to encourage participation in programs and leveraging relationships with community partners to amplify our marketing and outreach efforts.

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 several months, SDCP has engaged with reporters to provide information about the greater energy landscape in California and update them on our organization's activities.

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: November 16, 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

During the November 9, 2023 regular CAC meeting:

- Vice-Chair Harris (La Mesa) chaired the meeting and members welcomed the following new staff members:
 - Kiran Singh, Director of Data Analytics and IT
 - Erin Hudak, Compliance Analysr
- The CAC approved the consent agenda, including October meeting minutes and updates on Marketing and Public Relations, Customer Operations, and Regulatory and Legislative Affairs. Members received staff reports and briefings for all items and had specific questions around marketing strategies.

- The Programs team updated and solicited feedback from members on its grant programs. During the meeting, members asked clarifying questions about the next round of the Community Grant Program and provided positive feedback on member agency grants
- The CAC heard updates on the October activity of its Ad-Hoc Committees. The Programs Ad-Hoc Committee did not meet. The Community & Equity Ad-Hoc Committee set a new recurring date and time to ensure participation from most participants, and discussed CAC Educational Presentations and began discussing the 2024 CAC Work Plan.
- The CAC Fiscal Year 2022-2023 Work Plan will be updated later this year, along with several key documents last amended by the Board of Directors In 2021.
 Members suggested some items be considered for discussion by SDCP leadership, including the Board of Directors, its chair, and the Chief Executive Officer. Committee members also provided announcements on upcoming events and volunteering opportunities with SDCP.

As of November 7, 2023, the CAC has one vacancy representing the County of San Diego (unincorporated). The vacancy for the City of Imperial Beach is expected to be filled during the November Board of Directors meeting. 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: November 16, 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

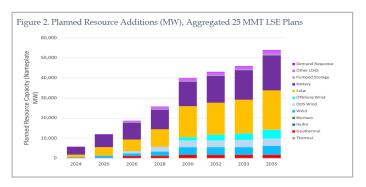
A) Regulatory Updates

Integrated Resource Planning (IRP)

Administrative Law Judge's Ruling Seeking Comment on Proposed 2023 Preferred System Portfolio and Transmission Planning Process Portfolios

On October 5, 2023 the California Public Utilities Commission (CPUC) issued a Ruling within the Integrated Resources Planning (IRP) proceeding (R.20-05-003). This Ruling seeks input from parties on a package of materials proposed to be part of the 2023 Preferred System Plan (PSP) and portfolio to be sent to the California Independent System Operator (CAISO) for analysis in its 2024-2025 Transmission Planning Process (TPP) and to give direction load serving entities (LSE) regarding their procurement activities and for their next round of IRPs.

The Ruling presents the results of the aggregation of the individual IRPs filed by each LSE on or around November 1, 2022. Moreover, the Ruling recommends that the Commission adopt the aggregated portfolio that is based on planning to а



greenhouse gas (GHG) target for the electricity sector of 25 million metric tons (MMT) by 2035, which is the lower of the two targets the LSEs were directed to plan for in Decision (D.) 22-02-004. <u>SDCP's Preferred Conforming Portfolio provided in its individual 2022 IRP</u> far surpassed the emissions requirement for its proportional share of the 2035 25 MMT GHG Benchmark.

The Ruling also presents analysis related to the consideration of two petitions for modification (PFMs) of the mid-term reliability (MTR) decisions.

- One PFM seeks an extension to the requirements in D.21-06-035 for the category of resources designed to partially offset the loss of the Diablo Canyon Power Plant with procurement that was required by 2024 and 2025.
- The other PFM seeks to extend the deadline of 2028 for long lead-time (LLT) resources set in D.23-02-040, which was already an extension to the 2026 deadline originally set in D.21-06-035.
 - The ruling proposes that if the LLT resource extension is granted, that LSEs be required to procure 2,000 megawatts (MW) of replacement clean energy capacity in 2028.
 - Any other procurement would be left up to the new Reliable and Clean Power Procurement Program expected to be considered in 2024.

Lastly, the Ruling includes a proposed set of reliability standards to be used by the Commission in the IRP context, distinct from the resource adequacy context, for this cycle of IRP.

SDCP is coordinating with CalCCA to develop positions on the various elements of the Ruling and draft Opening Comments and Reply Comments, which are due November 13, 2023, and December 1, 2023, respectively.

Extension of Diablo Canyon Power Plant Operations

Proposed Decision Conditionally Approving Extending Operations at Diablo Canyon Nuclear Power Plant Pursuant to Senate Bill 846

On October 26, 2023, the CPUC issued a <u>Proposed Decision</u> (PD) to direct and authorize extended operations at Diablo Canyon Power Plant (DCPP) until October 31, 2029 (Unit 1) and October 31, 2030 (Unit 2), as required by Senate Bill 846.

Notably, the PD adopts three key positions argued by CalCCA:

- The PD finds that allocating the costs of extended operations based on an IOU's share of a 12-month coincident peak load is fair and equitable, and proposes using the Cost Allocation Mechanism (CAM) as the process for allocating costs to the LSEs within each IOU's territory.
- The PD finds it fair and reasonable to allocate Resource Adequacy (RA) benefits in the same manner that eligible costs for extended operations at DCPP are allocated, ensuring that CCA customers will receive the RA benefits they pay for via the CAM process.
- The PD directs PG&E to offer LSEs that are paying for extended operations
 of DCPP the ability to use their share of DCPP's GHG-free attributes for
 their power content label if they so choose.

Opening Comments on the PD are due on November 15, 2023, and Reply Comments on November 20, 2023.

ERRA Forecast Proceeding Update

On October 13, SDG&E filed the *Updated Application and Prepared Direct Testimony* ("October Update"). SDG&E's October Update generally tracks with changes that were expected due to new Market Price Benchmarks issued by Energy Division on October 2, 2023. SDCP, CEA and CalCCA ("the CCA Parties") jointly filed comments on October 27, 2023.

In these comments the CCA Parties note that SDG&E continues to use an inaccurate "forecast" for its Sold and Unsold RA inputs. Unlike the other IOUs, SDG&E only reports on sales already made through executed contracts. SDG&E's refusal to provide an accurate forecast distorts 2024 PCIA rates, resulting in unnecessary volatility and incorrect rate signals being sent to customers. The CCA Parties continue to recommend that the Commission require SDG&E to forecast a 2024 RA sales volume equal to the average of actual RA sales recorded during calendar year 2023 to date. Additionally, the CCA Parties discovered a few mistakes in SDG&E's workpapers, most of which were acknowledged by SDG&E and which the CCA Parties expect that SDG&E will correct. The CCA Parties also noted that SDG&E corrected the NQC for several contract resources discussed in CCA Parties' testimony. Finally, the CCA Parties note that forecast commodity rates continue to be redacted in SDG&E's workpapers. This new practice decreases transparency for customers and is inconsistent with the practices of the

other IOUs. The CCA Parties recommend in future ERRA proceedings that SDG&E provide a transparent forecast of bundled commodity rates that are public.

A proposed decision in this proceeding is expected on November 28, 2023, with a final decision expected to be adopted by December 14, 2023.

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 11

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services; and

Kenny Key, Director of Power Contracts

Via: Karin Burns, Chief Executive Officer

Subject: Approve the 2023 Procurement Counsel Legal Services Request for

Proposal Contracts

Date: November 16, 2023

RECOMMENDATIONS

Approve the 2023 Procurement Counsel Legal Services Request for Proposal ("RFP") Contracts: (1) Approval of Amended and Restated Engagement Letter with Keyes and Fox LLP for up to \$500,000 per year for Legal Services for Power Procurement beginning January 1, 2024; (2) Approval of Engagement Letter with Perkins Coie LLP for up to \$200,000 per year for Legal Services for Power Procurement beginning January 1, 2024; and (3) Approval of Engagement Letter with Sunridge Legal, LLP for up to \$200,000 per year for Legal Services for Power Procurement beginning January 1, 2024.

BACKGROUND

SDCP issued an RFP for legal services on September 8, 2023 related to legal services to assist SDCP with the procurement of wholesale electricity supply, energy storage, resource adequacy, renewable energy credits, and transmission rights to serve SDCP customers. That RFOs purpose was to allow SDCP to select procurement counsel (and potentially backup procurement counsels) to begin engagement January 1, 2024.

ANALYSIS AND DISCUSSION

Six firms submitted proposals in response to this RFP, including SDCP's current procurement counsel, Keyes & Fox. From the initial list, staff reviewed offer materials and prepared a summary matrix to compare the firms. Based upon a number of factors, including cost, relevant experience, bandwidth, and responsiveness of the proposal to SDCP's RFP documents, four firms were chosen for shortlisting and further evaluation. Staff evaluated their proposals to see how they ranked compared to the actual needs of the RFP and contacted all the references for each to get a better understanding of the firms and the individual attorneys that SDCP would be working with.

After review, Staff recommends the following:

- 1. Select Keyes & Fox as SDCP's primary procurement counsel for power services. Their firm has a clear track record with SDCP, works with other CCAs, has successfully helped SDCP ramp up procurement efforts in 2023, and can also hit the ground running and continue with engagements right away on Jan 1, 2024.
- 2. Select the following as backup procurement counsel for power services:
 - a. Perkins Coie: Large firm, with a deep bench in energy and environmental law. Presence throughout the west with large offices in both San Diego and San Francisco. Named the #1 Best Law Firm for Women and Diversity by Seramount (2023).
 - b. Sunridge Legal: The lead counsel would be Caryn Lai, who was previously with Keyes & Fox and previously worked on several transactions with SDCP. Sunridge is expected to be able to hit the ground running on projects based on prior experience.

For the Do Not Exceed (DNE) limits in the engagement letters Staff recommends the following:

- Primary:
 - Keyes and Fox \$500k / year
- Backup:
 - Perkins Coie \$200k / year
 - Sunridge Legal \$200k / year

Please note that nothing in the Engagement Letters sets a minimum spend level and none of the Engagement Letters have a retainer. SDCP, and the law firms, are free to end the engagement at any time.

Please note that, in order to avoid returning to the board to amend the engagement letters while SDCP manages workload over three external firms, staff intentionally set the DNEs above what is expected to be budgeted and spent for procurement counsel. The real limit on spend is set by SDCP's finance and executive teams and then approved by the BOD in the budgeting process and that is the number that staff will be responsible for managing against.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

Cost of this action includes a total amount not-to-exceed or \$900,000 per year. Staff expects the approved budget for legal services for power procurement to be well below that not-to-exceed amount when the budget for upcoming fiscal years is approved by the board. Funding for outside legal services for power procurement is included in the proposed FY24 budget, which staff will revisit during the mid-year budgeting process to ensure previous expectations remain appropriate.

ATTACHMENTS

Attachment A: Engagement Letter Between Keyes & Fox LLP and San Diego Community Power

Attachment B: Engagement Letter Between Perkins Coie LLP and San Diego Community Power

Attachment C: Engagement Letter Between Sunridge Legal LLP and San Diego Community Power



1580 Lincoln Street, Suite 1105 Denver, CO 80203

November 3, 2023

Attn: Mr. Byron Vosburg San Diego Community Power 815 E Street, Suite 12716 San Diego, CA 92112

RE: Engagement Letter Between Keyes & Fox LLP and San Diego Community Power

Keyes & Fox LLP ("<u>K&F</u>") welcomes the opportunity to continue representation of San Diego Community Power, a California joint powers authority, ("<u>SDCP</u>") with respect to the procurement of wholesale electricity supply, energy storage, resource adequacy, renewable energy credits, and transmission rights to serve SDCP customers (referred to herein as "<u>Legal Services</u>"). This Engagement Letter excludes work that K&F is performing for SDCP under a separate joint representation agreement and on January 1, 2024 will replace the engagement letter dated October 20, 2023. This Engagement Letter describes the basis of the attorney-client relationship between K&F and SDCP with respect to the Legal Services, along with an explanation of how K&F will bill for those services.

1. Scope of Engagement

Pursuant to this engagement letter, K&F agrees to represent SDCP as its client with regard to the Legal Services described above. Keyes & Fox will do its utmost to serve SDCP effectively, provide Legal Services in an efficient manner, and respond promptly to SDCP's inquiries.

K&F has run a conflict check as it relates to the contemplated Legal Services and has not found any direct conflicts with undertaking them. If a conflict arises that may impact our ability to provide SDCP with effective representation, including with respect to negotiations that may involve current or former K&F clients as counterparties, we will promptly bring that conflict to SDCP's attention. If you have any concerns regarding any relationship K&F may have with particular companies, organizations or individuals, please bring those concerns to our attention.

K&F will coordinate the provision of the Legal Services with Byron Vosburg as the designated representatives of SDCP, or with whomever he may specifically delegate that authority. We understand that Mr. Vosburg have the authority to make decisions on behalf of SDCP in connection with the Legal Services, and we are relying on that understanding.

2. Confidentiality of Communications and Work Product

It is in SDCP's interest to preserve confidentiality of all communications with K&F and such work product related to the Legal Services not intended for use with third parties. If SDCP discloses any of our communications, it jeopardizes the privileged nature of the communications or work product. Accordingly, we advise our clients to take care not to disclose privileged information or work product not intended for use with third parties to any third-party person or entity.

3. Fees, Expenses, Invoicing, and Retainer

By signing this Engagement Letter, SDCP agrees to pay K&F for all professional fees and out-of-pocket expenses related to the Legal Services, according to the terms set forth below. Compensation under this Engagement Letter shall not exceed five hundred thousand dollars (\$500,000) per calendar year without prior authorization by SDCP.

a. Professional Fees

K&F will keep an hourly total of time spent on the Legal Services. Work will be performed at the hourly rates set forth in the Rates for Professionals provided in Attachment A to this Engagement Letter, which is incorporated by reference herein. Attachment A lists those persons we anticipate may work on the Legal Services. In addition to the K&F attorneys listed in Attachment A, the assistance of other K&F attorneys and/or staff may be enlisted from time to time as determined necessary for the provision of the Legal Services.

It is K&F's policy to adjust hourly rates for all attorneys and staff at the beginning of the calendar year. Historically, rate increases have been between 5-8% per year. Rates quoted in Attachment A are 2024 rates. K&F shall not increase hourly rates charged for work performed during calendar year 2024 Legal Services above those listed in Attachment A. K&F's practice is to charge for travel time, as discussed in Attachment A.

Mr. Fox and Ms. Cho will be the lead K&F attorneys working with you in connection with the Legal Services. Mr. Fox and Ms. Cho may utilize the services of other K&F attorneys in connection with this matter. By entering into this Engagement Letter, you consent in writing to Mr. Fox and Ms. Cho serving as the lead attorneys in this matter and to Mr. Fox's and Ms. Cho's assignment, with authorization by SDCP, of work on this matter to the other persons listed in Attachment A.

b. Expenses

Expenses may be incurred in connection with the Legal Services. K&F will bill for all costs, disbursements, and expenses in addition to our hourly fees. Costs and expenses include messenger and other delivery fees, copying and reproduction costs, costs for travel including mileage and parking, and similar expenses. Expenses will be billed at actual cost.

c. Invoices and Payments

K&F will invoice SDCP at the beginning of each month for Legal Services during the prior calendar month. Invoices will list the matter worked on and provide information on the dates of service, time involved, person responsible and activity undertaken. K&F will use best efforts to respond to requests for special invoice formats. Upon receipt of properly prepared invoicing, SDCP shall pay K&F within thirty (30) calendar days for services provided in accordance with this Engagement Letter.

4. Termination of K&F's Representation

Either SDCP or K&F may terminate K&F's representation of SDCP at any time and for any reason. At the time K&F's representation of SDCP concludes, all unpaid fees and costs for work performed by K&F become due and payable. If at that time SDCP does not request the return

of files related to the Legal Services, K&F will retain such files for a period of three (3) years, after which K&F may have the files destroyed.

5. Miscellaneous

This letter is the entire agreement between SDCP and K&F concerning the Legal Services and supersedes all prior or contemporaneous agreement between SDCP and K&F, whether written or verbal, for the Legal Services. This agreement and the scope of work provided under it may be amended from time to time by mutual agreement among K&F and SDCP. California law will govern this agreement and any subsequent amendments.

6. Conclusion

If the terms of K&F's representation as explained in this letter are satisfactory, please execute a copy of this letter as indicated and return it to me. Please feel free to contact me if you have any questions.

We look forward to our representation of SDCP.

Sincerely,

Kevin Fox, Partner Keyes & Fox LLP

By signing this letter, the signatory affirms that he or she understands and agrees to bind his or her company to the terms set forth in this Engagement Letter. This agreement shall not take effect, and K&F shall have no obligation to provide the work described herein, until SDCP has returned a signed copy of this letter.

San Diego Community Power

I have read the foregoing letter, und	derstand it and agree to it on behalf of SDCP.
By: Karin Burns	
Title:	
Date:	

Attachment A

Rates for Professionals

Hourly Rates and Other Terms

Kevin Fox, Partner	\$580
Theresa Cho, Counsel	\$610
Alexandra Haggerty, Associate	\$370
Corey Cochran, Paralegal	\$110
Alicia Zaloga, Paralegal	\$130

Firm Travel: Travel time is billed at the one-half of the listed hourly rate. Every effort will be made to work productively on the Legal Services during travel. All reasonable travel expenses are billable – hotel, airfare, car rental, meals, taxi, public transit, etc.

PERKINSCOIE

505 Howard Street Suite 1000 San Francisco, CA 94105-3204 1 +1.415.344.7000 1 +1.415.344.7050 PerkinsCoie.com

November 2, 2023

Buck B. Endemann
BEndemann@perkinscoie.com
D. +1.415.344.7022

VIA E-MAIL

Kenny Key
Director of Power Contracts
San Diego Community Power
P. O. Box 12716
San Diego, CA 92101
Email: kkey@sdcommunitypower.org

Re: Legal Representation

Dear San Diego Community Power:

We are delighted that San Diego Community Power ("SDCP," "you" or "your") has selected Perkins Coie LLP as legal counsel. This letter describes the scope and terms of our engagement. Although this letter addresses the formalities of our engagement, we want you to know how honored we are that you have placed your trust in us.

Beginning January 1, 2024, Perkins Coie will represent you in connection with legal services to assist SDCP with the procurement of wholesale electricity supply, energy storage, resource adequacy, renewable energy credits, and transmission rights to serve SDCP customers. This letter will also apply to any additional matters that we undertake at SDCP's request, unless otherwise specified in a separate engagement letter addressing that matter. Compensation under this Engagement Letter shall not exceed two thousand dollars (\$200,000) per year without prior authorization by SDCP.

Unless other arrangements are made, the principal factors in determining our fees will be the time and effort devoted to the matter and the hourly rates of the lawyers and paralegals involved. I will have primary oversight for Perkins Coie's representation of SDCP, but we assign other firm lawyers and paralegals when necessary, beneficial or cost-effective and when desirable to meet the time constraints of the matter. My current hourly rate is \$1,025. I am happy to offer you a 15% discount off our standard rates for this initial matter up to the \$200,000 for the initial year of engagement. Our hourly rates range from \$1,870 per hour for our most experienced partners to \$475 for our most junior associates and \$640 to \$170 for paralegals, depending on their experience levels. These rates are reviewed and subject to change annually on January 1. Services performed after the effective date of the new rates will be charged at the new applicable rates. We normally issue invoices for our fees and disbursements on a monthly basis. These

San Diego Community Power November 2, 2023 Page 2

invoices include detail that most of our clients find sufficient, but please let me know at any time if more detailed information is needed on our invoices. Please also refer to the enclosed Information for Clients for specifics regarding fees, disbursements, billing, payment, and termination of our representation should payment not be made or other circumstances warrant.

During the course of our representation, we may express opinions or beliefs reflecting our professional judgment concerning various courses of action or results that might be anticipated. Any such statement made by any of our lawyers, paralegals or other employees is intended to be an expression of opinion only, based on the information available to us at the time, and should not be construed by you as a promise or guarantee.

Our representation of SDCP does not include acting as counsel for any entity in which SDCP holds equity or any subsidiary, affiliate, equity-holder, employee, family member or other person (collectively, "Affiliates"), unless such additional representation is separately and clearly undertaken by us. If in the future we and SDCP mutually agree to expand our representation of SDCP to include any of SDCP's Affiliates, it is agreed that the terms, conditions and consents contained herein will apply to such representation(s).

Additionally, Perkins Coie represents many other companies, individuals and government agencies ("clients"). During the time we are representing SDCP we may be asked to represent:

- (1) other present or future clients in transactions, litigation or other disputes directly adverse to SDCP that are not substantially related to our representation of SDCP; and/or
- (2) parties who are considered directly adverse parties in matters we handle for SDCP (our work for these directly adverse parties would be in matters that are not substantially related to our work for SDCP); and/or
- (3) SDCP in future transactions, litigation or other disputes directly adverse to other firm clients in matters not substantially related to our work for the other firm clients.

We request SDCP's consent to allow Perkins Coie to undertake such future representations without the need to obtain any further or separate approval from SDCP, as long as those representations described in (1) and (2) above are not substantially related to work Perkins Coie has done, or is doing, for SDCP. Your signature below constitutes SDCP's consent to such representation(s). We agree not to use any proprietary or other confidential nonpublic information concerning SDCP acquired by us as a result of our representation of SDCP in connection with any litigation or other matter in which we represent a party directly adverse to SDCP.

Perkins Coie may need to consult with or secure consent from its other current or prospective clients who are or may become adverse to you in order to clear or address actual or potential

San Diego Community Power November 2, 2023 Page 3

conflicts of interest. You agree and consent that to the extent it is reasonably necessary in such communications, Perkins Coie may disclose to each such current or prospective client the fact that Perkins Coie has or has had an attorney-client relationship with you.

During our representation of SDCP, there may be issues that raise questions about our duties under the rules of professional conduct that apply to lawyers. These might include, e.g., conflict of interest issues, and could even include issues raised because of a dispute between us and a client over the handling of a matter. Normally when such issues arise we would seek the advice of our Professional Standards Counsel, Loss Prevention Partners or Professional Standards Conflicts Attorneys. Consistent with the rulings of courts in many jurisdictions, we consider such consultations to be attorney-client privileged conversations between firm personnel and counsel for the firm. However, there have been judicial decisions indicating that under some circumstances such conversations involve a conflict of interest between the client and Perkins Coie and that our consultation with Perkins Coie's counsel may not be privileged, unless we either withdraw from the representation of the client or obtain the client's consent to consult on a privileged basis with Perkins Coie's counsel.

We believe that it is in our clients' interests, as well as ours, that in the event legal ethics or professional responsibility issues arise during a representation, we receive advice from counsel. Accordingly, as part of our agreement concerning our representation of SDCP, you agree that if we determine in our own discretion during the representation that it is appropriate to consult with our firm counsel (either Perkins Coie's internal counsel or, if we choose, outside counsel), we have your consent to do so on a privileged basis despite any alleged conflict of interest. You further agree that our continuing to represent you at the time of such consultation shall not thereby waive or otherwise limit any attorney-client privilege that Perkins Coie has regarding the confidentiality of our communications with our own in-firm or outside counsel. The costs associated with such legal counsel for Perkins Coie will be paid solely by Perkins Coie and will not be charged to you in any way.

This letter, along with the enclosed Information for Clients, confirms the terms and conditions under which Perkins Coie LLP will provide legal services to you. Unless otherwise agreed in writing, the terms of this letter and the enclosed Information for Clients will also apply to any additional matters that we undertake at your request. If you agree that this letter correctly describes the terms of our engagement, please sign and date a copy of this letter and return it to me. Should you have any questions about this letter, our services or fees, or if you have any other concerns, please call me at any time. I appreciate the opportunity to continue working with you at Perkins Coie.

Sincerely,

San Diego Community Power November 2, 2023 Page 4

Buck B. Endemann

EBB:tmw

Enclosures: Information for Clients

Perkins Coie IRS Form W-9

San Diego Community Power November 2, 2023				
Page 5				
ACCEPTED AND AGREED:				
SAN DIEGO COMMUNITY POWER				
By: Karin Burns, its Chief Executive Officer				
Date:				

Information for Clients

Perkins Coie LLP is pleased to serve you. The following information explains the terms that apply to our engagements (except to the extent that you have reached a different written understanding with us about particular terms) for legal services provided by Perkins Coie LLP. No changes or additions to these terms will be binding unless confirmed in writing sent by us or signed by us. We encourage you to discuss this information with our lawyers at the inception of a matter and whenever you have questions during the course of that matter. Section headings are for convenience of reference only and not intended to affect the interpretation of the provisions of such sections.

Personnel. We generally assign one lawyer primary responsibility for seeing that your requests for legal services are met, but additional lawyers, paralegals and technology professionals may assist in rendering the most appropriate and efficient legal services. We attempt to assign personnel to each matter based on the nature and scope of the issues raised by the matter and our lawyers' experience and expertise.

Basis for Fees. We charge for legal services rendered by our firm at applicable hourly rates. Each attorney, paralegal, and other timekeeper records time at assigned billing rates. Because hourly rates vary among personnel, each statement typically reflects a composite of several hourly rates. Those rates are reviewed periodically and change at least annually (usually on January 1) based on economic factors and the changing experience levels of our personnel. Services performed after the effective date of the new rates will be charged at the new rates.

Disbursements and Other Charges. In the course of performing legal services for you, various services may be provided by third parties. Examples include messenger and courier charges, filing and recording fees, foreign agent fees, court reporters and transcript costs, expert and other witness fees, discovery vendor costs, charges for outside consultants and research services, court runner fees, and travel expenses. You are responsible for these third-party charges, and we reserve the right to forward their invoices directly to you for payment. For administrative ease, however, we may advance payment to the third-party provider and include the charge on our invoice to you, with no markup for handling. We will retain and not allocate to clients relatively insignificant discounts we receive for prompt payment or volume usage. For patent, trademark and other matters that may involve significant third-party payments, you may be required to maintain a minimum balance in a trust account to fund such payments. You will be advised of any such requirements, and we will not be obligated to request or pay for third-party services not fully covered by such deposits.

We will also charge you for certain internal services we provide in connection with our legal services. As noted below, because we both invest in specialized equipment and commit to long-term contracts with certain vendors, we achieve savings in exchange for guaranteed payment, usage or other obligations undertaken at our risk. This allows us to charge our clients for certain services at rates discounted below standard rates. However, the payments we receive from clients for these services may exceed our total payments to the vendors. This excess is used to partially offset the costs we incur for related equipment and personnel and the risks we assume in entering into these contracts.

We currently charge specific internal costs in the following manner:

- 1. Photocopying, Printing, and Facsimile. In our U.S. offices, clients are charged ten cents per page for photocopying. These charges are higher in our non-U.S. offices. We do not charge for facsimiles sent or received.
- 2. Computer Research. There is no extra charge to clients for our use of the firm's internal work product retrieval system. There also is no extra charge to clients for our use of Westlaw, LexisNexis or Public Access to Court Electronic Records (PACER). Clients are charged for certain other computer-assisted research from outside services, such as public records research, at the vendors' standard rates. We may occasionally be able to pass along discounted rates for computer-assisted research from these outside sources when we can negotiate volume discounts.

- 3. Telecommunications. We do not charge for local or long-distance calls or for any email communications. Credit card and cell phone calls necessitated by work on your matters are charged at our actual cost.
- **4. Mail/Messengers.** In our larger offices, we may use firm messengers whenever appropriate to shorten delivery times and offer greater flexibility. Charges for such internal messengers are equal to or below rates charged by outside messengers for similar services. We do not charge for regular mail. Bulk mailings, packages, overnight deliveries, and special postal services are charged at our actual cost.
- **5. Overtime.** Clients are charged for staff overtime, meals, and transportation only when (a) the client specifically requests after-hours effort or (b) the nature of the work necessitates overtime and such work could not have been done during normal work hours.
- 6. Discovery Services and Database Hosting. Certain matters, particularly large-scale litigation, may require certain discovery and ancillary support services such as data processing, data hosting and certain software solutions that you instruct us to use. In some instances we may be able to reduce costs by contracting with vendors, including discovery and data storage vendors on whose servers and other media your information may be stored, to purchase a quantity of service over time that is beyond the needs of a single client. Because these services require us to incur management and other overhead expenses, we may bill you at a reduced per-unit rate that does not fully reflect the quantity of discounts we ultimately obtain.

Invoices and Payment. We typically bill monthly, and payment is due upon receipt of the invoice. Payment of an invoice will reflect your agreement to the amount charged on that invoice, and you must bring any misbilling or other charge that you believe is inappropriate to our attention within 45 days of presentation of the invoice. To the fullest extent permitted by law, you agree that we have an attorneys' lien (including, without limitation, in the results of our services) to secure payment of the obligations owed us and that we may take steps to inform others of any attorneys' lien rights we might have. For accounts not paid within 30 days of the invoice date, we add a late payment charge of 1% per month (or such lower rate as required by applicable law) on unpaid balances from the invoice date. Unless otherwise agreed upon, we may apply payments first to our own attorneys' fees and costs of collection, second to our late charges, third to our invoiced fees, and finally to our invoiced disbursement charges. Our election not to exercise any rights or not to require punctual performance of each provision of this agreement will not be construed as a waiver or relinquishment of our rights. We do not and cannot guarantee the outcome of any matter or particular results, and payment of our fees and disbursements is not conditioned on any particular outcome. If we are required to bring an action or proceeding to collect fees or disbursements due us, we will also be entitled to recover certain fees and costs. These include, but are not limited to, our own outside attorneys' fees, expert witness fees, other costs of collection billed to us, and the value of legal services Perkins Coie's own attorneys perform in analyzing or prosecuting a collection action if such circumstances arise on your account. You consent to venue and jurisdiction wherever we have an office with attorneys who worked on your behalf. Also, if we are required to testify, produce documents, or respond to other requests in connection with litigation or other proceedings commenced by third parties that relate to our representation of you, you will pay us our reasonable fees and costs incurred in connection with such activities. Entitlement to the recovery of the fees and costs noted above will vary by jurisdiction and, in some jurisdictions, may extend to either prevailing party. For matters handled by our New York lawyers, the client may have a right to arbitrate fee disputes under Part 137 of the Rules of the Chief Administrator of the New York Supreme Court, Appellate Division.

E-billing Set-Up. We understand that our clients often use e-billing services. In many instances, those e-billing services electronically send our clients' Outside Counsel Guidelines as part of the procedure to set up the account. Acceptance of Outside Counsel Guidelines by our finance/billing personnel through e-billing services set-up is to facilitate invoicing. To the extent that there may be provisions within those guidelines that conflict with this engagement letter or the Information for Clients attachment, this engagement letter and attachment will control unless we otherwise mutually agree in writing.

Insurance Coverage. You may have insurance policies relating to a matter for which you engage us that might cover, among other things, reimbursement of attorneys' fees and costs. If coverage is potentially available, including coverage for our fees and costs, your appropriate insurance company must be notified as soon as possible. We can

advise you on the availability of insurance coverage only if you expressly and timely request that we do so, we do not have a conflict of interest, and we agree to undertake such additional work. You would then need to furnish us copies of all relevant insurance policies and related documents. Regardless whether, when, and to what extent insurance coverage might be available to reimburse all or a portion of our fees and costs, you nevertheless remain primarily obligated for amounts owed us, including any late charges that accrue during any delay in payment by others.

Advance Payments and Estimates. We may require advance payments before working or continuing work on a matter. Of course, the amount of work we are called upon to perform may subsequently exceed our prior expectations. Regardless of whether you make an advance payment, you agree that any budget, estimate, or similar range for potential charges is nothing more than a forecast based on then-current assumptions, and any such forecast may be high or low due to changed or unforeseen circumstances. We reserve the right, as a condition of providing additional services, to require an increase in any advance payment.

Legal Service Provider. We provide strictly legal services to you in connection with this agreement. You are not relying on us for any services other than legal services, and we are specifically not providing any business, investment, insurance, or accounting advice or any investigation of the character or credit of persons with whom you may be dealing.

Identity of Client. You confirm that we are being engaged by you and not any of your subsidiaries, affiliates, equityholders, employees, members of your family, or other persons (collectively, "Affiliates"), unless we separately and explicitly undertake such representation. You also expressly confirm that, as our representation is limited to you and does not include acting as counsel for your Affiliates, we may represent other clients adverse to your Affiliates without disclosing those matters to you or obtaining your consent. If in the future we agreed to expand our representation of you to include one or more of your Affiliates, you, and Affiliate(s), agree that the terms, conditions and consents contained in our engagement letter with you will apply to such representation(s).

Conflicts of Interest. We have performed a search of our other clients to determine whether representing you might create a potential conflict of interest with any other clients. That check was done using your name and any other names you gave us. Please inform us immediately if you use other names or have affiliated companies that we should enter into our conflicts system.

Cooperation/Reliance on Accurate Information. To enable us to represent you effectively, you will cooperate fully with us in your matter(s). You and your agents will fully and accurately disclose to us all facts and documents that may be relevant to a matter we undertake or which we may otherwise request. This information will form the basis of our legal advice.

Email Communication Disclaimer. Many of our legal professionals receive hundreds of email messages per day (in addition to spam). Although email is an efficient method for many communications, it can also be delayed in transit or otherwise missed (e.g., blocked by our anti-spam software). If you have not received a response or acknowledgement of receipt of an email, please notify the intended recipient.

Client Privacy Policy. We collect or receive information in the ordinary course of providing legal services to you, including personal information. For more information about how we collect, use, and disclose personal information in connection with our legal representation of clients, please review our Client Privacy Policy, which can be accessed here: https://www.perkinscoie.com/en/client-privacy-policy.html.

Termination of Services. We retain the right to cease performing legal services and to terminate our legal representation for any reason consistent with ethical rules, including conflicts of interest or your failure to pay our legal fees and expenses when due. Our representation in any matter will also cease on completion of our work on that matter unless you ask us to perform additional work that we agree to undertake. Performing additional services for you on the same or any other matter is subject to these terms and conditions, our mutual concurrence and clearance of conflicts, if any. We are unable to assure you that matters for other clients will not conflict us out of additional matters you might later ask us to undertake. On completion of a matter, we may close our files and,

absent a specific written undertaking to do so, will not thereafter be obligated to docket milestones, make additional or continuation filings, pursue appeals, take other steps on your behalf on the matter, or monitor or advise you with respect to changes in the law or circumstances that might bear upon or adversely affect the completed matter. If we have only performed legal services for you on only a single discrete matter which has concluded or if six months have passed since we have performed legal services for you on any matter, you can be treated as a former client and we will not owe you any of the duties and obligations that attorneys owe to their current clients, including with respect to conflicts of interest. We of course will continue to respect our duties of confidentiality owed to you as a former client and, unless you consent, also will not take on matters for other clients in which their interests are materially adverse to your interests if those matters for other clients are substantially related to matters in which we previously represented you. If you wish to have us return material from your files after the conclusion of a particular matter, we will provide you such material at your request and expense. Some of our practice groups consider our electronic records to be the official client file. Thus, requests for copies of client files may be provided in electronic form only. We will have no obligation to retain client files more than one year after the conclusion of a particular matter or our representation. Our representation of you will be deemed concluded at the time that we have rendered our final bill for services on the matter described in our engagement letter or any such additional matters that are clearly undertaken by us. Whether we will undertake any further matters and form an attorney-client relationship again will depend upon your request, our performance of a conflicts check and our expression to you of our willingness to accept any further matters.

Alliances/Other Counsel. Many of our clients also have international or other legal needs we cannot fulfill. This causes us from time to time to establish ongoing working relationships or strategic alliances with law firms in other jurisdictions. While our close relationships with our legal colleagues at these firms have helped us provide coordinated representation for many of our clients, these firms (and other firms we may recommend to our clients) are separate from and independent of Perkins Coie. We do not share personnel or fees, do not have common operations beyond occasional joint seminars and presentations, and must check any other firm's conflicts of interest before that firm's lawyers may jointly represent any of our clients. Under rules in certain jurisdictions where we practice, we must advise you that you may consult independent counsel to advise you regarding these documents governing our relationship, and we encourage you to do so if you like. Also, you retain the right to consult with independent counsel at any time while we represent you. However, we are not responsible for any advice an independent counsel may give you, and such consultation will be entirely at your expense.

Use of Perkins Coie Name/Logo. Client shall not use the Perkins Coie name, any individual Perkins Coie lawyer's name, or the Perkins Coie logo on its website or any marketing materials of any type without express written permission from Perkins Coie.

Notice to Texas Clients. We provide this notice in accordance with Texas Government Code Section 81.079. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar's Office of Chief Disciplinary Counsel will provide you with information about how to file a complaint. Please call 1-800-932-1900 toll-free for more information.

Questions. We endeavor to deliver legal services effectively and efficiently and to render accurate and understandable billings. Please direct any questions about services or billing practices to your client service lawyer. Questions regarding the billing or payment status of your account may also be directed to the Client Accounting Department in our Seattle office at 1-800-261-3143 (206-359-3143 in the Seattle area).

Form (Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. Perkins Coie LLP									
	2 Business name/disregarded entity name, if different from above									
Print or type. See Specific Instructions on page 3.	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Che following seven boxes. ☐ Individual/sole proprietor or ☐ C Corporation ☐ S Corporation ☐ Partnership single-member LLC ☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partners Note: Check the appropriate box in the line above for the tax classification of the single-member ow LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the or another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a singlis disregarded from the owner should check the appropriate box for the tax classification of its owner. ☐ Other (see instructions) ► 5 Address (number, street, and apt. or suite no.) See instructions. 1201 Third Avenue, Suite 4900 6 City, state, and ZIP code	□ Truship) ► _ vner. Do vner of le-member.	not of the Liper LL	etate ——— check LC is _C tha	Exem C Exem at	in entitie actions of apt payer aption from (if any)	es, not page e code om FA	e (if any) ATCA rep N/	uals; s	/A
	and the second distriction of the second dis									
	Seattle, WA 98101									
	7 List account number(s) here (optional)									
Par	Taxpayer Identification Number (TIN)									
	our TIN in the appropriate box. The TIN provided must match the name given on line 1 to avo		Soc	cial s	ecurity I	number				
reside	withholding. For individuals, this is generally your social security number (SSN). However, for talien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other , it is your employer identification number (EIN). If you do not have a number, see <i>How to get</i>				-] -			
TIN, la		ια	or				_			
Note: If the account is in more than one name, see the instructions for line 1. Also see What Name and Employer ide				er identi	fication	numl	oer]	
Numb	r To Give the Requester for guidelines on whose number to enter.		9	1	0	5 9) 1	2 0	6	1
			9	1	- 0	5 8	11	2 0	, 6	
Part	II Certification									
	penalties of perjury, I certify that:									
2. I an Ser	number shown on this form is my correct taxpayer identification number (or I am waiting for a not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) ice (IRS) that I am subject to backup withholding as a result of a failure to report all interest o enger subject to backup withholding; and	Ihave	not b	been	notified	by the	e Inte			
3. I an	a U.S. citizen or other U.S. person (defined below); and									
4. The	FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting	g is cor	rect.							
you ha	tation instructions. You must cross out item 2 above if you have been notified by the IRS that you re failed to report all interest and dividends on your tax return. For real estate transactions, item 2 cion or abandonment of secured property, cancellation of debt, contributions to an individual retire an interest and dividends, you are not required to sign the certification, but you must provide you	does no ement a	ot ap	ply. F geme	or mor	tgage ir , and ge	nteres enera	t paid, lly, payı	ments	s
Sign Here	Signature of U.S. person ► Thomas S Bourns	Date ►	01	/02	/202	3				

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

• Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)
 Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.



Connor McNellis, Esq. Email: connor@sunridgelegal.com T: 858.232.5287 sunridgelegal.com

November 7, 2023

San Diego Community Power Attn: Kenny Key, Director of Power Contracts

Email: kkey@sdcommunitypower.org

RE: Engagement Agreement regarding San Diego Community Power ("SDCP" or the "Company")

Dear San Diego Community Power,

We are pleased that you would like to engage Sunridge Legal, LLP (the "Firm") to assist the Company with backup procurement counsel services. Caryn Lai (caryn@sunridgelegal.com) will be your primary point of contact at the Firm. The enclosed Exhibit A, incorporated by reference herein (the "Engagement Agreement"), sets forth the Firm's practices and policies on fees, billing, collection, and other material terms of the engagement. The terms of the Engagement Agreement will govern our services until we agree in writing on different terms.

If the terms of the Engagement Agreement are acceptable, please indicate your agreement by arranging for a copy of this letter to be signed and returned to Caryn. Email or other electronic signatures are effective as originals. We look forward to working with you!

Sincerely,	
Name: Connor McNellis, Esq.	
Title: Managing Partner	
ACCEPTED and AGREED:	
San Diego Community Power:	
Ву:	Dated:
Name:	
Title:	

EXHIBIT A ENGAGEMENT AGREEMENT

This Engagement Agreement describes the terms pursuant to which the Firm will provide and bill for legal services. Use of "us", "our" or "we" herein shall refer to the Firm; references to "you" or "your" shall refer to the Company.

- 1. <u>Client</u>. We have been retained by San Diego Community Power. Unless we agree otherwise in writing, and subject to satisfactory conflict clearances, we are not representing any other related entities or individuals, such as their shareholders, directors and officers, employees, partners, members, or any of their parent, affiliates, or subsidiary corporations or other entities.
- 2. Scope. Beginning January 1, 2024, we agree to provide you with legal services, as requested by you from time to time, which in our professional judgment are reasonably necessary and appropriate in connection with our engagement. In all matters in which we represent you, we will provide services of a strictly legal nature. It is understood that you will not be relying on us for business, investment, accounting, or tax advice, nor to assess the character or creditworthiness of persons with whom you may deal. We will endeavor to indicate where specialized expertise should be consulted in conjunction with our services (e.g. tax advice). You also understand that legal advice regarding the laws of a State in which the attorneys of the Firm are not licensed may warrant retaining local counsel. This Engagement Agreement does not cover litigation services of any kind, whether in court, arbitration, administrative hearings, or government agency hearings. Separate arrangements must be agreed to for those services. Services that you may request in the future with respect to this or any other matter will be performed pursuant to the terms of this Engagement Agreement.
- 3. Fees. Our objective is to obtain the results you desire in the most cost-effective manner possible. Caryn Lai, Dru Roscoe, and Sascha Yim each have an hourly rate of \$675, associate and contract attorney rates will range from \$400 to \$625 per hour, and paralegal and practice assistant rates will range from \$120 to \$325 per hour, each depending on seniority. The foregoing hourly rates will provide the principal basis for billing of services.

Compensation under this Engagement Agreement shall not exceed two hundred thousand dollars (\$200,000) per calendar year without prior authorization by SDCP.

The Firm reviews and adjusts the schedule of rates from time to time. You will receive advance notice of any adjustments to the schedule of rates. In addition, in connection with certain forms of legal work in which a particularly high degree of expertise is required, the rate for such specialized services may exceed the normal hourly rate (which will be communicated to you in advance). The Company will be responsible for the rates in effect at the time that services are performed.

We will <u>not</u> charge you for routine daily office expenses which we incur in the course of representing you, such as postage, long distance telephone charges, computerized legal research charges, word processing, in-house photocopying and the like.

4. <u>Contract Attorneys</u>. In the course of our representation of the Company, the Firm may use the services of, or delegate some or all of our obligations hereunder, to one or more contract

attorneys who may perform a portion or aspect of the legal services to be provided to the Company. Some of our attorneys work as independent contractors or contract through their professional corporations. For more detailed information regarding these arrangements, please see the "Terms of Use" identified on our website (sunridgelegal.com). Notwithstanding the foregoing, the use of one or more contract attorneys in connection with our representation of the Company (a) shall not relieve the Firm of its ethical obligations to the Company, including duties of supervision and competence; and (b) except as set forth in Section 3 of this Engagement Agreement, the Company shall not pay more for the services and expenses of any such contract attorneys than what the Company would have paid if the Firm had performed such services or obligations directly. We will include our charges for all attorneys and paralegals at their applicable hourly rates on our invoice to you, and we will be responsible for compensating them under a separate agreement.

- 5. <u>Costs.</u> Any costs incurred by us in the course of our representation will be billed to you at cost. We do not foresee the incurring of any costs, and if this changes for any reason, we will notify you.
- 6. Statements of Account. It will be the Firm's policy to bill monthly for all services performed and costs incurred in the previous month. Formal invoices will be issued and will be payable by good funds delivered by ACH as instructed on each invoice. You agree to pay invoices in full upon receipt. If full payment is not received within thirty (30) days of the invoice date, then late charges at 0.8333% interest per month (10% per year) will be imposed on your unpaid balance. The purposes of the late charge and interest is to assess on an equitable basis the added expenses and hardship incurred by us for overdue accounts.
- 7. <u>Retainer</u>. No retainer is required at this time, but circumstances may arise in the future where we request a retainer.
- 8. <u>Confidentiality</u>. You agree to provide us with all factual information relevant to the subject matter of our engagement. A lawyer has an ethical duty to preserve the confidence and secrets of the client. Where we represent a corporation, partnership, limited liability company, or other legal entity, our relationship is with, and hence the duty of confidentiality is owed to, the entity, and not to the entity's parent or subsidiary entities, or its shareholders, members, officers, employees, directors or partners.
- 9. Consent to Use of Email and Cloud Services. In order to provide you with efficient and convenient legal services, we will frequently communicate and transmit information and documents using email, cloud computing services and other technology. Communicating in this manner, however, presents certain risks related to confidentiality and security, including the inadvertent or unauthorized disclosure of information relating to the representation. In addition, we use a cloud computing service with servers located in a facility of a third-party vendor. Most of the Firm's electronic data, including emails and documents, are stored in this manner. By executing this Engagement Agreement, you acknowledge and consent to the Firm's use of e-mail communication in connection with our representation of you and to having communications, documents and information related to our representation of you stored through such a cloud-based service.

Notwithstanding the foregoing, our duties of confidentiality and competence require that we take appropriate steps to ensure that our use of technology in connection with our representation of you does not subject your confidential information to an undue risk of unauthorized disclosure. Because of the evolving nature of technology and differences in security features that are available, we must ensure the steps we take to protect your confidential information are sufficient for each form of technology being used and must continue to monitor the efficacy of such steps.

- 10. Term. Either of us may terminate this Agreement and our engagement hereunder at any time for any reason by written notice, subject on our part to applicable Rules of Professional Conduct. If we terminate the engagement prior to its conclusion, we will take reasonable steps to protect your interest in any matters as to which we are then representing you. If you do not meet your obligation of timely payments under this Agreement, we reserve the right to withdraw from your representation on that basis alone, subject to any required judicial, administrative, or other approvals. If there were to be a termination, you would remain liable for all unpaid charges for services provided and expenditures advanced or incurred.
- 11. <u>Disclaimer</u>. Nothing in this Engagement Agreement and none of our statements will or should be construed as a promise or guarantee about the outcome of any matter. We make no such promises or guarantees. Our comments about the outcome of any matter are expressions of opinion and professional judgment only. Unless otherwise specified, any estimate of fees is not a guarantee. Actual fees may vary from estimates given.
- 12. Conflicts of Interest. We have searched the Firm's conflicts database and have disclosed to you any ethical conflicts of interest, as defined by the applicable rules of professional conduct (a "Conflict"), that existed at the time. Because of the size of our firm, the breadth of our client base and the scope of our practice, you understand that in the course of representing our other clients, we may take positions that are directly or indirectly adverse to your interests. This may include representing competitors, insurance carriers and other parties on various matters. Our undertaking to represent you in the above matters will not act as a bar so as to prevent us from representing any existing or future client with respect to a matter, claim or transaction adverse to you, so long as in the course of our representation of you we have not obtained any information that would be adverse to your interests with respect to such matter, claim or transaction.
- 13. <u>Miscellaneous</u>. This Engagement Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Engagement Agreement will be binding on the parties. If any provision of this Engagement Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Engagement Agreement will be severable and remain in effect. Any amendment or modification of this Agreement must be in writing and signed by both parties. For purposes of this Agreement, "writing" includes a communication transmitted by email by one party and acknowledged and agreed by the other party in a return email. So, any subsequent agreements, consents or waivers (including informed consents to and waivers of conflicts of interest), may be acknowledged and approved in emails exchanged between our respective authorized representatives.

14. Arbitration Of Disputes. Except as otherwise may be required by applicable Rules of Professional Conduct or law, any controversy or claim, whether in tort, contract or otherwise, arising out of or relating to the relationship between the Company, its affiliates or successors (the "Client Arbitration Parties") and the Firm, its affiliated partnerships, attorneys or staff or any of their successors (the "Firm Arbitration Parties") or the services provided or the fees charged by the Firm Arbitration Parties pursuant to this Engagement Agreement or otherwise to the Client Arbitration Parties shall be submitted to binding arbitration. By agreeing to arbitrate, you are agreeing to waive your right to a jury trial. The arbitration will be conducted in accordance with this document, the Federal Arbitration Act and CPR Rules for Non-Administered Arbitration ("CPR Rules"), as in effect on the date of this engagement letter. The arbitration shall be conducted before a sole arbitrator selected in accordance with Rule 6 of the CPR Rules. The arbitration shall be commenced and held in San Diego, California. Any issues concerning the location of the arbitration, the extent to which any dispute is subject to arbitration, the applicability, interpretation, or enforceability of this agreement shall be resolved by all of the arbitrators. All aspects of the arbitration shall be treated as confidential and neither the parties nor the arbitrators may disclose the content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. The result of the arbitration shall be binding on the parties and judgment on the arbitrators' award may be entered in any court having jurisdiction.



SAN DIEGO COMMUNITY POWER Staff Report – Item 12

To: San Diego Community Power Board of Directors

From: Xiomalys Crespo, Community Engagement Manager

Via: Karin Burns, Chief Executive Officer

Subject: Community Advisory Committee Report – Third Quarter

Date: November 16, 2023

RECOMMENDATION

Receive and file the Community Advisory Committee (CAC) quarterly 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 Chair of SDCP's Board of Directors, the CAC, via staff, shall provide quarterly updates during the regular meetings of the Board of Directors. The last quarterly update was provided on July 27, 2023.

ANALYSIS AND DISCUSSION

At the July 27, 2023 regular meeting of the Board of Directors, staff presented a summary of CAC activities from April through June. This report summarizes July through October.

<u>July:</u> At the July 13, 2023 regular meeting of the CAC, members welcomed Jack Clark as SDCP's new Chief Operating Officer and received updates on Public Relations with a focus on upcoming outreach opportunities, media around the Community Clean Energy Innovation Grant Program, and the hiring of Public Outreach Coordinators. The CAC also received updates on Customer Operations, which included reported reasons for opt-outs and opt-ups per the request of members, and on Regulatory and Legislative Affairs, in which SDCP staff described how SDCP works to protect CCA independence in

Sacramento. The CAC voted to recommend that the Board of Directors approve the proposed Language Access Policy and heard updates on the first meetings of the Programs and Community and Equity Ad-Hoc Committees.

Lastly, the CAC voted new 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). The Committee thanked outgoing leadership Eddie Price, Aida Castañeda, and Anna Webb for their service. Former Chair Price and former Secretary Webb served the maximum number of terms, per CAC Standard Operating Procedures.

<u>August:</u> The Committee decided to take a meeting recess in August; regular meetings resumed in September.

<u>September:</u> At the September 14, 2023 regular meeting of the CAC, members 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 also received updates from the Programs Team on Regional Energy Network (REN) progress and activity out of its Ad-Hoc Committees, which included discussing a "Summer Tips" Targeted Social & Digital Display Campaign and revisions to the Energy Proposal Evaluation Criteria.

October: During the October 12, 2023 regular CAC meeting, members welcomed several members of the Public Affairs, Finance, and Programs teams. The CAC approved the standard updates in the consent agenda and the Power Services team updated members on its revisions to the Energy Proposal Evaluation Criteria, soliciting feedback around Community Benefits and Workforce Development. The Programs and Account Services teams provided updates on Net Billing Tariff (NBT) and the existing Net Energy Metering (NEM) policy. Members were offered opportunities to receive item-specific briefings outlining a detailed analysis of estimated savings and avoided cost calculator rates, generation adders, Net Surplus Compensation, stakeholder engagement, and SDCP's proposed Battery Energy Storage Pilot Program.

The CAC heard updates on the October activity of its Ad-Hoc Committees, which included discussions on the budget allocation of the REN and the upcoming Energy Education and Online Marketplace. The Community & Equity Ad-Hoc Committee did not meet in October, as members are working with staff to arrive at a recurring date and time that works best for all participants to attend.

As of November 7, 2023, the CAC has one vacancy representing the County of San Diego (unincorporated). The vacancy for the City of Imperial Beach is expected to be filled during the November Board of Directors meeting. Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically.

The CAC Fiscal Year 2022-2023 Work Plan will be updated later this calendar year.

Staff will return to the Board of Directors at the start of the first quarter of 2024, which will take place in January, to report on fourth quarter activities for 2023.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 13

To: San Diego Community Power Board of Directors

From: Xiomalys Crespo, Community Engagement Manager

Via: Karin Burns, Chief Executive Officer

Subject: Approval of Community Advisory Committee Appointment for the City of

Imperial Beach

Date: November 16, 2023

RECOMMENDATION

Approve the appointment of Ilian Sandoval as a Community Advisory Committee (CAC) member representing the City of Imperial Beach.

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. The Community Advisory Committee is advisory only, and shall not have decision-making authority, nor receive any delegation of authority from the Board of Directors. Each Party may nominate a committee member(s) and the Board shall determine the final selection of committee members, who should represent a diverse cross-section of interests, skills sets, and geographic regions.

ANALYSIS AND DISCUSSION

At the February 2023 Board of Directors meeting, Staff announced CAC vacancies for La Mesa, Imperial Beach, and San Diego County and presented the process on how a director from each respective member agency can appoint a representative of their community to the CAC. The vacancy for La Mesa was filled in March 2023, with the vacancy for the County of San Diego being filled in April 2023 and shortly thereafter being vacated once again in July 2023. Throughout this process, staff has continued to promote the applications via SDCP's social media channels and Community Advisory Committee,

as well as directly engaging with staff and the public in Imperial Beach and the County of San Diego.

A total of two (2) applications for Imperial Beach were received and reviewed to determine qualifications based on membership criteria, including residence and experience as outlined on their resumes. Staff worked with Director Aguirre to review and determine a nomination for appointment.

If approved by the Board with a simple majority vote, stall will work with the representative to conduct their oath of office and onboarding prior to the next CAC meeting on December 7, 2023. Staff will also update Attachment A: CAC Roster and Seat Assignments, which is publicly available through SDCP's website, to include the new representative.

As of the drafting of this report, a seat for the County of San Diego (unincorporated) remains vacant. Applications for vacant seats remain open until filled.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: CAC Roster and Seat Assignments



Community Advisory Committee Roster and Seat Assignments

Member Agency	Name	Term Ends
San Diego	Eddie Price	2025
	Matthew Vasilakis (Chair)	2026
Chula Vista	Anthony Sclafani	2025
	Carolyn Scofield	2026
La Mesa	Lauren Cazares (Secretary)	2026
	David Harris (Vice-Chair)	2026
Encinitas	Gary L. Jahns	2025
	Tara Hammond	2026
Imperial Beach	Anna Webb	2025
	Vacant	-
County of San Diego	Peter Andersen	2025
(unincorporated)	Vacant	-
National City	Aida Castañeda	2025
	Lawrence Emerson	2026

Terms end at the end of every June. Members are subject to a limit of two, three-year terms.

They are also subject to the <u>CAC Membership Terms and Criteria</u>.



SAN DIEGO COMMUNITY POWER Staff Report – Item 14

To: San Diego Community Power Board of Directors

From: Kenny Key, Director of Power Contracts

Via: Karin Burns, Chief Executive Officer

Subject: Energy Proposal Evaluation Criteria Revision

Date: November 16, 2023

RECOMMENDATION

Approve the update to the Energy Proposal Evaluation Criteria for future evaluation of long-term, wholesale contracts for purchase of renewable energy and capacity.

BACKGROUND

As SDCP strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) and Energy Storage Service Agreements (ESSAs) are integral components of its energy supply portfolio. Long-term PPAs and ESSAs provide developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA or ESSA that SDCP signs with a developing facility will underpin a new, incremental project.

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. Long-term ESSAs allow SDCP to shift more energy supply into peak demand hours as well as provide reliability and resource adequacy benefits.

In addition, 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. The California Public Utilities Commission (CPUC) also required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, incremental facilities in D.21-06-025 and subsequent mid-term reliability decisions.

SDCP will pursue long-term contracts for renewable energy and resource adequacy supply predominantly via competitive solicitations processes. These will be similar to solicitations run in 2022 (Long-Term California RPS-Eligible Renewable Energy RFP) and

2023 (Long-Term California RPS-Eligible Renewable Energy RFP Request for Offers for Standalone Storage) as well the Local Renewable Energy and Energy Storage RFI.

In each of these solicitations, SDCP Staff and the Energy Contract Working Group (ECWG) have used the Energy Proposal Evaluation Criteria (EPEC) that was reviewed by the board of directors in March 2022 for the purposes of evaluating and scoring each potential project or transaction.

Upon receipt of submissions or proposals from the participating project developers and energy suppliers, SDCP staff evaluates each project based on the EPEC and prepares a summary of offers for initial review with SDCP's ECWG. Part of this initial review typically involves development of a "short-list" of contracts with which the ECWG authorizes Staff to enter into negotiations for a PPA or ESSA contract. Assuming that Staff and shortlisted developer(s) are able to agree to mutually agreeable contracts consistent with terms authorized by the ECWG, Staff then takes the contracts to the SDCP board for approval and authorization to execute.

Staff now proposes to revise the EPEC, for purposes of future evaluation of long-term, wholesale contracts for purchase of renewable energy and capacity.

ANALYSIS AND DISCUSSION

The purpose of a defined evaluation criteria is not only to provide SDCP Staff, Committees, and the Board a consistent and transparent method via which to evaluate all proposed transactions within a given solicitation but also to communicate to potential participants, prior to the solicitation, SDCP's preferences with respect to energy and capacity resource acquisition and to encourage developers and suppliers to pursue development opportunities that best align with SDCP's stated priorities.

Based on learnings from solicitations SDCP has administered since inception, Staff proposes the following changes:

- 1. For each of the six evaluation criteria, set consistent rating options of high (A), medium+ (B), medium- (C), neutral (D) or low (F).
- 2. For the Project Location criterion, include in the high (A) rating projects in San Diego or Imperial County without requiring import rights (or located in CAISO) and in the medium+ (B) rating project In Imperial County but that require import rights.
- 3. For the Quantitative Value criterion, add the timeline and expectations of ability to achieve Full Capacity Deliverability Status to the factors reviewed in rating.
- 4. For the Project Development Review criterion, add deliverability to the project development related factors reviewed in rating.

- 5. For the Community Benefits criterion:
 - a. Adjust the high (A) rating to only include projects that have set up, or committed to, a community benefit fund that benefits SDCP customers.
 - b. Create the medium+ (B) rating for projects located within a DAC, COC, or REDZ, that have committed to, but have not yet completed, Community Outreach to demonstrate Community Benefits. This will allow for differentiation of high (A) and medium+ (B) based on a community benefit fund and status of community outreach.
 - c. Adjust the low (F) rating to factor in wholesale energy projects above 20 MW that are located within 1,500 feet of residential property.
- 6. For the Workforce Development criterion:
 - a. Adjust the high (A) rating to only include projects that have executed, or have committed to executing, a Project Labor Agreement (PLA).
 - b. Adjust the medium+ (B) rating to include projects without a PLA, but that have local hire commitments and commits to 50% or more union labor.
 - c. Adjust the medium- (C) rating to include projects that can demonstrate they meet the requirements of the Inflation Reduction Act ("IRA")
 - d. Adjust the low (F) rating to include projects that do not meet one or all of prevailing wage, skilled and trained workforce, and local hire commitments instead of demonstrating they will not meet all three.
- 7. For the Environmental Stewardship criterion:
 - Adjust the high (A), medium+ (B) and medium- (C) ratings to clarify that
 previously developed land includes agricultural land no longer suitable for
 farming.
 - b. Adjust the high (A) rating to include projects that beneficially impact and reduce air pollution within communities that have been disproportionately impacted by the existing generating fleet.
 - c. Adjust the medium+ (B) rating to allow for projects not on current or previously developed land, but that beneficially impact and reduces air pollution within communities that have been disproportionately impacted by the existing generating fleet.
 - d. Adjust the medium- (C) rating to include projects not on current or previously developed land, but that demonstrate additional societal, economic, water-saving, or environmental benefits beyond the climate and GHG reduction benefits of renewable energy.
 - e. Adjust the Low (F) rating to include projects that have not conducted feasibility study of the project's environmental impacts.

For reference, an illustrative example of how SDCP will summarize and present the evaluation of potential transactions under this revised EPEC is included below. Note the summary has been revised to include project's capacity and the capacity price, if applicable.

Example Evaluation Summary:

			- ↓ /	Added Colu	mns 🗸							
Project	Location	Generation Price	Capacity Price	Generation Capacity (MW)	Storage Capacity (MW)	COD	Project Location	Price / Value	Dev Score	Community Benefits	Workforce Dev	Enviro
SDCP A	SD County	\$2.00	\$1.00	100	100	1/1/24	High (A)	High (A)	High (A)	Med+ (B)	High (A)	Med+ (B)
SDCP B	Orange County	\$1.50	\$1.50	200	100	1/1/24	Med+ (B)	High (A)	High (A)	High (A)	Med+ (B)	Med- (C)
SDCP C	SD County	\$2.25	\$2.05	50	50	1/1/25	High (A)	High (A)	Med+ (B)	Med- (C)	High (A)	Med- (C)
SDCP D	Imperial County	\$2.00	\$2.10	20	20	1/1/24	High (A)	High (A)	High (A)	Med- (C)	High (A)	Neutral (D)
SDCP E	SD County	\$3.00	\$3.50	75	75	1/1/25	High (A)	Med- (C)	Med- (C)	Neutral (D)	Med- (C)	Neutral (D)
SDCP F	Riverside County	\$3.50	\$3.45	20	0	1/1/25	Med+ (B)	Med+ (B)	High (A)	Med- (C)	Med+ (B)	
SDCP G	Imperial County	\$4.00	\$4.10	50	50	1/1/24	Med+ (B)		Med- (C)			
SDCP H	SD County	\$3.75	\$2.15	100	0	1/1/24	High (A)		High (A)	Neutral (D)	Med- (C)	
GOM POW	MUNITY VER											1:

SDCP intends that the EPEC will continue to be updated as SDCP grows and evolves, and it may be modified on a solicitation-by-solicitation basis to reflect specific goals of targeted procurement efforts.

COMMITTEE REVIEW

The EPEC revisions were reviewed with SDCP's Energy Contract Working Group (ECWG), the Community & Equity Ad-Hoc committee of SDCP's Community Advisory Committee, and SDCP Community Advisory Committee.

FISCAL IMPACT

There is no direct fiscal impact of adoption of this EPEC. Consistent and quantitative evaluation of potential energy resource value and risk per this EPEC will allow SDCP to reduce energy supply related costs to the benefit of SDCP customers.

ATTACHMENTS

None.



SAN DIEGO COMMUNITY POWER Staff Report – Item 15

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services; and

Kenny Key, Director of Power Contracts

Via: Karin Burns, Chief Executive Officer

Subject: Energy Storage Service Agreement with Avocet Energy Storage, LLC

Date: November 16, 2023

RECOMMENDATION

Adopt the proposed Renewable Energy Storage Service Agreement Avocet Energy Storage, LLC and authorize the CEO to execute the agreement.

BACKGROUND

As San Diego Community Power (SDCP) strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term contracts of at least 10 years in duration are integral components of its portfolio. Long-term contracts provide renewable generation and clean energy storage facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term contract that SDCP signs with a developing facility will underpin a new, incremental project. In addition, long-term contracts lock in energy and capacity 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.

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 and storage facilities that will achieve commercial operation during 2023 through 2026. Further, Decision 23-02-040 allowed LSEs to contract for long-lead time resources, including long duration storage, with commercial operations out into 2028 to meet its resource adequacy requirements.

The proposed Energy Storage Service Agreement (ESSA) is for capacity, energy arbitrage and ancillary services benefits from a 200 MW/800 MWh, 4-hour battery energy storage facility (Avocet) with Avocet Energy Storage, LLC, a subsidiary of Arevon Energy, Inc. (Arevon). The ESSA originated from an offer SDCP received in May 2023 via its 2023

Request for Offers for Standalone Storage. SDCP engaged with Arevon after short-listing the project and has reached terms mutually agreeable to both parties.

ANALYSIS AND DISCUSSION

Staff negotiated the attached full toll ESSA for the purchase of capacity, energy arbitrage and ancillary services from the Avocet project, which is a standalone battery storage project to be developed in Los Angeles County by Arevon.

As previously reviewed with the Ad Hoc Energy Contracts Working Group, the ESSA provides for a Guaranteed Commercial Operate date of April 15, 2026, which will provide sufficient buffer to help ensure the project meets the commercial operation date requirements under CPUC Decision 21-06-025 to allow the capacity to count towards SDCP's 2026 compliance requirements for mid-term reliability.

Below is additional information regarding Arevon and the ESSA.

Background on Arevon:

- Arevon has developed 10 GW of renewable energy assets
- Notable recent projects in California from Arevon include:
 - Saticoy, 100 MW storage, 2021
 - Sprinbok 3, 90 MW solar, 2019
 - Cal Flats 150, 150 MW solar, 2019
 - Mt. Signal 3, 250 MW solar, 2018
 - Additionally, Arevon is developing the Vikings Energy Farm project, a 136MW solar and 150MW storage project under contract with SDCP.

Contract Overview - Avocet Energy Storage, LLC

- Project: 200 MW/800 MWh (4-hour) lithium-ion battery energy system
- Project location: Los Angeles County, California
- Guaranteed commercial operation date: April 15, 2026
- Contract term: 15 years
- Pricing: Fixed capacity price adjusted for availability and verified capacity
- SDCP would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones as well as seller's failure to meet guaranteed efficiency rates once the project is operational.

Community Benefits:

Avocet will help replace resource adequacy from several thermal generation power
plants in the LA Basin that are slated for retirement in the coming years, specifically
Ormond Beach GS, Alamitos GS, Huntington Beach, Redondo GS. This will help
improve the health of surrounding communities.

- Arevon is committed to union labor and entered into Project Labor Agreements last year to ensure union labor at the project and has worked with local IBEW chapters and the State Building and Construction Trades Council of California.
- Project development will bring approximately 100 clean-energy jobs during construction and approximately 4 full-time equivalent jobs during operations.

COMMITTEE REVIEW

The ECWG approved the shortlisting of the Avocet project on June 28, 2023. On October 23, 2023 the ECWG approved key ESSA terms to move forward with the execution of this ESSA.

FISCAL IMPACT

The competitive capacity pricing of the ESSA are confidential, but the long-term purchase of capacity, energy arbitration, and ancillary services will provide SDCP with significant value and cost certainty over the term of this ESSA.

ATTACHMENTS

Attachment A: Energy Storage Service Agreement with Avocet Energy Storage, LLC (redacted version for commercially sensitive information)

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

<u>Seller</u>: Avocet Energy Storage, LLC ("<u>Seller</u>")

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

<u>Description of Facility</u>: A 200 MW/800 MWh (as of the Commercial Operation Date) battery energy storage facility, located in Los Angeles County, in the State of California, as further described in <u>Exhibit A</u>, and subject to reduction in size as described in <u>Exhibit B</u>.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	
Documentation of Conditional Use Permit if required	
Executed Interconnection Agreement	
Financial Close	
Guaranteed Construction Start Date	
Full Capacity Deliverability Status Obtained	
Initial Synchronization	
Network Upgrades completed	
Expected Commercial Operation Date	
Guaranteed Commercial Operation Date	April 15, 2026

Delivery Term: 15 Contract Years

Guaranteed Capacity: 200 MW at four (4) hours of continuous discharge

<u>Dedicated Interconnection Capacity</u>: (a) prior to the Commercial Operation Date, 200 MW, and (b) at any given point in time after the Commercial Operation Date, the Committed Storage Capacity at such time.

Guaranteed Availability:

Guaranteed Efficiency Rate:

Year	Guaranteed Efficiency Rate
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

Minimum	Efficiency	Rate
---------	-------------------	------

Contract Price:

Contract Year	Contract Price

Product:

	ъ.	1	•		
IVI	1 110	che	arging	Hno	POTI
\sim	-D19	CHIC	มยแย	Line	120

- ☑ Discharging Energy☑ Installed Capacity and Effective Capacity

Scheduling Coordinator: Buyer or Buyer's designated agent

Security Amount:

Development Security:	
Performance Security:	

TABLE OF CONTENTS

		Page
ARTICLE 1	DEFINITIONS	1
1.1	Contract Definitions	1
1.2	Rules of Interpretation	
ARTICLE 2	2 TERM; CONDITIONS PRECEDENT	
2.1	Contract Term.	21
2.2	Commercial Operation; Conditions Precedent	
2.3	Development; Construction; Progress Reports	
2.4	Remedial Action Plan	
2.5	Pre-Commercial Operation Actions	
ARTICLE 3	3 PURCHASE AND SALE	23
3.1	Product	23
3.2	Discharging Energy.	
3.3	Capacity Attributes.	
3.4	Ancillary Services.	
3.5	Resource Adequacy Failure.	
3.6	Buyer's Re-Sale of Product.	26
3.7	Compliance Expenditure Cap.	26
ARTICLE 4	OBLIGATIONS AND DELIVERIES	27
4.1	Delivery	27
4.2	Interconnection.	
4.3	Storage Availability and Efficiency	
4.4	Facility Testing.	28
4.5	Testing Costs and Revenues.	29
4.6	Facility Operations.	30
4.7	Dispatch Notices.	30
4.8	Facility Unavailability to Receive Dispatch Notices	
4.9	Energy Management.	
4.10	Capacity Availability Notice	
4.11	[Reserved]	
4.12	Outages	33
ARTICLE 5	5 TAXES, GOVERNMENTAL COSTS	
5.1	Allocation of Taxes and Charges.	35
5.2	Cooperation	35
ARTICLE (MAINTENANCE AND REPAIR OF THE FACILITY	35
6.1	Maintenance of the Facility.	35
6.2	Maintenance of Health and Safety.	
6.3	Shared Facilities	
ARTICLE 7	7 METERING	36
7.1	Metering	36

	7.2	Meter Verification.	37
ARTIC	CLE 8	INVOICING AND PAYMENT; CREDIT	37
	8.1	Invoicing.	37
	8.2	Payment	
	8.3	Books and Records.	
	8.4	Payment Adjustments; Billing Errors.	38
	8.5	Billing Disputes.	
	8.6	Netting of Payments	39
	8.7	Seller's Development Security.	39
	8.8	Seller's Performance Security	
	8.9	First Priority Security Interest in Cash or Cash Equivalent Collateral	40
	8.10	Financial Statements.	
	8.11	Buyer's Financial Statements.	40
ARTIC	CLE 9	NOTICES	41
	9.1	Addresses for the Delivery of Notices	41
	9.2	Acceptable Means of Delivering Notice	41
ARTIC	CLE 10	FORCE MAJEURE	41
	10.1	Definition	
	10.2	No Liability If a Force Majeure Event Occurs	
	10.3	Notice	43
	10.4	Termination Following Force Majeure Event	43
ARTIC	CLE 11	DEFAULTS; REMEDIES; TERMINATION	44
	11.1	Events of Default	44
	11.2	Remedies; Declaration of Early Termination Date	47
	11.3	Damage Payment; Termination Payment	47
	11.4	Notice of Payment of Termination Payment or Damage Payment	49
	11.5	Disputes With Respect to Termination Payment or Damage Payment	49
	11.6	Limitation on Seller's Ability to Make or Agree to Third-Party Sales from	
		the Facility after Early Termination Date.	
	11.7	Rights And Remedies Are Cumulative	
	11.8	Mitigation	50
ARTIC	CLE 12	2 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES	50
	12.1	No Consequential Damages.	
	12.2	Waiver and Exclusion of Other Damages	50
ARTIC	CLE 13	REPRESENTATIONS AND WARRANTIES; COVENANTS	51
	13.1	Seller's Representations and Warranties.	51
	13.2	Buyer's Representations and Warranties.	
	13.3	General Covenants.	53
	13.4	Seller's Covenants.	53
	13.5	Prevailing Wage.	54

13.6	Workforce Development and Supplier Diversity	54
ARTICLE 14	4 ASSIGNMENT	54
14.1	General Prohibition on Assignments.	54
14.2	Collateral Assignment	
14.3	Permitted Assignment.	
14.4	Portfolio Financing.	55
14.5	Permitted Assignment by Buyer	56
ARTICLE 15	5 DISPUTE RESOLUTION	56
15.1	Governing Law.	56
15.2	Dispute Resolution.	
15.3	Attorneys' Fees.	56
ARTICLE 10	6 INDEMNIFICATION	56
16.1	Indemnification.	56
16.2	Claims.	
ARTICLE 1'	7 INSURANCE	58
17.1	Insurance	58
ARTICLE 18	S CONFIDENTIAL INFORMATION	59
18.1	Definition of Confidential Information.	59
18.2	Duty to Maintain Confidentiality	
18.3	Irreparable Injury; Remedies.	
18.4	Further Permitted Disclosure.	
18.5	Press Releases	61
ARTICLE 19	9 MISCELLANEOUS	61
19.1	Entire Agreement; Integration; Exhibits	61
19.2	Amendments.	
19.3	No Waiver.	
19.4	No Agency, Partnership, Joint Venture or Lease	
19.5	Severability.	
19.6	Mobile-Sierra.	62
19.7	Counterparts.	62
19.8	Electronic Delivery.	62
19.9	Binding Effect.	62
19.10	No Recourse to Members of Buyer.	62
19.11	Forward Contract.	
19.12	Change in Electric Market Design	63
	Further Assurances	
19 14	Service Contract	63

Exhibits:

Exhibit A Exhibit B	Facility Description Facility Construction and Commercial Operation
Exhibit C	Compensation
Exhibit D	Scheduling Coordinator Responsibilities
Exhibit E	Progress Reporting Form
Exhibit F	Form of Monthly Expected Available Capacity Report
Exhibit G	Form of Daily Availability Notice
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Capacity and Efficiency Rate Test Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Form of Guaranty
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Capacity and Efficiency Rate Tests
Exhibit P	Facility Availability Calculation
Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram
Exhibit S	Sample Supplier Diversity Survey
Exhibit T	Collateral Assignment Agreement
Exhibit U	Committed Storage Capacity

ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement ("<u>Agreement</u>") is entered into as of [_____], 2023 (the "<u>Effective Date</u>"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "<u>Party</u>" and jointly as the "<u>Parties</u>." 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 or otherwise control, and operate the Facility; and

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

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

ARTICLE 1 DEFINITIONS

- 1.1 <u>Contract Definitions</u>. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:
 - "AC" means alternating current.
 - "Accepted Compliance Costs" has the meaning set forth in Section 3.7(c).
- "Affiliate" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transferee", "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.
- "Agreement" has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.
- "Ancillary Services" means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services, as each is defined in the CAISO Tariff, in each case that the Facility is capable of providing consistent with the Operating Restrictions and as set forth in Exhibit Q.
 - "Annual Storage Availability" has the meaning set forth in Exhibit P.

"Approved Maintenance Hours"

- "Automated Dispatch System" or "ADS" has the meaning set forth in the CAISO Tariff.
- "Automatic Generation Control" or "AGC" has the meaning set forth in the CAISO Tariff.
 - "Availability Adjustment" has the meaning set forth in Exhibit C.
 - "Availability Adjustment Payment" has the meaning set forth in Exhibit C.
 - "Availability Notice" has the meaning set forth in Section 4.10(b).
- "<u>Availability Standards</u>" has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.
- "<u>Available Capacity</u>" means the capacity of the Facility, expressed in whole MWs, that is mechanically available to charge and discharge Energy and provide Ancillary Services.
- "Bankrupt" or "Bankruptcy" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.
- "<u>Battery Charging Factor</u>" means a fraction, the numerator of which is the amount of Charging Energy absorbed by the Facility after the first five (5) hours of the charging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.
- "<u>Battery Discharging Factor</u>" means one (1) minus a fraction, the numerator of which is the amount of Discharging Energy discharged during the first four (4) hours of the discharging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.
- "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.
 - "Buyer" has the meaning set forth on the Cover Sheet.
- "<u>Buyer Default</u>" means a failure by Buyer to perform Buyer's obligations hereunder, and includes an Event of Default of Buyer.

- "Buyer Dispatched Test" has the meaning in Section 4.4(c).
- "Buyer's Indemnified Parties" has the meaning set forth in Section 16.1(a).
- "CAISO" means the California Independent System Operator Corporation or any successor entity performing similar functions.
- "CAISO Approved Meter" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Charging Energy and Discharging Energy delivered to or from the Delivery Point.
 - "CAISO Balancing Authority Area" has the meaning set forth in the CAISO Tariff.
- "CAISO Certification" means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all applicable Ancillary Services, PMAX, and PMIN.
 - "CAISO Charges Invoice" has the meaning set forth in Exhibit D.
- "CAISO Dispatch" means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.
- "CAISO Grid" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.
- "<u>CAISO Tariff</u>" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, as the same may be amended or modified from time-to-time and approved by FERC.
- "Capacity Attribute" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the ability of the Facility to charge, discharge and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.
 - "Capacity Damages" has the meaning set forth in Section 5 of Exhibit B.
- "<u>Capacity Test</u>" or "<u>CT</u>" means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity, or Efficiency Rate or any other test conducted pursuant to <u>Exhibit O</u>.
- "<u>CEQA</u>" means the California Environmental Quality Act, as amended or supplemented from time to time.
- "Change of Control" means, except in connection with public market transactions of equity interests or capital stock of Seller's Ultimate Parent, any circumstance in which Ultimate

Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

- (a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and
- (b) ownership interests in Seller owned directly or indirectly by any Lender (including any cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.



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

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

"Commercial Operation" has the meaning set forth in Exhibit B.

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

"Commercial Operation Date" or "COD" has the meaning set forth in Exhibit B.

"Commercial Operation Delay Damages" means an amount equal to (a) the Development Security amount required hereunder.

"Committed Storage Capacity" means, for each Contract Year, the applicable value specified for such Contract Year in Exhibit U.

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

- "Compliance Actions" has the meaning set forth in Section 3.7(a).
- "Compliance Expenditure Cap" has the meaning set forth in Section 3.7.
- "Confidential Information" has the meaning set forth in Section 18.1.
- "Construction Start" has the meaning set forth in Exhibit B.
- "Construction Start Date" has the meaning set forth in Exhibit B.
- "Contract Price" has the meaning set forth on the Cover Sheet.
- "Contract Term" has the meaning set forth in Section 2.1(a).
- "Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.
- "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.
- "Cover Sheet" means the cover sheet to this Agreement, which is incorporated into this Agreement.
- "COVID-19" means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.
 - "CPM Soft Offer Cap" has the meaning set forth in the CAISO Tariff.
- "CPUC" means the California Public Utilities Commission, or any successor agency performing similar statutory functions.
- "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.
 - "Cure Plan" has the meaning set forth in Section 11.1(b)(iii).
 - "Curtailment Order" means any of the following:
- (a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Instruction (as defined in the CAISO Tariff), to curtail deliveries of Discharging Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System

Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;

- (b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;
- (c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or
- (d) a curtailment in accordance with Seller's obligations or limitations under its Interconnection Agreement with Transmission Provider or distribution operator, including limitations on transfer capability under the Interconnection Agreement.
- "<u>Daily Delay Damages</u>" means an amount equal to (a) the Development Security amount required hereunder.
- "<u>Damage Payment</u>" means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount set forth in Section 11.3(a).
 - "Day -Ahead Market" has the meaning set forth in the CAISO Tariff.
 - "Day-Ahead Schedule" has the meaning set forth in the CAISO Tariff.
- "<u>Dedicated Interconnection Capacity</u>" means an instantaneous amount of Charging Energy and/or Discharging Energy, as applicable, that is permitted to be delivered from and/or to the Delivery Point under Seller's Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.
 - "<u>Defaulting Party</u>" has the meaning set forth in Section 11.1(a).
 - "Delivery Point" means the PNode assigned to the Facility by the CAISO.
- "<u>Delivery Term</u>" shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.
 - "<u>Development Cure Period</u>" has the meaning set forth in <u>Exhibit B</u>.
- "<u>Development Security</u>" means (a) cash or (b) a Letter of Credit in the amount set forth for the Development Security on the Cover Sheet.

"Discharging Energy"

"<u>Discharging Notice</u>" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO to Seller, directing the Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to a specified Stored Energy Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Procedures, the CAISO Tariff and applicable Law. Any instruction to discharge the Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.

"<u>Disclosing Party</u>" has the meaning set forth in Section 18.2.

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

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

"Effective Capacity" means the lesser of (a) PMAX, and (b) the maximum dependable operating capacity of the Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point to the extent such Electrical Losses are not already reflected in the Facility Meter measurements) as determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test), and, solely with respect to the Commercial Operation Capacity Test, as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to any other Capacity Test).

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

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

"<u>Efficiency Rate</u>" means the tested rate calculated pursuant to Sections II.I(2) and III(A) of <u>Exhibit O</u> by dividing Discharging Energy by Charging Energy.

"<u>Electrical Losses</u>" means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy.

"<u>Emission Reduction Credits</u>" or "<u>ERCs</u>" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources;

Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

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

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

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

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

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

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

"<u>Facility Meter</u>" means a CAISO Approved Meter, along with a CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Facility Metering Point and the amount of Discharging Energy discharged from the Facility to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

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

"<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor government agency.

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

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

"Flex RA Shortfall Amount" has the meaning set forth in Section 3.5(b)(ii).

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

"<u>Full Capacity Deliverability Status</u>" or "<u>FCDS</u>" has the meaning set forth in the CAISO Tariff.

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

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

"Guaranteed Availability" means the minimum guaranteed Annual Storage Availability of the Facility in each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

"<u>Guaranteed Capacity</u>" means the maximum dependable operating capability of the Facility to discharge electric energy, as measured in MW AC at the Delivery Point for four (4) hours of continuous discharge, as set forth on the Cover Sheet.

"Guaranteed Commercial Operation Date" means the date set forth on the Cover Sheet, as such date may be extended pursuant to $\underline{\text{Exhibit B}}$.

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

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

"Guaranteed Flexible Capacity" means, at any point in time,



"Guaranteed Net Qualifying Capacity" means, at any point in time,

"Guarantor" means, with respect to Seller, any Person that (a)

, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c)-has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody's, (d) has a tangible net worth of at least
, (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and d) executes and delivers a Guaranty for the benefit of Buyer.

"Guaranty" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as $\underline{Exhibit\ L}$.

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

"Idle Periods" has the meaning set forth in Section 4.9(j).

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

"Indemnified Party" shall mean (i) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the

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

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

"<u>Initial Synchronization</u>" means the commencement of Trial Operations (as defined in the CAISO Tariff).

"Installed Capacity" means the Effective Capacity determined pursuant to a Commercial Operation Capacity Test and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B, up to but not in excess of the Guaranteed Capacity.

"Insurable Force Majeure Event" means any Force Majeure Event which results in direct, physical loss to the Facility.

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

"Interconnection Agreement" means the interconnection agreement(s) entered into by Seller or a Seller Affiliate pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility that is no less than the Dedicated Interconnection Capacity, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

"<u>Interconnection Point</u>" means the point at which the Interconnection Facilities connect the Facility with the Transmission System, as set forth in <u>Exhibit A</u>.

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

"Interim Deliverability Status" has the meaning set forth in the CAISO Tariff.

"<u>ITC</u>" means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

"<u>Joint Powers Act</u>" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"<u>Joint Powers Agreement</u>" 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.

"<u>kWh</u>" means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

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

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

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

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

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

"Locational Marginal Price" or "LMP" has the meaning set forth in the CAISO Tariff.

"Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party,

including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes.

- "Marketable Emission Trading Credits" means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).
 - "Master File" has the meaning set forth in the CAISO Tariff.
- "Maximum Charging Capacity" means the highest level at which the Facility may be charged, expressed in MW and as set forth in Exhibit Q.
- "<u>Maximum Discharging Capacity</u>" means the highest level at which the Facility may be discharged, expressed in MW and as set forth in <u>Exhibit Q</u>.
- "<u>Milestones</u>" means the development activities for significant permitting, interconnection, and construction milestones set forth on the Cover Sheet.
 - "Minimum Efficiency Rate" means the percentage specified on the Cover Sheet.
- "Monthly Capacity Payment" means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.
 - "Moody's" means Moody's Investors Service, Inc., or its successor.
- "Must Offer Obligations" means the obligations to offer the Net Qualifying Capacity in order to satisfy Resource Adequacy Requirements, including under Section 40.6 of the CAISO Tariff.
- "<u>MW</u>" means megawatts in alternating current, unless expressly stated in terms of direct current.
- "<u>MWh</u>" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.
- "<u>NERC</u>" means the North American Electric Reliability Corporation, or any successor entity performing similar functions.
 - "Net Qualifying Capacity" or "NQC" has the meaning set forth in the CAISO Tariff.
 - "Network Upgrades" has the meaning set forth in the CAISO Tariff.

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

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

"Notification Deadline" in respect of a Showing Month shall be the relevant deadlines for the corresponding RA Compliance Showings for such Showing Month.

"<u>Operating Restrictions</u>" means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

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

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

"<u>Performance Security</u>" means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth for the Performance Security on the Cover Sheet. Throughout the Delivery Term, Seller shall have the right to reduce the Performance Security to an amount equal to of the then-applicable Committed Storage Capacity.

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

- (a) A tangible net worth of not less than or a Credit Rating of at least BBB- from S&P or Baa3 from Moody's; and
- (b) At least two (2) years of experience in the ownership and operations of energy generation or storage facilities similar to the Facility or has retained a third-party with such experience to operate the Facility.

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

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

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

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

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

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

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

"<u>Portfolio Financing Entity</u>" means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

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

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

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

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

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

"RA Guarantee Date" means the first day of the first Showing Month that commences at after the Commercial Operation Date.

"RA Penalties"



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

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

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

"Replacement RA" means Resource Adequacy Benefits, if any, (a) equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is anticipated to be due to Buyer, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits, and (b) located within the CAISO Balancing Authority Area.

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

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

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

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

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

"Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006, 22-06-050, 23-04-010 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by the CPUC or the CAISO, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

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

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

"<u>Schedule</u>" has the meaning set forth in the CAISO Tariff, and "<u>Scheduled</u>" and "<u>Scheduling</u>" have a corollary meaning.

"Scheduled Energy" means the Charging Energy schedule or Discharging Energy schedule, as applicable, that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or CAISO Dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

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

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

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

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

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

"Settlement Amount" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

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

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

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

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

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

"<u>SP-15</u>" means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

"<u>State of Charge</u>" or "<u>SOC</u>" means the ratio of (a) the Stored Energy Level of the Facility to (b) the Effective Capacity multiplied by four (4) hours, expressed as a percentage.

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

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

"<u>Stored Energy Level</u>" means, at a particular time, the amount of electric Energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

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

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

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

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

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

"System RA Shortfall Amount" has the meaning set forth in Section 3.5(b)(i)(A).

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

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

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

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

"<u>Throughput</u>" means, for a day or Contract Year (as the context dictates), the cumulative amount of Discharging Energy from the Facility for such time period.

"Transformer Failure" has the meaning set forth in Section 11.1(b)(iii).

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

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

"<u>Transmission System Outage</u>" means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller's actions or inactions and that prevents (i) Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System at or after the Delivery Point, or (ii) Seller from receiving Charging Energy at the Delivery Point.

"<u>Ultimate Parent</u>" means Arevon Energy JV I, LLC, provided that a direct or indirect transfer of the project to Arevon Energy JV V, LLC shall not be considered a Change of Control and, in such case, Arevon Energy JV V, LLC shall become the Ultimate Parent.

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

- 1.2 <u>Rules of Interpretation</u>. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:
- (a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;
- (c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;
- (e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;
- (f) a reference to a Person includes that Person's successors and permitted assigns;
- (g) the terms "include" and "including" mean "include or including (as applicable) without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- (h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

- (i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;
- (j) references to any amount of money shall mean a reference to the amount in United States Dollars;
- (k) the expression "and/or" when used as a conjunction shall connote "any or all of";
- (l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and
- (m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

- (a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("<u>Contract Term</u>"); *provided*, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.
- (b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.
- 2.2 <u>Commercial Operation; Conditions Precedent</u>. Seller shall provide Notice to Buyer of the expected Commercial Operation Date at least sixty (60) days in advance of such date. The COD shall be the date when all of the following requirements have been met as evidenced by Seller providing certificates from an independent Licensed Professional Engineer to Buyer with respect to (a)-(h) (including certificates substantially in the form of <u>Exhibit H</u> and <u>Exhibit I</u>) and an officer's certificate with respect to (i)-(m) certifying to the following:
- (a) The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System;

- (b) Seller has executed an Interconnection Agreement with the Transmission Provider, which shall be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer and the Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority Area;
- (c) Seller has provided Buyer with a copy of written notice from CAISO that the Facility has achieved Full Capacity Deliverability Status or Interim Deliverability Status for an amount no less than the Guaranteed Capacity;
- (d) The commissioning of the equipment has been completed in accordance with the applicable material requirements of the manufacturers' specifications;
- (e) The Facility's Installed Capacity is no less than of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions;
- (f) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;
 - (g) Seller has obtained CAISO Certification for the Facility;
- (h) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;
- (i) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;
 - (j) Seller has Site Control;
- (k) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;
- (l) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1; and
- (m) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Daily Delay Damages and Commercial Operation Delay Damages.
- 2.3 <u>Development; Construction; Progress Reports</u>. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agrees to participate in regularly scheduled meetings between representatives

of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in <u>Exhibit E</u>. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

- Remedial Action Plan. If Seller (a) misses three (3) or more Milestones, or (b) misses any one (1) Milestone by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days after the occurrence of (a) or (b), a remedial action plan ("Remedial Action Plan"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.
- 2.5 <u>Pre-Commercial Operation Actions</u>. The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller's delivery of an Availability Notice for the Commercial Operation Date, and Buyer's delivery of a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date.

ARTICLE 3 PURCHASE AND SALE

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

third party other than to Buyer or the CAISO pursuant to this Agreement or as otherwise required by Law.

- 3.2 <u>Discharging Energy</u>. Subject to the terms and conditions of this Agreement, Seller commits to make available the Discharging Energy to Buyer during the Delivery Term, and Buyer shall have the exclusive rights to all such Discharging Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point.
- 3.3 <u>Capacity Attributes</u>. Seller shall request Full Capacity Deliverability Status for the Facility's Guaranteed Capacity in the CAISO generator interconnection process. Seller shall take all actions necessary to include the Net Qualifying Capacity of the Facility in the CPUC's RA Master Resource Database to the extent permitted in accordance with the process established in CPUC Decision 23-04-010, including promptly complying with all related requests from the CPUC and Buyer. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.
- (a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.
- (b) Throughout the Delivery Term and subject to Section 3.7, Seller shall maintain Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term and subject to Section 3.7, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.
- (c) For the duration of the Delivery Term, and subject to Section 3.7, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, providing all information reasonably requested by Buyer to comply with its RAR obligations with respect to the Facility (including the CPUC Slice of Day framework) and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

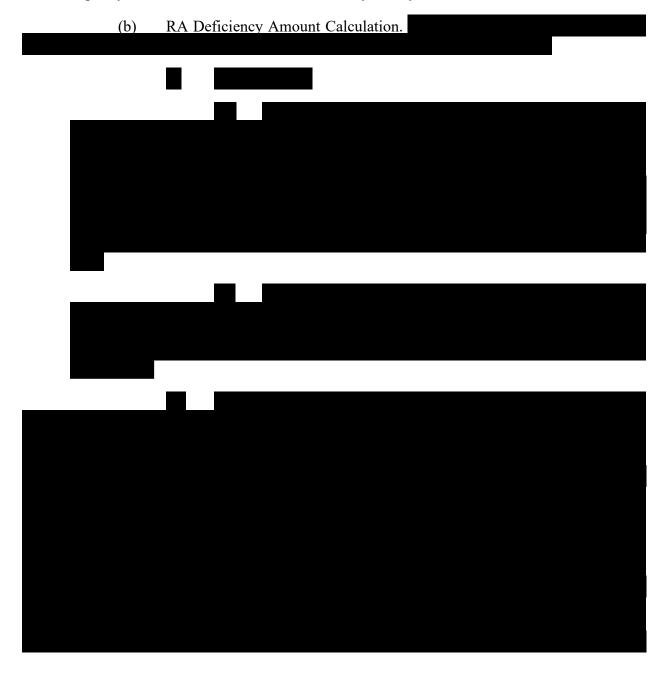
3.4 Ancillary Services.

(a) Ancillary Services. Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing during the Delivery Term consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Contract Term so as to be able to provide Ancillary Services in accordance with the specifications set forth in the Facility's initial CAISO Certification associated with the Installed Capacity, adjusted to reflect the Effective Capacity. Notwithstanding anything to the contrary herein, Seller is permitted to provide voltage support to the Transmission Provider in accordance with the Interconnection Agreement. Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at

the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein and without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with conducting such additional CAISO Certification.

3.5 **Resource Adequacy Failure**.

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





- 3.6 <u>Buyer's Re-Sale of Product</u>. Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, resale or remarketing of the Product, or any part of the Product; *provided*, no such re-sale shall relieve Buyer of any obligations hereunder. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable administrative actions and execute all reasonable and necessary documents or instruments to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement in connection with such failure (if any) if Buyer had not resold the Product, and Seller shall have no liability to Subsequent Purchaser.
- 3.7 <u>Compliance Expenditure Cap</u>. If a change in Laws occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Capacity Attributes or

Ancillary Services, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped at per MW of Guaranteed Capacity ("Compliance Expenditure Cap").

- (a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "Compliance Actions."
- (b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.
- (c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "Accepted Compliance Costs"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.7 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.
- (d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 <u>Delivery</u>. Subject to the provisions of this Agreement, including Section 4.9(a), commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Discharging Energy to the Delivery Point, including any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Charging Energy to the Delivery Point (including the cost of Charging Energy itself) and delivery of Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Charging Energy and Discharging Energy will be scheduled to the CAISO by Buyer in accordance with Exhibit D.

4.2 <u>Interconnection</u>. Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. During the Delivery Term, Seller shall have and maintain interconnection capacity available or allocable to the Facility that is no less than the Dedicated Interconnection Capacity throughout the Delivery Term.

4.3 Storage Availability and Efficiency.



- (b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate, which Efficiency Rate shall be calculated in accordance with a Capacity Test conducted pursuant to Exhibit O. If the Efficiency Rate during any month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages pursuant to Exhibit C.
- (c) Buyer's sole and exclusive remedies for Seller's failure to achieve the Guaranteed Availability and the Guaranteed Efficiency Rate are: (i) for the Guaranteed Availability, (A) the Availability Adjustment Payment, as set forth in Exhibit C, and (B) the Seller Event of Default as set forth in Section 11.1(b)(iii) and the applicable remedies set forth in Article 11; and (ii) for the Guaranteed Efficiency Rate, (A) the liquidated damages for failure to achieve the Guaranteed Efficiency Rate, as set forth in Exhibit C, and (B) the Seller Event of Default as set forth in Section 11.1(b)(iv).

4.4 **Facility Testing**.

- (a) <u>Capacity Tests</u>. Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Capacity Test in accordance with <u>Exhibit O</u>. Thereafter, Seller and Buyer shall have the right to run additional Capacity Tests in accordance with Exhibit O.
- (i) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests. Alternatively, to the extent that any Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests.
- (ii) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Capacity Test varies from the then-current Effective Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate determined pursuant to such Capacity Test shall become the new Effective Capacity and/or Efficiency Rate, as applicable, at the beginning of the day following the completion of the test for all purposes under this Agreement

until a revised Effective Capacity and/or Efficiency Rate, as applicable, is determined pursuant to a subsequent Capacity Test.

- (b) <u>Additional Testing</u>. Seller shall conduct such additional testing as necessary to ensure the Facility is functioning properly and the Facility is able to respond to Dispatch Notices pursuant to Section 4.6(b).
- Operation Capacity Tests, and all required annual tests pursuant to Section B of the section headed "Capacity Test Notice and Frequency" in Exhibit O, shall be deemed Buyer-instructed dispatches of the Facility ("Buyer Dispatched Test"). Any test of the Facility that is not a Buyer Dispatched Test, including all tests conducted prior to Commercial Operation, any Commercial Operation Capacity Test, any Capacity Test conducted if the Effective Capacity immediately prior to such Capacity Test is below of the Installed Capacity, and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Facility or for reperforming a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest) shall be deemed a "Seller Initiated Test".
- (i) For any Seller Initiated Test other than a Capacity Test required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).
- (ii) No Dispatch Notices shall be issued during any Seller Initiated Test. Dispatch Notices may be issued during a Buyer Dispatched Test as reasonably necessary to implement the applicable test, subject to the Operating Restrictions. The Facility shall be deemed unavailable during any Seller Initiated Test. Any Buyer Dispatched Test shall be deemed an Excused Event for the purposes of calculating the Annual Storage Availability.

4.5 Testing Costs and Revenues.

- (a) Buyer shall be responsible for paying for all Charging Energy and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test. Seller shall be responsible for paying for all Energy to charge the Facility (as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses) and shall be entitled to all CAISO revenues associated with a Seller Initiated Test. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.
- (b) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.
- (c) Except as set forth in Sections 4.5(a) and (b), all other costs of any testing of the Facility shall be borne by Seller.

4.6 **Facility Operations**.

- (a) Seller shall operate the Facility in accordance with Prudent Operating Practices.
- (b) During the Delivery Term, Seller shall maintain SCADA Systems, communications links, and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice ("<u>Automated Dispatches</u>"). In the event of the failure or inability of the Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer's review and comment. During any period during which the Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Dispatch Notices ("<u>Alternative Dispatches</u>").
- (c) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 4.6(c) shall be provided to Buyer within fifteen (15) days of Buyer's reasonable request.
 - (d) Seller shall maintain accurate records with respect to all Capacity Tests.
- (e) Seller shall maintain and make reasonably available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements, and permit on-site audits, investigations, tests and inspections required under, any Prudent Operating Practices.
- 4.7 <u>Dispatch Notices</u>. Buyer shall have the right to dispatch the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff and applicable Law. Subject to the Operating Restrictions, each Dispatch Notice shall be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer or Buyer's SC. If Automated Dispatches are not possible for reasons beyond Buyer's control, Alternative Dispatches may be provided pursuant to Section 4.6(b).
- 4.8 <u>Facility Unavailability to Receive Dispatch Notices</u>. To the extent the Facility is unable to receive or respond to Dispatch Notices either through Automated Dispatches or Alternative Dispatches during any Settlement Interval or Settlement Period, then as an exclusive remedy, the time period corresponding to such Settlement Interval or Settlement Period shall be deemed unavailable for purposes of calculating the Annual Storage Availability except to the extent that the Facility is unable to receive or respond to Dispatch Notices due to any circumstances at the high-voltage side of the Delivery Point or beyond that point, including any failure of CAISO,

4.9 **Energy Management**.

- (a) <u>Charging Generally</u>. Upon receipt of a valid Charging Notice, Seller shall take all action necessary to deliver the Charging Energy to the Facility from the Delivery Point. Seller shall maintain, repair or replace equipment in Seller's possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all costs and charges of delivering the Charging Energy to the Delivery Point, including all CAISO costs and charges associated with Charging Energy.
- (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Charging Notices to be issued, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this Agreement shall be effective unless and until Buyer, Buyer's SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice. Buyer shall be responsible for issuing all Charging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligation.
- (c) <u>No Unauthorized Charging</u>. Seller shall not charge the Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions, the CAISO Tariff and/or applicable Law), or in connection with a Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. If, during the Delivery Term, Seller charges the Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.9(c), then (i) Seller shall pay to Buyer all Energy costs associated with such charging of the Facility, and (ii) Buyer shall be entitled to discharge such Energy and shall be entitled to all of the benefits (including Product) associated with such discharge.
- (d) <u>Discharging Notices</u>. Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Discharging Notices to be issued, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement shall be effective unless and until Buyer, Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice. Buyer shall be responsible for issuing all Discharging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligations.

(e) No Unauthorized Discharging.

- (f) <u>Unauthorized Charges and Discharges</u>. If Seller or any third party charges, discharges or otherwise uses the Facility other than as permitted hereunder, or as is expressly addressed in this Section 4.9, it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom. Seller shall implement procedures reasonably acceptable to Buyer to prevent further occurrences of unauthorized charging and discharging of the Facility. The time period of any unauthorized charging and discharging of the Facility shall be treated as unavailable hours for the purpose of <u>Exhibit P</u>.
- (g) <u>CAISO Dispatches</u>. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer or Buyer's SC, and Seller shall have no liability for violation of this Section 4.9 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch or Seller negligently or intentionally fails to accurately communicate to Buyer the Facility's availability, Seller shall be responsible for all CAISO charges and penalties resulting from such deviations (in addition to any Buyer remedy related to overcharging of the Facility as set forth in Section 4.9(c)).
- (h) Pre -Commercial Operation Date Period. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Facility and will be responsible for all CAISO costs, and entitled to all CAISO revenues, associated with such charging and discharging of the Facility.
- (i) <u>Curtailments</u>. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Agreement or any Dispatch Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions.
- (j) Station Use.



4.10 Capacity Availability Notice.

- (a) No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Available Capacity for each day of the following month in a form substantially similar to Exhibit F ("Monthly Forecast").
- (b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with CAISO scheduling practices, Seller shall provide Buyer and the SC (if applicable) with an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (the "<u>Availability Notice</u>"). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in <u>Exhibit G</u>, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.
- (c) Seller shall notify Buyer and the SC (if applicable) as soon as practicable with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Capacity of the Facility changes or is expected to change after Buyer's receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices.

4.11 [Reserved].

4.12 **Outages**

(a) <u>Planned Outages</u>.

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller's schedule of proposed Planned Outages ("Outage Schedule") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Seller shall limit Planned Outages to periods of the day when Seller does not reasonably believe the Facility will be dispatched. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller

shall, consistent with Prudent Operating Practices, use commercially reasonable efforts to accommodate Buyer's requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments.

	(11) Γ	f reasonably	require <u>d i</u>	<u>n acco</u> rdance	with Prud	ent Operating
Practices, Seller shall	have the	right, on no le	ess than	days a	dvance Noti	ce to Bu <u>yer, to</u>
propose changes to the	e Outage	Schedule deve	eloped pursu	ant to Section	4.12(a)(i); p	rovided,
	. Buyeı	may provide	comments	no later than		after receiving
Seller's Notice of proj	posed cha	inges to the O	utage Sched	lule and shall p	ermit any ch	nanges if doing
so would not have a r	material a	dverse impac	t on Buyer	and Seller agre	ees to reimb	urse Buyer for
any costs or charges a	ssociated	with such cha	anges.			

- (b) No Planned Outages During Summer Months. Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from

 In the event Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.
- (c) <u>Planned Outage Timing</u>. To the extent commercially reasonable, Seller shall schedule maintenance outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.
- (d) <u>Notice of Unplanned Outages</u> Seller shall notify Buyer by telephoning Buyer's Scheduling Coordinator no later than ten (10) minutes following the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.
- (e) <u>Inspection</u>. In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day, at a reasonable time and upon reasonable advance Notice to Seller, and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller's safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Facility.
- (f) <u>Reports of Outages</u>. Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws. Seller shall also report all Unplanned Outages or Planned Outages in the daily operations log.

ARTICLE 5 TAXES, GOVERNMENTAL COSTS

- Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Buyer's income, revenue, receipts or employees). Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees) or on Charging Energy prior to its delivery to Seller. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.
- 5.2 <u>Cooperation</u>. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY

6.1 **Maintenance of the Facility**.

- (a) Seller shall, as between Seller and Buyer, be solely responsible for the operation, inspection, maintenance and repair of the Facility, and any portion thereof, in accordance with applicable Law and Prudent Operating Practices and as necessary to provide the Product to Buyer in accordance with this Agreement. Seller shall maintain maintenance and repair records of the Facility and shall deliver copies of the same to Buyer's scheduling representative upon reasonable request. Nothing herein shall limit Seller's right to replace or augment existing batteries and other equipment to maintain the capacity of the Facility.
- 6.2 <u>Maintenance of Health and Safety</u>. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of

damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility or suspending the supply of Discharging Energy to the Delivery Point.

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

ARTICLE 7 METERING

Metering. Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter. The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses and Station Use, as applicable, from such meters to the Delivery Point in accordance with Prudent Operating Practices. Seller shall separately meter all Station Use to the extent that such Station Use is reasonably capable of being separately metered. Metering shall be consistent with the Metering Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface - Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility.

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

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

- 8.1 **Invoicing**. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product within fifteen (15) Business Days after the end of the prior monthly delivery period. Each invoice shall reflect (a) records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy, Discharging Energy, and the amount of Replacement RA delivered to Buyer (if any) and (ii) Seller's records of metered data, including data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices; provided, however, that the Parties acknowledge and agree that CAISO metering and transaction data showing the amount of Product delivered by the Facility for any Settlement Period during the prior month may not be available or be final at the time each monthly invoice is delivered pursuant to this Section 8.1 and that the monthly invoice will be based on such data as are available at the time. When CAISO metering and transaction data showing the amount of Product delivered by the Facility for any Settlement Period during the applicable month, including the amount of Charging Energy and the amount of Discharging Energy, in each case as read by the Facility Meter, and the amount of Replacement RA delivered to Buyer (if any) becomes available, Seller will true up such invoices to reflect any differences between Seller's records and the data received from CAISO, and an appropriate credit or charge will be added to the next monthly invoice. The invoice shall be delivered by electronic mail in accordance with Exhibit N.
- 8.2 **Payment**. Buyer shall make payment to Seller of Monthly Capacity Payments for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days of Buyer's receipt of Seller's invoices; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not

paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "Interest Rate"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

- 8.3 <u>Books and Records</u>. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.
- 8.4 Payment Adjustments; Billing Errors. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a Facility Meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.
- 8.5 Billing Disputes. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

- 8.6 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.
- 8.7 Seller's Development Security. To secure its obligations under this Agreement, Seller shall (a) deliver the Development Security to Buyer in an amount equal to the amount set forth for the Development Security on the Cover Sheet within of the Effective Date. Seller shall maintain the Development Security in full force and effect until Buyer is required to return such Development Security hereunder. . Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security. Upon five (5) Business Days prior notice to Buyer, Seller may at its option exchange one permitted form of Development Security for another permitted form of Development

Security.

Seller's Performance Security. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for liquidated damages, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. Notwithstanding the foregoing, Seller's total obligation to replenish the Performance Security is limited to twice the initial Performance Security posting amount. 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. Upon five (5) Business Days prior notice to Buyer, Seller may at its option exchange one permitted form of Performance Security for another permitted form of Performance Security.

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

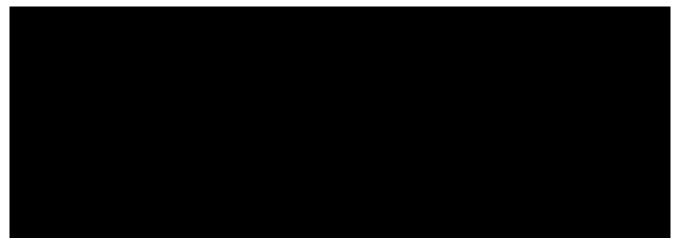
Upon or any time after the occurrence and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

8.10 <u>Financial Statements</u>. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

8.11 **Buyer's Financial Statements.**



ARTICLE 9 NOTICES

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

ARTICLE 10 FORCE MAJEURE

10.1 **Definition**.

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including COVID-19

; landslide; mudslide;

sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance;

or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

- Notwithstanding the foregoing, the term "Force Majeure Event" does not include (i) economic conditions or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (ix) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.
- 10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability within a reasonable period of time. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder except as provided above, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions

provided in Section 4 of Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) after all applicable extensions of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

Event, the Party suffering the Force Majeure Event shall

(b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, however, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.

10.4 <u>Termination Following Force Majeure Event.</u>



ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

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

- (a) with respect to a Party (the "<u>Defaulting Party</u>") that is subject to the Event of Default the occurrence of any of the following:
- (i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;
- (ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);
- (iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.5, (B) failures related to the Annual Storage Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P, (C) failure to maintain the Guaranteed Efficiency Rate that does not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Exhibit C, and (D) failure to achieve the Guaranteed Capacity by the date that is ninety (90) days after the Commercial Operation Date, the exclusive remedies for which are set forth in Exhibit B and Exhibit U), and such failure is not remedied within thirty (30) days after Notice thereof, in each case after applicable cure periods as set forth in this Agreement (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);
 - (iv) such Party becomes Bankrupt;
- (v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or
- (vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.
- (b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

- (i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point that was not discharged by the Facility;
- (ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;



- (v) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4;
- (vi) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

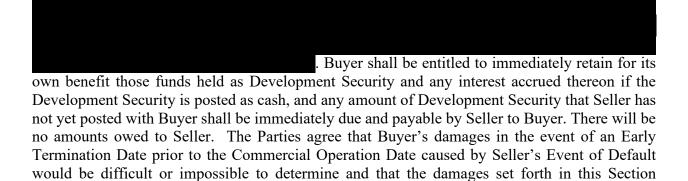
- (viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against the Performance Security for any reason other than to satisfy a Termination Payment;
- (ix) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, 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:
 - (A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;
 - (B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;
 - (C) the Guarantor becomes Bankrupt;
 - (D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;
 - (E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or
 - (F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.
- (x) 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:
 - (A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;
 - (B) the issuer of such Letter of Credit becomes Bankrupt;

- (C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
- (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
- (E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
- (G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit.
- 11.2 <u>Remedies; Declaration of Early Termination Date</u>. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("<u>Non-Defaulting Party</u>") shall have the following rights:
- (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") that terminates this Agreement (the "Terminated Transaction") and ends the Delivery Term effective as of the Early Termination Date;
- (b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;
 - (c) to withhold any payments due to the Defaulting Party under this Agreement;
 - (d) to suspend performance; and
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.
- 11.3 <u>Damage Payment; Termination Payment</u>. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the

Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

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

If Seller is the Defaulting Party, then,



11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

- (ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal the aggregate of all Settlement Amounts plus any and all other amounts due to or from Seller (as of the Early Termination Date) netted into a single amount. There will be no amount owed to Buyer. Seller shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to Seller's duty to mitigate, Seller shall not have to enter into replacement transactions to establish a Settlement Amount. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.
- (b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("Termination Payment") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the

Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

- 11.4 <u>Notice of Payment of Termination Payment or Damage Payment</u>. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.
- Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

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

- 11.7 <u>Rights And Remedies Are Cumulative</u>. Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy herein, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.
- 11.8 <u>Mitigation</u>. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

- 12.1 No Consequential Damages. EXCEPT TO THE EXTENT (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B)

 (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.
- 12.2 <u>Waiver and Exclusion of Other Damages</u>. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY ENERGY STORAGE TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY TAX CREDITS, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.5, 10.4, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, and EXHIBIT C, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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



ARTICLE 13 REPRESENTATIONS AND WARRANTIES; COVENANTS

- 13.1 <u>Seller's Representations and Warranties</u>. As of the Effective Date, Seller represents and warrants as follows:
- (a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.
- (b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all

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

- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.
- (d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
- (e) Neither Seller nor its Affiliates have received written notice from any existing or potential supplier or service provider for the Facility that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.
- 13.2 <u>Buyer's Representations and Warranties</u>. As of the Effective Date, Buyer represents and warrants as follows:
- (a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in its jurisdiction and each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.
- (b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.
- (d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
- (e) Buyer 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, (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.
- (f) Buyer cannot assert sovereign immunity or any similar doctrine as a defense to the enforcement of its obligations under this Agreement.
- (g) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.
- 13.3 <u>General Covenants</u>. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:
- (a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;
- (b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
- (c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.
- 13.4 <u>Seller's Covenants</u>. Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term:
- (a) <u>Compliance with Laws</u>. To the extent applicable to Seller or the Facility, Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination

and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees. Seller shall not discriminate against any employee or applicant for employment on the basis of the fact or perception of that person's race, color, religion, ancestry, national origin, age, sex (including pregnancy, childbirth or related medical conditions), legally protected medical condition, family care status, veteran status, sexual orientation, gender identity, transgender status, domestic partner status, marital status, physical or mental disability, or AIDS/HIV status.

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



Buyer will, from time to time, request voluntary disclosure of Seller's certification status with the CPUC Clearinghouse, and voluntary disclosure regarding Seller's efforts to work with diverse business enterprises, including women, minority, disabled veteran, and lesbian, gay, bisexual, transgender and/or persons with disabilities business enterprises in a form similar to Exhibit S.

ARTICLE 14 ASSIGNMENT

14.1 General Prohibition on Assignments. Except as provided below in this Article 14, neither Party may assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; provided, a Change of Control of Seller shall not require Buyer's consent and will not be subject to Section 14.2 or Section 14.3 if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall pay the other Party's reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys' fees.

14.2 <u>Collateral Assignment</u>. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility without the consent of Buyer. In connection with any financing or refinancing of the Facility, Buyer shall execute a consent to collateral assignment of this Agreement ("<u>Collateral Assignment Agreement</u>"), which shall be substantially in the form of <u>Exhibit T</u>. Buyer agrees to work in good faith with Seller and its Lender with respect to modifications to the form of Collateral Assignment Agreement.

14.3 **Permitted Assignment**.

- (a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:
- (i) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (ii) Seller has provided Buyer a written agreement signed by the Affiliate to which Seller wishes to assign its interests that provides that such Affiliate will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment.
- (b) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to any Person succeeding to all, or substantially all, of the assets of Seller (whether voluntary or by operation of law), if, and only if:
 - (i) The assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.
- (c) Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such agreement by the assignee has been delivered to Buyer.
- 14.4 <u>Portfolio Financing</u>. Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver

such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*,

14.5 <u>Permitted Assignment by Buyer</u>. If a change in Law occurs after the Effective Date that allows a tax-exempt load serving entity, including Buyer, to include product purchased under an energy storage agreement with a standalone storage facility, including Product purchased under this Agreement, in a municipal prepayment transaction, then Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has creditworthiness that is equal to or better than the creditworthiness of Buyer ("<u>Limited Assignee</u>") of Buyer's right to receive Product and Buyer's obligation to make payments to Seller, subject to execution of an assignment agreement between and among Seller, Buyer, and Limited Assignee upon terms and conditions mutually agreed and acceptable to Seller's Lenders.

ARTICLE 15 DISPUTE RESOLUTION

- 15.1 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of San Diego, California.
- 15.2 <u>Dispute Resolution</u>. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law in or equity.
- 15.3 <u>Attorneys' Fees</u>. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 **Indemnification**.

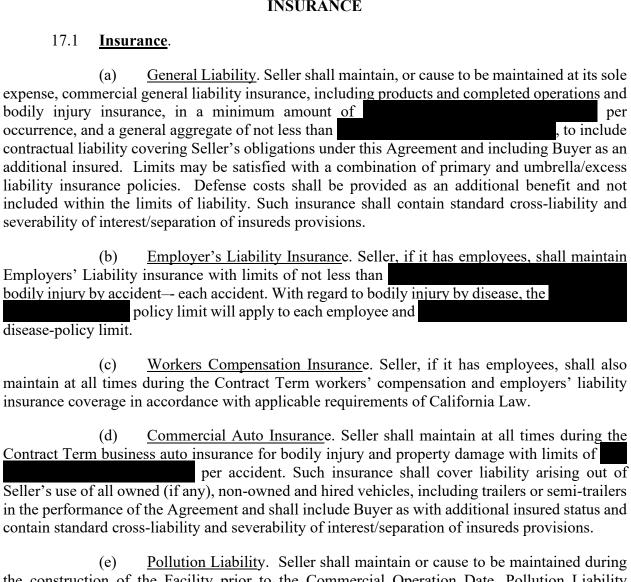
(a) Seller agrees to indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "Buyer's Indemnified Parties") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees),

howsoever described, to the extent arising out of, resulting from, or caused by (i) Seller's breach of this Agreement (including inaccuracy of any Seller representation of warranty made hereunder), (ii) a violation of applicable Laws by Seller or its Affiliates, including but not limited to violations of any laws in constructing or operating the Facility, or (iii) negligent or willful misconduct by Seller or its Affiliates, directors, officers, employees, or agents.

- (b) Buyer agrees to indemnify, defend and hold harmless Seller and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "Seller's Indemnified Parties") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Buyer's breach of this Agreement (including inaccuracy of any representation of warranty made hereunder), (ii) a violation of applicable Laws by Buyer or its Affiliates, or (iii) negligent or willful misconduct of Buyer or its Affiliates, its directors, officers, employees, or agents.
- (c) Seller shall indemnify, defend, and hold harmless Buyer's Indemnified Parties, from any claim, liability, loss, injury or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the storage, disposal and transportation of Hazardous Substances, or the contamination of land, including but not limited to the Site, with any Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement.
- (d) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its own sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.
- Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which an indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, provided, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; provided, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance

proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE



- (e) <u>Pollution Liability</u>. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Liability Insurance in the amount of per occurrence and in the aggregate, naming Seller as named insured and Lender if any, as additional insured. Seller may satisfy this requirement through sudden & accidental pollution coverage as part of the General and Umbrella/Excess Liability policies.
- (f) <u>Umbrella/Excess Liability Insurance</u>. Seller shall maintain or cause to be maintained an umbrella/excess liability policy with a limit of liability of per occurrence and in the aggregate. Such insurance shall be in excess of the General Liability, Employer's Liability, and Commercial Auto Insurance coverages. Seller may choose any combination of primary, excess or umbrella liability policies to meet the insurance limits required under Sections 17.1(a), 17.1(b), 17.1(d) and 17.1(e) above.

- (g) <u>Construction All-Risk Insurance</u>. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction (builder's) all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.
- (h) <u>Property Insurance</u>. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility (subject to usual and customary policy sublimits and aggregates); *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.
- (i) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) commercial general liability insurance with a per-occurrence limit of coverage not less than and in the general aggregate; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) commercial auto insurance for bodily injury and property damage with limits of per accident. All subcontractors shall include Seller as an additional insured to insurance carried pursuant to clauses (i)(i) and (i)(iii). All subcontractors shall provide a primary/non-contributory endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(i).
- (j) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual policy renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any cancellation of coverage, or ten (10) days for non-payment of premium. The General Liability and Commercial Auto insurance shall be primary coverage without right of contribution from any insurance of Buyer. The Umbrella/Excess Liability insurance shall be non-contributory. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall include a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

ARTICLE 18 CONFIDENTIAL INFORMATION

Information," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully

in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

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

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

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

18.3 <u>Irreparable Injury; Remedies</u>. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to

compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

- 18.4 <u>Further Permitted Disclosur</u>e. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s) or potential Lender(s) and investors or potential investors), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.
- 18.5 <u>Press Releases</u>. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release.

ARTICLE 19 MISCELLANEOUS

- 19.1 Entire Agreement; Integration; Exhibits. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- 19.2 <u>Amendments</u>. Except as otherwise explicitly permitted herein, this Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.
- 19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- 19.4 <u>No Agency, Partnership, Joint Venture or Lease</u>. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated

as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

- 19.5 <u>Severability</u>. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.
- Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.
- 19.7 <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.
- Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.
- 19.9 <u>Binding Effect</u>. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 19.10 No Recourse to Members of Buyer. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's

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

- 19.11 **Forward Contract**. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.
- 19.12 Change in Electric Market Design. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the balance of benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.
- 19.13 <u>Further Assurances</u>. Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- 19.14 <u>Service Contract</u>. The Parties acknowledge and agree that this Agreement is intended to constitute a "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code of 1986, as amended from time to time.

[Signatures on following page]

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

AVOCET ENERGY STORAGE, LLC	SAN DIEGO COMMUNITY POWER					
By: Name: Title:	By: Name: Title:					
AVOCET ENERGY STORAGE, LLC						
By: Name: Title:						

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Avocet Energy Storage

Site includes all or some of the following APNs:

County: Los Angeles County

CEQA Lead Agency: City of Carson, CA

Zip Code: 90810

Latitude and Longitude:

Facility Description: 200 MW / 800MWh (as of the Commercial Operation Date) Battery

Energy Storage System

Operating Characteristics:

Maximum Stored Energy Level at COD (MWh): 800 MWh

Maximum Charging Capacity at COD: 200 MW

Maximum Discharging Capacity at COD: 200 MW

Operating Restrictions of Storage Facility: See Exhibit Q

Guaranteed Capacity at COD: 200 MW at four (4) hours of continuous discharge

Committed Storage Capacity: See Exhibit U

Interconnection Point: SCE Hinson 220 kV Substation

Facility Meter: See Exhibit R

Facility Metering Points: See Exhibit R

P-node: The PNode shall be updated by mutual agreement of Buyer and Seller prior to the Commercial Operation Date to reflect the PNode corresponding to the Facility's point of

interconnection with the CAISO Grid.

Transmission Provider: Southern California Edison Company

Additional Information: Site Plan provided below.



EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. "Construction Start" will occur upon Seller's acquisition of all applicable regulatory authorizations, approvals and permits necessary for the construction of the Facility, and once Seller has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation or grading or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "Construction Start Date." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date, as may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of this Exhibit B and/or a Development Cure Period pursuant to Section 4 of this Exhibit B.
- In addition to extensions pursuant to a Development Cure Period, Seller may extend b. the Guaranteed Construction Start Date by paying Daily Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of of extensions by such payment of Daily Delay Damages. If Seller elects to extend the Guaranteed Construction Start Date, on or before the date that is ten prior to the thencurrent (including any previous extensions) Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b) of Exhibit B. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller's payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.
- 2. <u>Commercial Operation of the Facility</u>. "<u>Commercial Operation</u>" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of <u>Exhibit H</u> (the "<u>COD Certificate</u>") and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation. The

"Commercial Operation Date" shall be the date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation to occur no later than the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(b) of this Exhibit B and/or a Development Cure Period pursuant to Section 4 of this Exhibit B. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.
- b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of of extensions by such payment of Commercial Operation Delay Damages. If Seller elects to extend the Guaranteed Commercial Operation Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller may provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b) of Exhibit B.



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



5. <u>Failure to Reach Guaranteed Capacity</u>. If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is up to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as <u>Exhibit I</u> hereto specifying the new Installed Capacity. If Seller fails to achieve an Installed Capacity that is 100% of the Guaranteed Capacity by such date,

Seller shall pay "Capacity Damages" to Buyer, in an amount equal to
for each MW that the Guaranteed Capacity exceeds the
Installed Capacity, and the Guaranteed Capacity, Performance Security, and other
applicable portions of the Agreement, including Exhibit Q, shall be adjusted accordingly.
Capacity Damages shall not be offset or reduced by the payment of Daily Delay Damages,
Commercial Operation Delay Damages, or any other form of liquidated damages under
this Agreement.

EXHIBIT C

COMPENSATION

(a) Monthly Capacity Payment. Each month of the Delivery Term (and pro-rated for
the first and last month of the Delivery Term if the Delivery Term does not start on the first day
of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the
Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If
the Effective Capacity is adjusted pursuant to a Capacity Test effective as of a day other than the
first day of a calendar month, payment shall be calculated separately for each portion of the month
in which the different Effective Capacity is applicable.
(b) <u>Availability Adjustment</u> . If the Annual Storage Availability during any Contract
Year of the Delivery Period is less than the Guaranteed Availability, then Seller shall owe Buyer
an "Availability Adjustment Payment" for such Contract Year
an Avanability Aujustinent Layment for such Confluct Lear
(c) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate.



EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

- (a) Buyer as Scheduling Coordinator for the Facility. Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt (as applicable) of Charging Energy, Discharging Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility. Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real time or other CAISO market basis that may develop after the Effective Date, as determined by Buyer.
- (b) <u>Notices</u>. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or transmission to the personnel designated to receive such information.
- CAISO Costs and Revenues. Buyer (as Scheduling Coordinator for the (c) Facility) shall be responsible for CAISO costs (including Charging Energy, penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including Discharging Energy, credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Delivery Point and Charging Energy delivered to the Delivery Point; provided, however, Seller shall assume all liability and be responsible for any and all CAISO penalties (i) resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility), or (ii) to the extent arising as a result of Seller's failure to comply with a timely Curtailment Order (subject to the Operating Restrictions) if such failure results in incremental costs to Buyer. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account (except to the extent such Non-Availability Charges arise out of Buyer's failure

to perform its duties as Scheduling Coordinator for the Facility). In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

- CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for (d) all settlement functions with the CAISO related to the Facility with respect to the Delivery Term. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this paragraph (d) of Exhibit D with respect to payment of CAISO Charges Invoices in respect of performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.
- (e) <u>Dispute Costs</u>. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute, except to the extent such dispute arises from Buyer's failure to perform its duties as Scheduling Coordinator for the Facility.
- (f) <u>Terminating Buyer's Designation as Scheduling Coordinator</u>. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.
- (g) <u>Master File and Resource Data Template</u>. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.
- (h) <u>NERC Reliability Standards</u>. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall

include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

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

EXHIBIT F

FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

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

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert a	dditiona	l rows f	or each	day in th	e montl	h]			I		I													I
Day 29																								
Day 30																								
Day 31																								

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

EXHIBIT G

FORM OF DAILY AVAILABILITY NOTICE

Trading D	ay:									
				Issued By:						
		o Restrictions								
	Hour Ending	Available Capacity	_	Comments						
		(MW)								
	1:00									
	2:00									
	3:00									
	4:00									
	5:00									
	6:00									
	7:00									
	8:00									
	9:00									
	10:00									
	11:00									
	12:00									
	13:00									
	14:00									
	15:00									
	16:00									
	17:00									
	18:00									
	19:00									
	20:00									
	21:00									
	22:00									
	23:00									
	0:00									
C 4				·						
Comment	s		_							

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (" <u>Certification</u> ") of Commercial Operation is delivered by [licensed professional engineer] (" <u>Engineer</u> ") to San Diego Community Power, a California joint powers authority (" <u>Buyer</u> ") in accordance with the terms of that certain Energy Storage Service Agreement dated (" <u>Agreement</u> ") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.
As of[DATE], Engineer hereby certifies and represents to Buyer the following:
1. The Facility is fully operational, interconnected, and synchronized with the Transmission System in accordance with the Interconnection Agreement.
2. The Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority Area.
3. The commissioning of the equipment has been completed in accordance with the applicable material requirements of the manufacturers' specifications.
4. The Facility's Installed Capacity is no less than Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
5. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on [DATE].
6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on[DATE]
7. Seller has segregated and separately metered Station Use to the extent required in accordance with the retail service provider's tariff, and any such meter(s) have the same or greater level of accuracy as is required under the retail service provider's tariff.
EXECUTED by [LICENSED PROFESSIONAL ENGINEER] this day of, 20
[LICENSED PROFESSIONAL ENGINEER] By: Its:
D .

EXHIBIT I

FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("<u>Certification</u>") is delivered by [SELLER ENTITY] ("<u>Seller</u>") to San Diego Community Power, a California joint powers authority ("<u>Buver</u>") in accordance with the terms of that certain Energy Storage Service Agreement dated ("<u>Agreement</u>") 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.

Agree	ement.		
Selle	r hereby certifies and represents to Buyer the f	ollowing:	
(1)	Construction Start (as defined in Exhibit B of the notice to proceed that Seller issued to attached hereto.		
(2)	the Construction Start Date occurred on and	(the "Construction	Start Date");
(3)	the precise Site on which the Facility is loca the previously	ted is, which must be within the identified	boundaries of Site:
	(such description shall amend the description /ITNESS WHEREOF, the undersigned has executed and of		Ź
[SEL]	LER ENTITY]		
Date:	:		

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: Bank Ref.:

Amount: US\$[XXXXXXXX]

Expiry Date:

Beneficiary:

San Diego Community Power Authority PO Box 12716 San Diego, CA 92112

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 San Diego Community Power, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Energy Storage Service Agreement dated as of [insert date that is prior to LC issuance date] and as amended (the "Agreement") between Applicant and Beneficiary related to [insert brief details of the agreement]. This Letter of Credit shall become effective immediately and shall expire on [Insert Date which is one year from the issue date of this Letter of Credit] or any expiration date extended until terminated 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. [XXXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]]. If presented by PDF email or fax, it must be followed up by a phone call to [bank phone number [XXX-XXX-XXXX]] or [bank phone number [XXX-XXX-XXXX]] to confirm receipt. In the event of presentation by PDF email or fax, original documents are not necessary and the electronic transmission or fax will constitute the operative drawing documents.

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.

We hereby agree with Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to 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.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect until the Expiration Date 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 ninety (90) days prior to any such Expiration Date Issuer has sent to Beneficiary written notice by overnight courier service that Issuer elects not to extend this Letter of Credit, in which case it will expire on such Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

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

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-XXXX-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: San Diego Community Power, Chief Financial Officer, PO Box 12716, San Diego, CA 92112. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]	
[Insert officer name]	

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawi	ng Certificate
[Insert	Bank Name and Address]
Ladies	and Gentlemen:
joint p	ndersigned, a duly authorized representative of San Diego Community Power, a California lowers authority, PO Box 12716, San Diego, CA 92112, as beneficiary (the "Beneficiary") Irrevocable Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") issued by [insert bank (the "Bank") by order of (the "Applicant"), hereby certifies to the Bank as is:
1.	Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of, 20 (the "Agreement").
2.	Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.
OR	
	Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.
3.	The undersigned is a duly authorized representative of San Diego Community Power and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.
	re hereby directed to make payment of the requested amount to San Diego Community by wire transfer in immediately available funds to the following account:
[Speci	fy account information]
San D	iego Community Power
Name	and Title of Authorized Representative
Date_	

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this "Guaranty") is entered into as of [] (the "Effective Date") by and

], a [____] ("Guarantor"), and San Diego Community Power, a California joint

powers	authority (together with its successors and permitted assigns, "Buyer").
	<u>Recitals</u>
	Buyer and [SELLER ENTITY], a ("Seller"), entered into that
	Energy Storage Service Agreement (as amended, restated or otherwise modified from time, the " <u>ESSA</u> ") dated as of [], 20
	Guarantor is entering into this Guaranty as Performance Security to secure Seller's ions under the ESSA, as required by Section 8.8 of the ESSA.
	It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will substantial direct and indirect benefits from the execution and delivery of the ESSA.
D. ESSA.	Initially capitalized terms used but not defined herein have the meaning set forth in the

Agreement

- 1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESSA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when due and payable pursuant to the terms of the ESSA (the "Guaranteed Amount"). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESSA, Guarantor shall promptly pay such amount after receipt of a Demand Notice and subject to the provisions contained herein.
- **2. Demand Notice**. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the ESSA. If Seller fails to pay any Guaranteed Amount as required pursuant to the ESSA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty and may

make a demand upon Guarantor (a "Payment Demand") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

- 3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the ESSA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or invalidated for the following reasons:
 - (i) the extension of time for the payment of any Guaranteed Amount, or
 - (ii) any amendment, modification or other alteration of the ESSA, or
 - (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the ESSA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the ESSA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the ESSA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the ESSA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

<u>provided</u> that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the ESSA that are expressly waived in this Section 3).

- 4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the ESSA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:
- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the ESSA;
- (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.
- **5. Subrogation**. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.
- 6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [limited liability company][corporate] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or

affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below on the day received if served by overnight express delivery. If transmitted by electronic mail, such notice shall be deemed received when receipt is confirmed by return electronic mail from the recipient (not an automated response). Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at	[] Attn: [] Email: []
If delivered to Guarantor, to it at	[] Attn: [] Email: []

- **8.** Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Diego, California.
- 9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the ESSA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination

shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:
[]
By:
Printed Name:
Title:
BUYER:
BUTER.
[]
By:
D ' (1) I
Printed Name:
Title:
By:
Printed Name:
Title:

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

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

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

Unit Information¹

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

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

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

By:			
By: [ts:			
Datas			

[SELLER ENTITY]

EXHIBIT N

NOTICES

AVOCET ENERGY STORAGE, LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
All Notices:	All Notices:
Street: 8800 N. Gainey Center Dr. Suite 100	PO Box 12716
City: Scottsdale, AZ 85258	San Diego, CA 92112
Attn: General Counsel	Attn: Byron Vosburg, Director of Power
Phone: 480-653-8450	Services
Email: contractnotices@arevonenergy.com	Phone: (619) 880-6545
and	Email: bvosburg@sdcommunitypower.org
AREVON-CAM@arevonenergy.com	
Reference Numbers:	Reference Numbers:
Duns:	Duns:
Federal Tax ID Number:	Federal Tax ID Number:
Invoices:	Invoices:
Attn: Settlements	Attn: SDCP Settlements
Phone: 480-653-8452	Phone: (619) 880-6545
Email: settlements@arevonenergy.com	Email: settlements@sdcommunitypower.org
Scheduling:	Scheduling:
Attn: Asset Management	Tenaska Power Services Co.
Phone: 480-653-8452	Attn: Kara Whillock
Email: <u>AREVON-</u>	Phone: (972) 333-6122
<u>CAM@arevonenergy.com</u>	Email: kwhillock@tnsk.com
	Day Ahead: (817) 303-1115
	Real Time: (817) 303-1852
	Facsimile: (817) 303-1104
Confirmations:	Confirmations:
Attn: Asset Management	Attn: SDCP Settlements
Phone: 480-653-8452	Phone: (619) 880-6545
Email: <u>AREVON-CAM@arevonenergy.com</u>	Email: settlements@sdcommunitypower.org
Payments:	Payments:
Attn: Settlements	Attn: Michael Maher
Phone: 480-653-8452	Phone: (415) 526-3020
Email: settlements@arevonenergy.com	Email: mmaher@mahercpa.com
Wire T <u>ransfer:</u>	Wire Transfer:
BNK:	BNK:
ABA:	ABA:
ACCT:	ACCT:

AVOCET ENERGY STORAGE, LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
With additional Notices of an Event of Default to: Attn: Justin Johnson, COO Phone: 480-653-8450 Email: contractnotices@arevonenergy.com	With additional Notices of an Event of Default to: Best, Best & Krieger Attn: Ryan Barron, General Counsel 655 West Broadway, 15th Floor San Diego, CA 92101 Phone: (949) 263-6568 Email: ryan.baron@bbklaw.com
Emergency Contact: Attn: Anand Narayanan Phone: 480-653-8450 Email: AREVON-CAM@arevonenergy.com	Emergency Contact: Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org

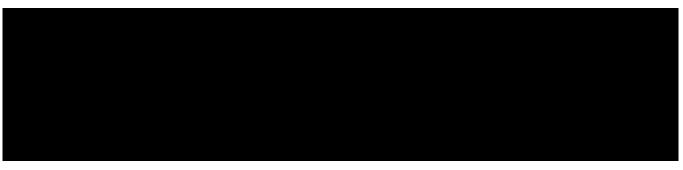
EXHIBIT O

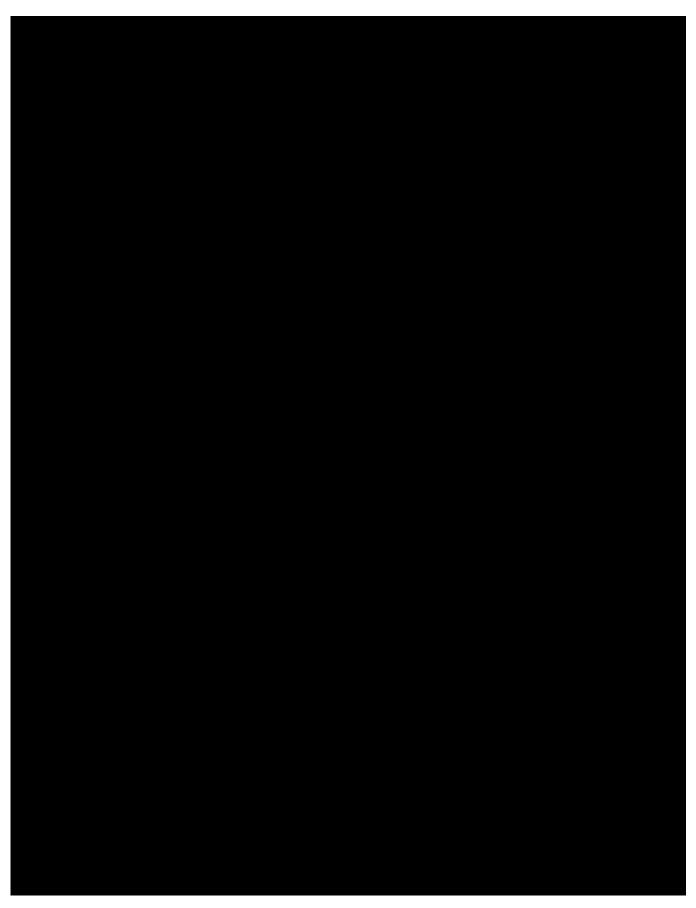
CAPACITY AND EFFICIENCY RATE TESTS

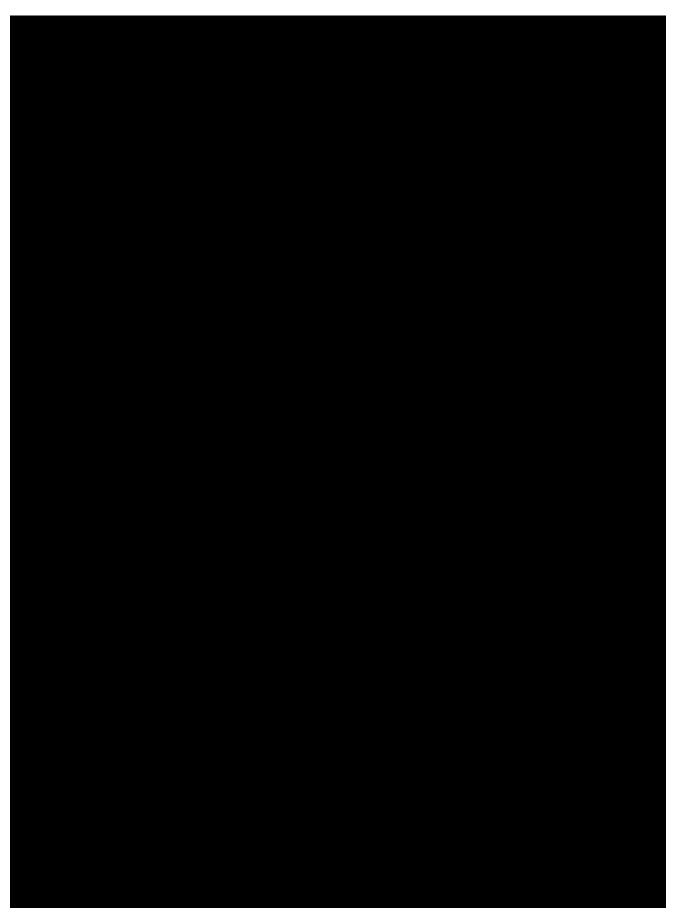
Capacity Test Notice and Frequency

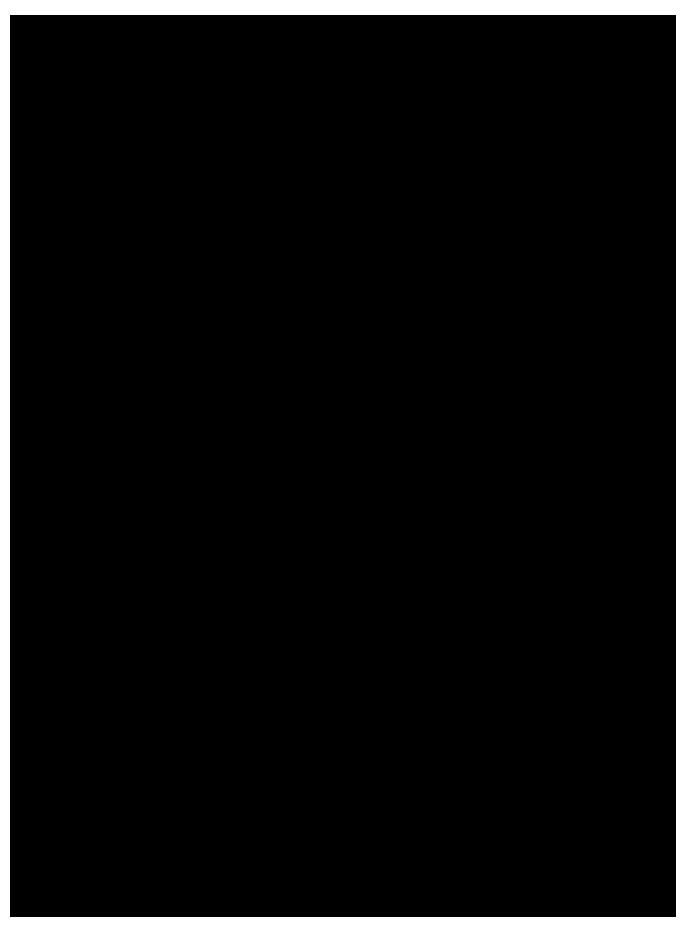
- A. <u>Commercial Operation Capacity Test(s)</u>. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Commercial Operation Capacity Test(s).
- B. <u>Subsequent Capacity Tests</u>. Following the Commercial Operation Date, at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. In addition to the annual capacity test, if Buyer has reason to believe that the Effective Capacity or the Efficiency Rate is materially less than shown by the most recent test results and provides Seller data demonstrating the basis for such reasonable belief, Buyer shall have the right to require a Capacity Test at any time upon no less than ten (10) Business Days prior Notice to Seller. Seller shall have the right to run a retest of any Capacity Test at any time upon ten (10) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).
- C. Test Results and Re-Setting of Effective Capacity and Efficiency Rate. No later than five (5) Business Days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and timestamped data from the site data historian (a software program that records data from the Facility) verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, (i) the Guaranteed Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test)) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

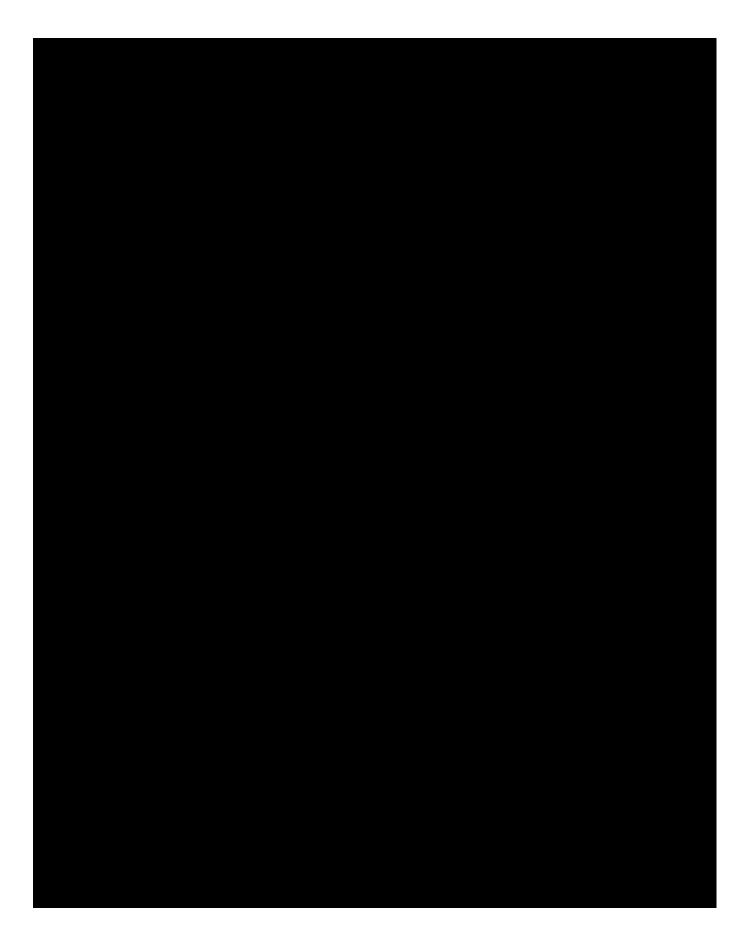
Capacity Test Procedures

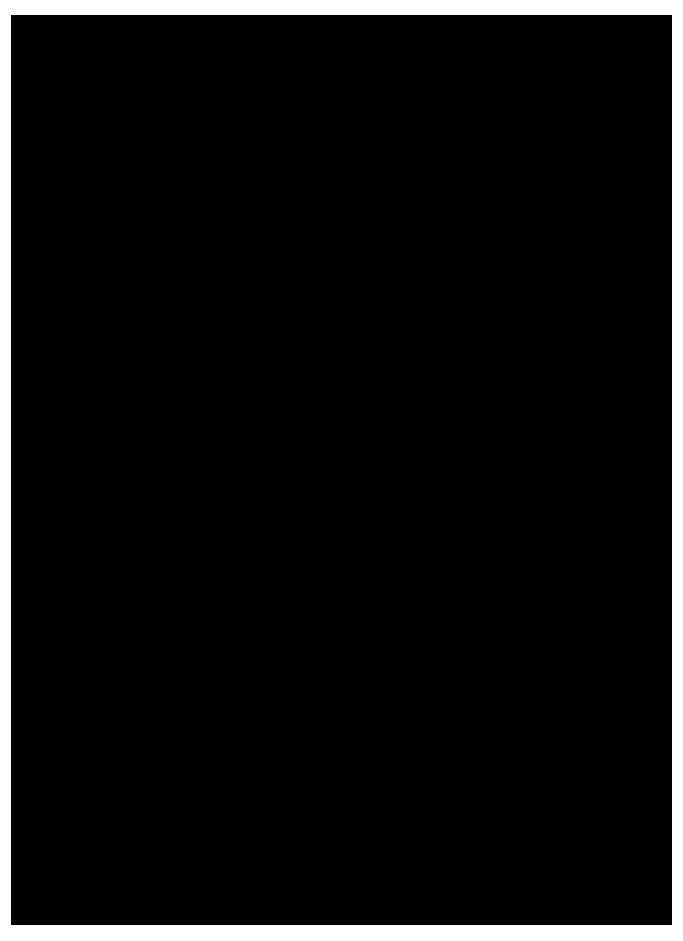












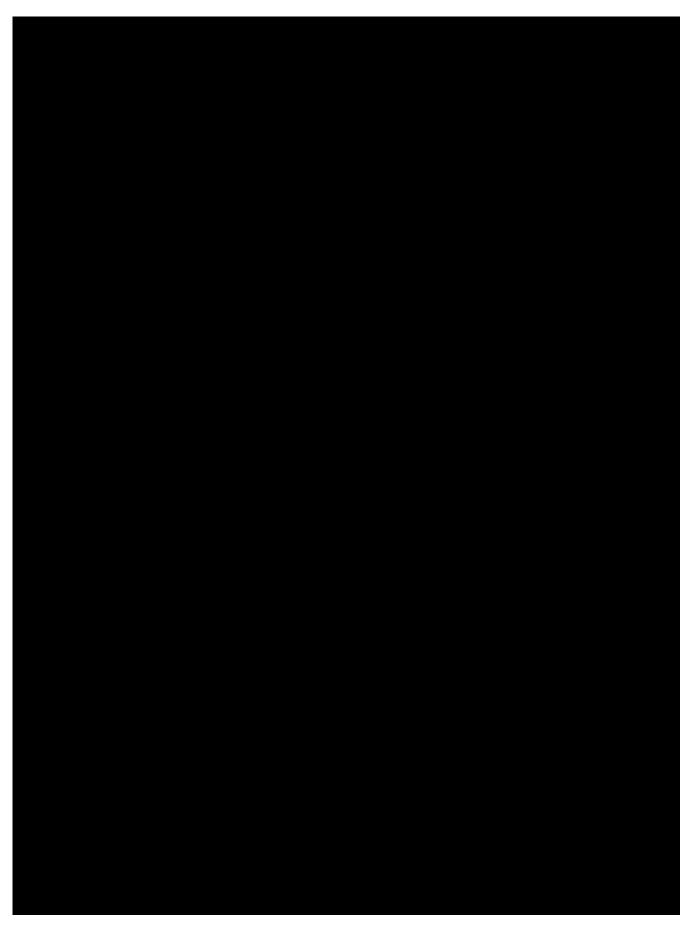


Exhibit O - 7

EXHIBIT P

FACILITY AVAILABILITY CALCULATION

<u>Annual Storage Availability Calculation</u>. Seller shall calculate the "<u>Annual Storage</u> <u>Availability</u>" for a given Contract Year of the Delivery Term using the formula set forth below:

Annual Storage Availability (%) =
$$\frac{[AVAILHRS_y + EXCUSEDHRS_y]}{[YRHRS_y]}$$

Where:

y = relevant Contract Year "y" for which Annual Storage Availability is calculated;

YRTHRS_y is the total number of hours for the relevant Contract Year;

AVAILHRS_y is the total number of hours, or partial hours, in the applicable Contract Year during which the Facility was available to charge and discharge Energy between the Facility and the Delivery Point and to provide Ancillary Services at the Delivery Point (excluding, for avoidance of doubt, all circumstances at the high-voltage side of the Delivery Point or beyond that may limit Seller's delivery of Product). If the Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the Effective Capacity, the AVAILHRS_y for such time period shall be calculated by multiplying such AVAILHRS_y by a percentage determined by dividing (a) by (b); where (a) is the lower of (i) such capacity amount reported as available by Seller's real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.10(b)), and (b) is the applicable Effective Capacity for such hours.

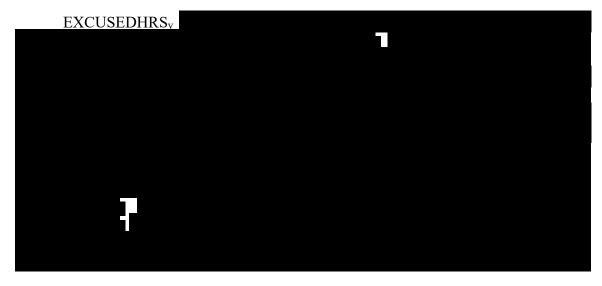


Exhibit P - 1

EXHIBIT Q OPERATING RESTRICTIONS

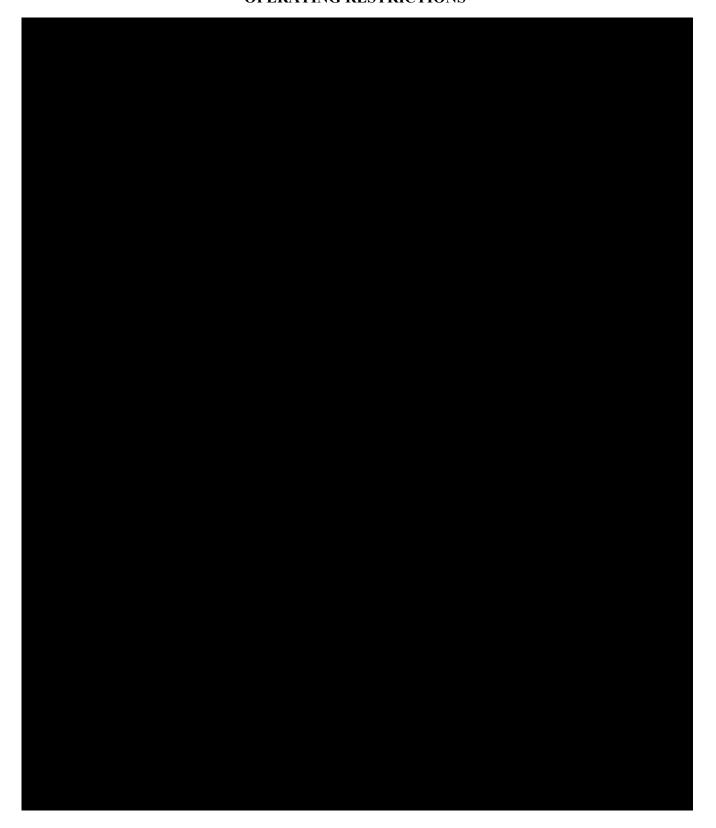


EXHIBIT R METERING DIAGRAM



EXHIBIT S

SAMPLE SUPPLIER DIVERSITY SURVEY

Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "Not Applicable" or "Decline to State."

Pursuant to Proposition 209, SDCP does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact your participation in any future SDCP solicitation selection process. Responses are collected for informational and reporting purposes only pursuant to Senate Bill (SB) 255.

*Required

- 1. Business Name*
- 2. Email Address*
- 3. Where is your business located/headquartered?
- 4. Is your business certified under General Order 156 (GO 156)? GO 156 is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minorityowned, disabled veteran-owned and LGBT-owned business enterprises (WMDVLGBTEs) in all categories. Qualified businesses become GO 156 Certified through the CPUC and are then added to the GO 156 Clearinghouse database at www.thesupplierclearinghouse.com*

Yes

No

Qualified as a WMDVLGBTBE but not GO 156 certified

- 5. If you answered "yes" to Question 4, when does your certification expire?
- 6. If you answered "yes" or "qualified, but not certified" to Question 4, in which categories are you certified or qualified? Please choose all that apply.

Minority Owned

Women Owned

LGBT Owned

Disabled Veteran Owned

Small Business Enterprise, as defined by 8(d) of the Small Business Act

7. If your business is a minority-owned business enterprise, what GO156 certification or qualification does your business fall under?

Black American

Hispanic American

Asian Pacific American

Native American

- 8. Please list the Standardized Industrial Code (SIC) of the products and services your business offers. Search for your SIC in the "Commodity Codes" search bar, here: https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory. asp.
- 9. If certified under GO 156, please list your annual business revenue as reported to the CPUC Supplier Clearinghouse. You may check your CPUC Supplier Clearinghouse status here: https://sch.thesupplierclearinghouse.com/ FrontEnd/SearchCertifiedDirectory.asp.
- 10. If your business is qualified, but not GO 156 certified, please identify the reasons for not completing the certification process?
- 11. If your business has used GO 156 certified subcontractors for your SDCP contract, please include a list of your subcontractor business names, if the subcontract is for products or services, and the anticipated subcontract amount. Example: Electrical Design Technology, Inc.; products (batteries); \$100,000.
- 12. If applicable, please describe any hiring policies your business has for using small, local, and/or economically disadvantaged subcontractors or for using subcontractors that qualify for the GO 156 Supplier Clearinghouse.
- 13. Does your business have a history of using apprenticeship programs, local-hires, union labor, or multi-trade project labor agreements? Local hires can be defined as labor-sourced from within SDCP's service area.

Yes, apprenticeship programs in this recent contract with SDCP

Yes, local labor in this recent contract with SDCP

Yes, union labor in this recent contract with SDCP

Yes, multi-trade PLA in this recent contract with SDCP

Yes, apprenticeship programs but not in this contract with SDCP

Yes, history of local hire but not in this contract with SDCP

Yes, history of union labor but not in this contract with SDCP

Yes, history of multi-trade PLA but not in this contract with SDCP

Uses California-based labor, but not local to SDCP's service areas

None of the above

Not applicable

14. Are you a small business? Please refer to the Small Business Association' Size Standards tool for more information: https://www.sba.gov/sizestandards.

Yes

No

- 15. If you answered "yes" to Question 14, please describe your history with labor agreements, union labor, multi-trade labor, apprenticeship labor, or how many local workers/businesses you employ for your contract with SDCP.
- 16. Is there any additional feedback that you would like to provide to SDCP at this time?
- 17. Does the bidder have formal initiatives to promote diversity, equity, and inclusion among its workforce?
- 18. If the answer to question 33 is "Yes", please explain and provide supporting documentation.
- 19. Has the bidder adopted formal Environmental, Social, and Governance (ESG) goals?
- 20. If the answer to question 36 is "Yes", please explain and provide supporting documentation.

EXHIBIT T

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this "Consent") is entered into among (i) San Diego Community Power, a California joint powers authority ("SDCP"), (ii) [Name of Seller], a [Legal Status of Seller] (the "Project Company"), and (iii) [Name of Collateral Agent], a [Legal Status of Collateral Agent], as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the "Secured Parties", and, such agent, together with its successors in such capacity, the "Collateral Agent"). SDCP, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties". Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the ESSA (as defined below).

RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and SDCP have entered into that certain Energy Storage Service Agreement, dated as of [Date] [List all amendments as contemplated by Section 3.4] ("ESSA"), pursuant to which Project Company will develop, construct, commission, test and operate the Facility (the "Project") and sell the Product to SDCP, and SDCP will purchase the Product from Project Company;
- B. As collateral for Project Company's obligations under the ESSA, Project Company has agreed to provide to SDCP certain collateral, which may include Performance Security and Development Security and other collateral described in the ESSA (collectively, the "ESSA Collateral");
- C. Project Company has entered into that certain [Insert description of financing arrangements with Lender], dated as of [Date], among Project Company, the Lenders party thereto and the Collateral Agent (the "Financing Agreement"), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company's obligations under the Financing Agreement and related agreements (collectively, the "Financing Documents"), Project Company has, among other things, assigned all of its right, title and interest in, to and under the ESSA and Project's Company's direct and/or indirect owners have pledged their direct and/or indirect ownership interest in Project Company (collectively, the "Assigned Interest") to the Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the ESSA that SDCP and the other Parties hereto shall have executed and delivered this Consent.

AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

SDCP hereby acknowledges:

- (a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and
- (b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the ESSA (subject to SDCP's rights and defenses under the ESSA and the terms of this Consent) and accepts any such exercise; provided, insofar as the Collateral Agent exercises any such rights under the ESSA or makes any claims with respect to payments or other obligations under the ESSA, the terms and conditions of the ESSA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

1.2 <u>Project Company's Acknowledgement.</u>

Each of Project Company and Collateral Agent hereby acknowledges and agrees that SDCP is authorized to act in accordance with Collateral Agent's instructions, and that SDCP shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the ESSA, or upon the occurrence or non-occurrence of any event or condition under the ESSA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable SDCP to terminate or suspend its performance under the ESSA (a "ESSA Default"), SDCP will not terminate or suspend its performance under the ESSA until it first gives written notice of such ESSA Default to Collateral Agent and affords Collateral Agent the right to cure such ESSA Default within the applicable cure period under the ESSA, which cure period shall run concurrently with that afforded Project Company under the ESSA. In addition, if Collateral Agent gives SDCP written notice prior to the expiration of the applicable cure period under the ESSA of Collateral Agent's intention to cure such ESSA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such ESSA Default) and is diligently proceeding to cure such ESSA Default, notwithstanding the applicable cure period under the ESSA, Collateral Agent shall have a period of sixty (60) days (or, if such ESSA Default is for failure by the Project Company to pay an amount to SDCP which is due and payable under the ESSA other than to provide ESSA Collateral, thirty (30) days, or, if such ESSA Default is for failure by Project Company to provide ESSA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such ESSA Default from SDCP to cure such ESSA Default; provided, (a) if possession of the Project is necessary to cure any such non-monetary ESSA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the ESSA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the ESSA Default, to complete such proceedings and cure such ESSA Default, and (b) if Collateral Agent is prohibited from curing any such ESSA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a ESSA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide SDCP with reports concerning the status of efforts to cure a ESSA Default upon SDCP's reasonable request.

1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a "Financing Document Default Notice") SDCP that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer of the Project, the ESSA or the Assigned Interests following a Financing Document Event of Default, Collateral Agent (or its designee), if such judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer directly involves the ESSA, shall be substituted for Project Company (the "Substitute Owner") under the ESSA, and, subject to Sections 1.7(b) and 1.7(c) below, SDCP and Substitute Owner will recognize each other as counterparties under the ESSA and will continue to perform their respective obligations (including those obligations accruing to SDCP and the Project Company prior to the existence of the Substitute Owner) under the ESSA in favor of each other in accordance with the terms thereof; provided, before SDCP is required to recognize the Substitute Owner, the Substitute Owner must (i) be a Permitted Transferee (as defined in the ESSA) or other permitted assignee under the ESSA or (ii) have demonstrated to SDCP's reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience to own and manage the operations of the Project. If the judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer involves the Assigned Interests, the Person taking assignment or ownership of the Assigned Interests must (i) be a Permitted Transferee (as defined in the ESSA) or other permitted assignee under the ESSA or (ii) have demonstrated to SDCP's reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience to own and manage the operations of the Project. SDCP acknowledges and agrees that the Collateral Agent, during the time that it may be the Substitute Owner or owns the Assigned Interests, is not required to meet the requirements of a Permitted Transferee. For purposes of the foregoing, SDCP shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the ESSA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

1.5 Replacement Agreements.

Subject to Section 1.7, if the ESSA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) ("Replacement Owner"), SDCP shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the ESSA remaining to be performed having terms substantially the same as the terms of the ESSA with respect to the remaining Contract Term ("Replacement ESSA"); provided, before SDCP is required to enter into a Replacement ESSA, the Replacement Owner (i) is a Permitted Transferee (as defined in the ESSA) or other permitted assignee under the ESSA or (ii) have demonstrated to SDCP's reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience to own and manage the operations of the Project. SDCP acknowledges and agrees that the Collateral Agent, during the time that it may be the Replacement Owner, is not required to meet the requirements of a Permitted Transferee. For purposes of the foregoing, SDCP is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement ESSA, to the extent SDCP is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the ESSA, SDCP may suspend performance of its obligations under such Replacement ESSA, unless and until all ESSA Defaults of Project Company under the ESSA or Replacement ESSA have been cured or such cure is being pursued in accordance with Section 1.3.

1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the ESSA and a Replacement ESSA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a "Person") to which the Project is transferred; *provided*, the proposed transferee (i) is a Permitted Transferee (as defined in the ESSA) or other permitted assignee under the ESSA or (ii) have demonstrated to SDCP's reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience to own and manage the operations of the Project.

1.7 Assumption of Obligations.

(a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to SDCP all of the obligations of Project Company, Substitute Owner or Replacement Owner under the ESSA or Replacement ESSA, as applicable, including posting and collateral assignment of the ESSA Collateral. Upon such assignment and the cure of any outstanding ESSA Default, and payment of all other amounts due and payable to SDCP in respect of the ESSA or such Replacement ESSA, the transferor shall be released from any further liability under the ESSA or Replacement ESSA, as applicable.

(b) <u>Substitute Owner.</u>

Subject to Section 1.7(c), any Substitute Owner that becomes a party to the ESSA pursuant to Section 1.4 shall be required to perform Project Company's obligations under the ESSA, including posting and collateral assignment of the ESSA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the ESSA.

(c) <u>No Liability</u>.

SDCP acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the ESSA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company's obligations under the ESSA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement ESSA, Collateral Agent shall not have any personal liability to SDCP under the ESSA or Replacement ESSA and the sole recourse of SDCP in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; *provided*, such limited recourse shall not limit SDCP's right to seek equitable or injunctive relief against Collateral Agent, or SDCP's rights with respect to any offset rights expressly allowed under the ESSA, a Replacement ESSA or the ESSA Collateral.

1.8 <u>Delivery of Notices</u>.

SDCP shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by SDCP to Project Company pursuant to the ESSA relating to (a) a ESSA Default by Project Company under the ESSA, (b) any claim regarding Force Majeure by SDCP under the ESSA, (c) any notice of dispute under the ESSA, (d) any notice of intent to terminate or any termination notice, (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent, and (f) any other notice that could result in a ESSA Default or a waiver, amendment or modification to the rights or obligations of the Project Company or SDCP under the Agreement. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy SDCP's obligation to give Collateral Agent a notice of ESSA Default under Section 1.3. Collateral Agent shall deliver to SDCP, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

1.9 <u>Confirmations</u>.

SDCP will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the ESSA (including the performance of same by Project Company); provided, such confirmation may be limited to matters of which SDCP is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of SDCP under the ESSA as between SDCP and Project Company.

1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until SDCP receives a Financing Document Default Notice, SDCP shall deal exclusively with Project Company in connection with the performance of SDCP's obligations under the ESSA. From and after such time as SDCP receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement ESSA is entered into or the ESSA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, SDCP shall, until Collateral Agent confirms to SDCP in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of SDCP's obligations under the ESSA, and SDCP may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

1.11 No Amendments.

To the extent permitted by Laws, SDCP agrees that it will not, without the Project Company obtaining prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the ESSA (b) terminate or suspend its performance under the ESSA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the ESSA by Project Company.

SECTION 2. PAYMENTS UNDER THE ESSA

2.1 Payments.

Unless and until SDCP receives written notice to the contrary from Collateral Agent, SDCP will make all payments to be made by it to Project Company under or by reason of the ESSA directly to Project Company. SDCP, Project Company, and Collateral Agent acknowledge that SDCP will be deemed to be in compliance with the payment terms of the ESSA to the extent that SDCP makes payments in accordance with Collateral Agent's instructions.

2.2 No Offset, Etc.

All payments required to be made by SDCP under the ESSA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the ESSA.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF SDCP

SDCP makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

3.1 <u>Organization</u>.

SDCP is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the

California Public Utilities Commission, and is qualified to conduct business in its jurisdiction. SDCP has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the ESSA, and to carry out the terms hereof and the transactions contemplated hereby and thereby.

3.2 Authorization.

The execution, delivery and performance by SDCP of this Consent and the ESSA have been duly authorized by all necessary corporate or other action on the part of SDCP and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of SDCP which, if not obtained, will prevent SDCP from performing its obligations hereunder or under the ESSA except approvals or consents which have previously been obtained and which are in full force and effect.

3.3 <u>Execution and Delivery; Binding Agreements.</u>

Each of this Consent and the ESSA is in full force and effect, have been duly executed and delivered on behalf of SDCP by the appropriate officers of SDCP, and constitute the legal, valid and binding obligation of SDCP, enforceable against SDCP in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) neither SDCP nor, to SDCP's actual knowledge, Project Company, is in default of any of its obligations under the ESSA; (b) SDCP and, to SDCP's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the ESSA; (c) to SDCP's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either SDCP or Project Company to terminate or suspend its obligations under the ESSA; and (d) the ESSA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

3.5 No Previous Assignments.

SDCP has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the ESSA, except as previously disclosed in writing and consented to by SDCP.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and SDCP:

4.1 Organization.

Project Company is a [Legal Status of Seller] duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the ESSA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the ESSA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, SDCP, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, SDCP, has complied with all conditions precedent to the effectiveness of its obligations under the ESSA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either SDCP or Project Company to terminate or suspend its obligations under the ESSA; and (d) the ESSA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

4.5 <u>No Previous Assignments.</u>

Project Company has not previously assigned all or any part of its rights under the ESSA.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of SDCP and Project Company:

5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

SECTION 6. MISCELLANEOUS

6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the ESSA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to SDCP or Project Company, in accordance with [Notice Section of the ESSA] of the ESSA, (b) if to Collateral Agent, to [Collateral Agent Name], [Collateral Agent Address], Attn: [Collateral Agent Contact Information], Telephone: [___], Fax: [___], and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

6.2 Governing Law; Submission to Jurisdiction.

- (a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.
- (b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the ESSA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection

which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 <u>Headings Descriptive</u>.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by SDCP, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party's obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until SDCP has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the ESSA or any Replacement ESSA, its obligations under such ESSA or Replacement ESSA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

SDCP hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 <u>Counterparts; Electronic Signatures.</u>

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

[NAME OF PROJECT COMPANY], [Legal Status of Project Company].	SAN DIEGO COMMUNITY POWER, a California joint powers authority.
By:	By:
[Name] [Title]	[Name] [Title]
Date:	Date:
[NAME OF COLLATERAL AGENT], [Legal Status of Collateral Agent].	
By:	
[Name] [Title]	
Date:	

SCHEDULE A

[Desc	cribe any	disclo	osures	relevant	to	representations	and	warranties	made	in	Section 3	3.4	ŀ]
-------	-----------	--------	--------	----------	----	-----------------	-----	------------	------	----	-----------	-----	----

SCHEDULE B

[Describe any disclosures relevant to representations and warranties made in Section 4.4]

EXHIBIT U
COMMITTED STORAGE CAPACITY

Year	Committed Storage Capacity
1	
2	
3 4	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	



SAN DIEGO COMMUNITY POWER Staff Report – Item 16

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services; and

Andrea Torres, Sr. Portfolio Manager, Power Services

Via: Karin Burns, Chief Executive Officer

Subject: Energy Storage Service Agreement Pomona Energy Storage 2, LLC

Date: November 16, 2023

RECOMMENDATION

Adopt the proposed Renewable Energy Storage Service Agreement with Pomona Energy Storage 2, LLC and authorize the CEO to execute the agreement.

BACKGROUND

As San Diego Community Power (SDCP) strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term contracts of at least 10 years in duration are integral components of its energy supply portfolio. Long-term contracts provide renewable generation and clean energy storage facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term contracts that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term contracts lock in energy and capacity 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.

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 and storage facilities that will achieve commercial operation during 2023 through 2026.

The proposed Energy Storage Service Agreement (ESSA) is for capacity, energy arbitrage and ancillary services benefits from a 20 MW/40 MWh, 2-hour battery energy storage facility (Pomona 2) with Pomona Energy Storage 2, LLC, a subsidiary of Ormat Technologies. The ESSA originated from bilateral negotiations with periodic reviews with the Ad Hoc Energy Contract Working Group (ECWG). The parties have reached mutually agreeable terms which have been reviewed at a high level with the ECWG.

ANALYSIS AND DISCUSSION

Staff negotiated the attached full toll ESSA for the purchase of capacity, energy arbitrage and ancillary services from the Pomona 2 project, which is an operational standalone battery storage project in Los Angeles County.

The Pomona 2 project is adjacent to Pomona 1, an operational project since 2016 for which Southern California Edison has a contract for resource adequacy. Because Pomona 2 is already operating in CAISO markets, this project can commence its delivery term for SDCP in January 2024 and will be the first operational storage asset in SDCP's portfolio of long-term contracts. Pomona 2 will contribute to SDCP's mid-term reliability requirements mandated by the CPUC.

Below is additional information regarding Ormat Technologies and the draft ESSA.

Background on Ormat Technologies

- Ormat Technologies Inc was established in 1965.
- Ormat has a current generating portfolio of over 1 GW spread globally in the U.S., Kenya, Guatemala, Indonesia, Honduras, and Guadeloupe. This is comprised of geothermal, solar, and waste heat recovery plants.
- Ormat has a current operational battery energy storage portfolio of 107 MW in the U.S. with an additional 204 MW / 464 MWh of BESS currently under construction in CA, TX, NJ, and OH.

Contract Overview – Pomona Energy Storage 2, LLC

- Project: 20 MW/40 MWh (2-hour) lithium-ion battery energy system
- Project location: Los Angeles County, California
- Expected initial delivery date: January 1, 2024
- Contract term: 15 years
- Pricing: Fixed capacity price adjusted for availability and verified capacity
- SDCP would receive financial compensation in the event of seller's failure to meet guaranteed efficiency rates once the project is operational.

COMMITTEE REVIEW

The ECWG approved key ESSA terms on October 23, 2023 to move forward with the execution of this ESSA.

FISCAL IMPACT

The capacity pricing of the ESSA is confidential, but the long-term purchase of capacity, energy arbitration, and ancillary services will provide SDCP with significant value and cost certainty over the term of this ESSA.

ATTACHMENTS

Attachment A: Energy Storage Service Agreement with Pomona Energy Storage 2, LLC (redacted version for commercially sensitive information)

EXECUTION VERSION

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

<u>Seller</u>: Pomona Energy Storage 2 LLC ("<u>Seller</u>")

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

<u>Description of Facility</u>: $20 \text{ MW}_{AC} / 40 \text{ MWh}$ battery energy storage facility, located in Los Angeles County, in the State of California, as further described in Exhibit A.

Delivery Term: Fifteen (15) Contract Years

<u>Guaranteed Capacity</u>: The amounts set forth in the table below corresponding to two (2) and four (4) hours of continuous discharge, as applicable.

Contract Year	Capacity at two (2) hours (MWAC)	Capacity at four (4) hours (MWAC)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		

Dedicated Interconnection Capacity: Twenty (20) MW

Guaranteed Availability:

Guaranteed Efficiency Rate: The amounts set forth in the table below.

Contract Year	Efficiency Rate
1	
2	
3	
4	
5	

6		
7		
8		
9		
10		
11		
12		
13		
14		
15		

Minimum Efficiency Rate:

Contract Price:

Contract Year	Contract Price
1 – 15	

Product:

- □ Discharging Energy
- ⊠ Effective Capacity
- □ Capacity Attributes

Scheduling Coordinator: Buyer/Buyer Third Party



TABLE OF CONTENTS

		Page
ARTICLE 1	DEFINITIONS	1
1.1	Contract Definitions	1
1.2	Rules of Interpretation	
ARTICLE 2	TERM; CONDITIONS PRECEDENT	
2.1	Contract Term.	
2.2	Initial Delivery Date; Conditions Precedent	
2.3	Pre-Initial Delivery Date Actions	
ARTICLE 3	PURCHASE AND SALE	21
3.1	Product	21
3.2	Discharging Energy	
3.3	Capacity Attributes	
3.4	Ancillary Services.	
3.5	Resource Adequacy Failure	
3.6	Buyer's Re-Sale of Product	
3.7	Compliance Expenditure Cap	
ARTICLE 4	OBLIGATIONS AND DELIVERIES	
4.1	Delivery	24
4.2	Interconnection	
4.3	Storage Availability and Efficiency	
4.4	Facility Testing	
4.5	Testing Costs and Revenues	
4.6	Facility Operations	
4.7	Dispatch Notices	
4.8	Facility Unavailability to Receive Dispatch Notices	
4.9	Energy Management.	
4.10	Capacity Availability Notice	
4.11	[Reserved]	
4.12	Outages	
	TAXES, GOVERNMENTAL COSTS	
5.1	Allocation of Taxes and Charges	31
5.2	Cooperation	31
ARTICLE 6	MAINTENANCE AND REPAIR OF THE FACILITY	31
6.1	Maintenance of the Facility.	31
6.2	Maintenance of Health and Safety.	
6.3	Shared Facilities	
ARTICLE 7	METERING	32
7.1	Metering	32
7.1	Meter Verification.	
ARTICLE 8	B INVOICING AND PAYMENT; CREDIT	33

	8.1	Invoicing	33
	8.2	Payment	
	8.3	Books and Records	
	8.4	Payment Adjustments; Billing Errors	
	8.5	Billing Disputes	
	8.6	Netting of Payments	
	8.7	Seller's Performance Security	
	8.8	First Priority Security Interest in Cash or Cash Equivalent Collateral	
	8.9	Financial Statements	
ARTI	CLE 9	NOTICES	36
	9.1	Addresses for the Delivery of Notices	36
	9.2	Acceptable Means of Delivering Notice	
ARTI	CLE 1	0 FORCE MAJEURE	
	10.1	Definition	
	10.1		
	10.2	No Liability If a Force Majeure Event Occurs	
	10.3	Termination Following Force Majeure Event	
AKTI		1 DEFAULTS; REMEDIES; TERMINATION	
	11.1	Events of Default	
	11.2	Remedies; Declaration of Early Termination Date	
	11.3	Termination Payment	
	11.4	Notice of Payment of Termination Payment	
	11.5	Disputes With Respect to Termination Payment	42
	11.6	Limitation on Seller's Ability to Make or Agree to Third-Party Sales from	
		the Facility after Early Termination Date	
	11.7	Rights And Remedies Are Cumulative	
	11.8	Mitigation	43
ARTI	CLE 1	2 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES	43
	12.1	No Consequential Damages	43
	12.2	Waiver and Exclusion of Other Damages	43
ARTI	CLE 1	3 REPRESENTATIONS AND WARRANTIES; COVENANTS	44
	13.1	Seller's Representations and Warranties	44
	13.2	Buyer's Representations and Warranties	
	13.3	General Covenants	
	13.4	Seller's Covenants	46
ARTI	CLE 1	4 ASSIGNMENT	47
	14.1	General Prohibition on Assignments	47
	14.2	Collateral Assignment	
	14.3	Permitted Assignment	
	14.4	Portfolio Financing	
	14.5	Buyer Financing Assignment.	

ARTICLE	15 DISPUTE RESOLUTION	50
15.1	Governing Law.	50
15.2		
15.3	Attorneys' Fees.	50
ARTICLE	16 INDEMNIFICATION	50
16.1	Indemnification.	50
16.2		
ARTICLE	17 INSURANCE	52
17.1	Insurance	52
ARTICLE	18 CONFIDENTIAL INFORMATION	53
18.1	Definition of Confidential Information	53
18.2		
18.3		
18.4	1 J J /	
18.5		
ARTICLE	19 MISCELLANEOUS	55
19.1	Entire Agreement; Integration; Exhibits	55
19.2		
19.3		
19.4		
19.5		
19.6	·	
19.7		
19.8	*	
19.9	,	
19.1	8	
19.1	· · · · · · · · · · · · · · · · · · ·	
19.1		
	3 Further Assurances.	
17.1		
Exhibits:		
Exhibit A	Facility Description	
Exhibit B	[Reserved]	
Exhibit C	Compensation	
Exhibit D	Scheduling Coordinator Responsibilities	
Exhibit F	Form of Monthly Expected Available Capacity Report	
Exhibit G	Form of Daily Availability Notice	
Exhibit H	[Reserved]	
Exhibit I	Form of Effective Capacity and Efficiency Rate Test Certificate	
Exhibit J	[Reserved]	
Exhibit K	Form of Letter of Credit	

Exhibit L	Form of Guaranty
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Capacity and Efficiency Rate Tests
Exhibit P	Facility Availability Calculation
Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram

ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement ("<u>Agreement</u>") is entered into as of , 2023 (the "<u>Effective Date</u>"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "<u>Party</u>" and jointly as the "<u>Parties</u>." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

"AC" means alternating current.

"Accepted Compliance Costs" has the meaning set forth in Section 3.7(c).

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

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

"<u>Ancillary Services</u>" means those Ancillary Services, as defined in the CAISO Tariff and as set forth as being available in <u>Exhibit Q</u>, that can be produced from the Facility immediately upon Commercial Operation, and any additional Ancillary Services that are added after the Effective Date pursuant to Section 3.4.

"Approved Maintenance Hours" means
Planned Outages for Facility maintenance scheduled in accordance with Section 4.12(a) and (b).

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

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

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

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

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

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

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

"Battery Charging Factor" means a fraction, the numerator of which is	s the amount of
Charging Energy absorbed by the Facility after	of the charging
phase of the applicable Capacity Test, and the denominator of which is the Effect	ive Capacity.

"<u>Battery Discharging Factor</u>" means one (1) minus a fraction, the numerator of which is the amount of Discharging Energy discharged during of the discharging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.

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

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

"<u>Buyer Default</u>" means a failure by Buyer (or its agents) to perform Buyer's obligations hereunder and includes an Event of Default of Buyer.

- "Buyer Dispatched Test" has the meaning in Section 4.4(c).
- "Buyer's Indemnified Parties" has the meaning set forth in Section 16.1(a).
- "<u>CAISO</u>" means the California Independent System Operator Corporation or any successor entity performing similar functions.
- "CAISO Approved Meter" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Charging Energy and Discharging Energy delivered to or from the Delivery Point.
 - "CAISO Balancing Authority Area" has the meaning set forth in the CAISO Tariff.
 - "CAISO Certification" means the certifications provided for in the CAISO Tariff that
 - "CAISO Charges Invoice" has the meaning set forth in Exhibit D.
- "CAISO Dispatch" means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.
- "CAISO Grid" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.
- "<u>CAISO Tariff</u>" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, as the same may be amended or modified from time-to-time and approved by FERC.
- "Capacity Attribute" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the ability of the Facility to charge, discharge and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.
- "<u>Capacity Test</u>" or "<u>CT</u>" means any test or retest of the Facility to establish the Effective Capacity or Efficiency Rate or any other test conducted pursuant to Exhibit O.
- "<u>CEQA</u>" means the California Environmental Quality Act, as amended or supplemented from time to time.
- "Change of Control" means, except in connection with public market transactions of equity interests or capital stock of Seller's Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than

fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

- (a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and
- (b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.
- "Charging Energy" means the Energy delivered to the Facility pursuant to a Charging Notice, as measured at the Facility Metering Point by the Facility Meter. All Charging Energy shall be used solely to charge the Facility.
- "Charging Notice" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO to the Facility, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions. Any instruction to charge the Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice.
 - "Collateral Assignment Agreement" has the meaning set forth in Section 14.2.
- "Communications Protocols" means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Facility pursuant to this Agreement.
 - "Compliance Actions" has the meaning set forth in Section 3.7(a).
 - "Compliance Expenditure Cap" has the meaning set forth in Section 3.7.
 - "Confidential Information" has the meaning set forth in Section 18.1.
 - "Contract Price" has the meaning set forth on the Cover Sheet.
 - "Contract Term" has the meaning set forth in Section 2.1(a).
- "Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Initial Delivery Date and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.
- "<u>Costs</u>" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into

new arrangements which replace the Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

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

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

"<u>CPUC</u>" means the California Public Utilities Commission, or any successor entity performing similar functions.

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

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

"Curtailment Order" means any of the following:

- (a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, that such Party is required to curtail deliveries of Discharging Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;
- (b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;
- (c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or
- (d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

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

"<u>Day-Ahead Schedule</u>" has the meaning set forth in the CAISO Tariff.

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

- "<u>Defaulting Party</u>" has the meaning set forth in Section 11.1(a).
- "Delivery Point" means the PNode assigned to the Facility by the CAISO.
- "<u>Delivery Term</u>" shall mean 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.
- "<u>Discharging Energy</u>" means all Energy delivered from the Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter.
- "<u>Discharging Notice</u>" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO to the Facility, directing the Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to a specified Stored Energy Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Procedures. Any instruction to discharge the Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.
 - "<u>Disclosing Party</u>" has the meaning set forth in Section 18.2.
- "<u>Dispatch Notice</u>" means any Charging Notice, Discharging Notice and any subsequent updates thereto, given by the CAISO, Buyer or Buyer's SC, to Seller, directing the Facility to charge or discharge Energy at a specific MWh rate and either for a specified period of time or to a specified Stored Energy Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions.
 - "Early Termination Date" has the meaning set forth in Section 11.2(a).
- "Effective Capacity" means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for two (2) hours of continuous discharge, as measured in MW at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point to the extent such Electrical Losses are not already reflected in the Facility Meter measurements) as determined pursuant to the most recent Capacity Test (including the Initial Delivery Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of twenty (20) MW.
 - "Effective Date" has the meaning set forth on the Preamble.
 - "Effective Flexible Capacity" or "EFC" has the meaning set forth in the CAISO Tariff.
- "<u>Efficiency Rate</u>" means the tested rate calculated pursuant to Sections II.H(2) and III(A) of <u>Exhibit O</u> by dividing Discharging Energy by Charging Energy.
- "<u>Electrical Losses</u>" means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Delivery

Point and the Facility associated with delivery of Charging Energy, and (b) between the Facility and the Delivery Point associated with delivery of Discharging Energy.

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

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

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

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



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

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

"<u>Facility</u>" means the energy storage facility described on the Cover Sheet and in <u>Exhibit</u> <u>A</u>, located at the Site and including the Energy Management System and mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared

Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

"Facility Meter" means a CAISO Approved Meter, along with a CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Facility Metering Point and the amount of Discharging Energy discharged from the Facility at the Facility Metering Point to the Delivery Point, including any adjustment to reflect Electrical Losses, for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

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

"<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor government agency.

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

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

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

"<u>Full Capacity Deliverability Status</u>" or "<u>FCDS</u>" has the meaning set forth in the CAISO Tariff.

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

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

"<u>Guaranteed Availability</u>" means the minimum guaranteed Monthly Capacity Availability of the Facility in each month of the Delivery Term, as set forth on the Cover Sheet.

"Guaranteed Capacity" means the dependable operating capability of the Facility to discharge electric energy, as measured in MW_{AC} at the Delivery Point, as set forth on the Cover Sheet.

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

"Guaranteed RA Amount" means, at any point in time, the maximum quantity of Resource Adequacy Benefits (in MWs), not including those associated with Local RAR, for which a stand-alone storage facility; located at the Site or in a comparable location; without on-site generation; charging from the grid; having a PMAX_{RA} equal to the then applicable four (4) hour Guaranteed Capacity; having achieved FCDS; performing with operational characteristics equal to those required by the Guaranteed Availability, Guaranteed Efficiency Rate, and the Operating Restrictions may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

"Guarantor" means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody's, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

"<u>Guaranty</u>" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

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

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

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

demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

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

"<u>Initial Delivery Capacity Test</u>" means the Capacity Test conducted prior to the Initial Delivery Date of the Facility.

"<u>Initial Delivery Date</u>" means the date on which Seller's delivery of Product to Buyer shall commence, subject to satisfaction of the conditions precedent in Section 2.2.

"Insurable Force Majeure Event" means any Force Majeure Event that results in direct, physical loss to the Facility, excluding Force Majeure Events that occur on the high voltage side of the Facility's main power transformer.

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

"<u>Interconnection Agreement</u>" means the interconnection agreement(s) entered into by Seller or a Seller Affiliate pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility that is no less than the Dedicated Interconnection Capacity, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be operated and maintained during the Contract Term.

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

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

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

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

"<u>Joint Powers Act</u>" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"<u>Joint Powers Agreement</u>" 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.

"<u>kWh</u>" means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

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

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

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

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

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

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

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

prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes.



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

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

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

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

"<u>Maximum Stored Energy Level</u>" means, at a particular time, the maximum amount of electric Energy that may be stored in the Facility to be discharged as Discharging Energy, expressed in MWh and as set forth in <u>Exhibit Q.</u>

"Minimum Efficiency Rate" means the percentage specified on the Cover Sheet.

"<u>Minimum Stored Energy Level</u>" means, at a particular time, the minimum amount of electric Energy that may be stored in the Facility to be discharged as Discharging Energy, expressed in MWh and as set forth in <u>Exhibit Q</u>.

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

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

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

- "Must Offer Obligations" means the obligations to offer the Net Qualifying Capacity in order to satisfy Resource Adequacy Requirements, including under Section 40.6 of the CAISO Tariff.
- "<u>MW</u>" means megawatts in alternating current, unless expressly stated in terms of direct current.
- "<u>MWh</u>" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.
- "<u>NERC</u>" means the North American Electric Reliability Corporation, or any successor entity performing similar functions.
 - "Net Qualifying Capacity" or "NQC" has the meaning set forth in the CAISO Tariff.
 - "Network Upgrades" has the meaning set forth in the CAISO Tariff.
 - "Non-Defaulting Party" has the meaning set forth in Section 11.2.
- "<u>Notice</u>" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).
- "<u>Notification Deadline</u>" in respect of a Showing Month shall be fifteen (15) Business Days before the relevant deadlines for the corresponding Supply Plan for such Showing Month.
- "<u>Operating Restrictions</u>" means those restrictions, rules, requirements, and procedures set forth in <u>Exhibit Q</u>.



- "Outage Schedule" has the meaning set forth in Section 4.12(a)(i).
- "Party" has the meaning set forth in the Preamble.
- "<u>Performance Security</u>" means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth on the Cover Sheet.
- "<u>Permitted Transferee</u>" means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:
- (a) A tangible net worth of not less than One Hundred Fifty Million Dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P or Baa3 from Moody's; and

- (b) At least two (2) years of experience in the ownership and operations of energy generation or storage facilities similar to the Facility or has retained a third-party with such experience to operate the Facility.
- "Person" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.
- "Planned Outage" means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.12(a).
 - "PMAX" means the applicable CAISO-certified maximum operating level of the Facility.
 - "PMAX_{RA}" has the meaning set forth in CPUC Decision 14-06-050.
 - "PMIN" means the applicable CAISO-certified minimum operating level of the Facility.
 - "PNode" has the meaning set forth in the CAISO Tariff.
- "Portfolio" means the portfolio of electrical energy generating, electrical energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller's Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.
- "Portfolio Financing" means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.
- "<u>Portfolio Financing Entity</u>" means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.
 - "Product" has the meaning set forth on the Cover Sheet.
- "Prudent Operating Practice" means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States, and (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as

they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

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

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

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

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

"RA Shortfall" has the meaning set forth in Section 3.5(b).

"<u>RA Shortfall Month</u>" means any Showing Month during the Delivery Term, commencing with the Showing Month that contains the Initial Delivery Date, during which the Resource Adequacy Benefits provided to Buyer from the Facility for such Showing Month was less than the then applicable Guaranteed RA Amount for such Showing Month.

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

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

"Replacement RA" means Resource Adequacy Benefits (other than those associated with Local RAR) that are (a) equivalent or superior to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, unless Buyer consents to accept Replacement RA that provides non-equivalent Resource Adequacy Benefits, and (b) are provided from a Resource Adequacy Resource located within the CAISO Balancing Authority Area.

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

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

- "Resource Adequacy Capacity" or "RA Capacity" has the meaning set forth in the CAISO Tariff.
- "Resource Adequacy Requirements" or "RAR" means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.
- "Resource Adequacy Resource" shall have the meaning used in Resource Adequacy Rulings.
- "Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by the CPUC or the CAISO, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.
- "<u>S&P</u>" means the Standard & Poor's Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.
- "<u>SCADA Systems</u>" means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer's SC.
- "<u>Schedule</u>" has the meaning set forth in the CAISO Tariff, and "<u>Scheduled</u>" and "<u>Scheduling</u>" have a corollary meaning.
- "Scheduled Energy" means the Charging Energy schedule or Discharging Energy schedule, as applicable, that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or CAISO dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.
- "Scheduling Coordinator" or " \underline{SC} " means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.
 - "Security Interest" has the meaning set forth in Section 8.9.
 - "Seller" has the meaning set forth on the Cover Sheet.
 - "Seller's Indemnified Parties" has the meaning set forth in Section 16.1(b).

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

"Settlement Amount" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be Zero Dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

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

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

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

"<u>Site</u>" means the real property on which the Facility is located, as further described in Exhibit A.

"<u>Site Control</u>" means that, for the Contract Term, Seller: (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.

"<u>State of Charge</u>" or "<u>SOC</u>" means the ratio of (a) the Stored Energy Level of the Facility to (b) the Effective Capacity multiplied by two (2) hours, expressed as a percentage.

"<u>Station Use</u>" means the Energy that is used within the Facility to power certain lights, motors, temperature control systems, control systems and other ancillary electrical loads that are necessary for operation of the Facility during periods in which the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice.

"<u>Stored Energy Level</u>" means, at a particular time, the amount of electric Energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

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

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

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

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

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

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

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

"Termination Payment" has the meaning set forth in Section 11.3.

"<u>Throughput</u>" means, for a day or Contract Year (as the context dictates), the cumulative amount of Discharging Energy from the Facility for such time period.

"<u>Transmission Provider</u>" means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Discharging Energy from the Delivery Point. As of the Effective Date, the Transmission Providers are Southern California Edison Company and CAISO.

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

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

"<u>Ultimate Parent</u>" means Ormat Nevada, Inc., a corporation registered in the State of Delaware.

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

- 1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:
- (a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;
- (c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;
- (e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;
- (f) a reference to a Person includes that Person's successors and permitted assigns;
- (g) the terms "include" and "including" mean "include or including (as applicable) without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- (h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

- (i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;
- (j) references to any amount of money shall mean a reference to the amount in United States Dollars;
- (k) the expression "and/or" when used as a conjunction shall connote "any or all of";
- (l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and
- (m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

- (a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("<u>Contract Term</u>"); *provided*, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.
- (b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.
- 2.2 <u>Initial Delivery Date</u>; <u>Conditions Precedent</u>. The Initial Delivery Date shall be January 1, 2024, subject to the Parties' satisfaction of the conditions precedent set forth below:
- (a) Seller has taken all actions and executed all documents and instruments, required to authorize Buyer (or its designated agent) to act as Scheduling Coordinator under this Agreement and to fully enable the Facility to be Scheduled by Buyer, and Buyer (or its designated agent) is authorized to act as Scheduling Coordinator;

- (b) Seller has delivered the Performance Security to Buyer in accordance with Section 8.7; and
- (c) Seller has made available to Buyer's Scheduling Coordinator all real-time telemetry data reasonably necessary for Buyer's Scheduling Coordinator to perform its duties as Buyer's Scheduling Coordinator, including the relevant operational data specified in Exhibit B, in respect of the Facility.
- 2.3 <u>Pre-Initial Delivery Date Actions</u>. The Parties agree that, in order for Buyer to dispatch the Facility for the Initial Delivery Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Initial Delivery Date, including, without limitation, Seller's delivery of an Availability Notice for the Initial Delivery Date, and Buyer's delivery of a Dispatch Notice and nominating and scheduling the Facility for the Initial Delivery Date, in advance of the Initial Delivery Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Initial Delivery Date.

ARTICLE 3 PURCHASE AND SALE

- 2.1 Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to the Effective Capacity and all Product associated therewith. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or the CAISO pursuant to this Agreement or as otherwise required by Law.
- 3.2 <u>Discharging Energy</u>. Subject to the terms and conditions of this Agreement, Seller commits to make available the Discharging Energy to Buyer during the Delivery Term, and Buyer shall have the exclusive rights to all such Discharging Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

3.3 **Capacity Attributes.**

- (a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.
- (b) Throughout the Delivery Term and subject to Section 3.7, Seller shall maintain Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term and subject to Section 3.7, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits, including Flexible Capacity, from the Facility to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.7, Seller
shall take all commercially reasonable administrative actions, including complying with all
applicable registration and reporting requirements, and execute all documents or instruments
necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer
pursuant to this Agreement.

3.4 <u>Ancillary Services</u> . Buyer shall have the exclusive rights to all Ancillary Services. Seller shall operate and maintain the Facility throughout the Contract Term so as to be able to
provide Ancillary Services in accordance with the specifications set forth in the Facility's initial
CAISO Certification and Exhibit Q;

3.5 **Resource Adequacy Failure**.

- (a) <u>RA Deficiency Determination</u>. For each RA Shortfall Month, Seller shall pay to Buyer as liquidated damages the RA Deficiency Amount, as set forth in Section 3.5(b), and/or provide Replacement RA, as set forth in Section 3.5(c), as the sole and exclusive remedy for the Resource Adequacy Benefits that Seller failed to convey to Buyer.
- (b) <u>RA Deficiency Amount Calculation</u>. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of:
- (i) the difference, expressed in kW, of the then applicable Guaranteed RA Amount of the Facility, ("RA Shortfall");
- (ii) multiplied by the sum of the CPM Soft Offer Cap and the RA Penalties for System RAR applicable to the RA Shortfall for such RA Shortfall Month (expressed in dollars per kW-month)
- (c) If Seller anticipates that it will have an RA Shortfall Month, Seller may, provide Replacement RA in the amount of the RA Shortfall;

- Buyer's Re-Sale of Product. Buyer shall have the exclusive right in its sole 3.6 discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser, so long as Seller does not incur any cost (other than de minimis administrative cost) or material risk resulting therefrom; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, so long as Seller does not incur any cost (other than de minimis administrative cost) or material risk resulting therefrom, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable administrative actions and execute all documents or instruments reasonably requested by Buyer to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product and Buyer shall indemnify and hold Seller harmless against any and all claims from a Subsequent Purchaser.
- 3.7 <u>Compliance Expenditure Cap</u>. Notwithstanding anything herein to the contrary, if a change in Laws occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Capacity Attributes or Ancillary Services, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped at ("Compliance Expenditure Cap").
- (a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "<u>Compliance Actions</u>."
- (b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.
- (c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "Accepted Compliance Costs"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.7 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.

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

ARTICLE 4 OBLIGATIONS AND DELIVERIES

- 4.1 <u>Delivery</u>. Subject to the provisions of this Agreement, including Section 4.9(a), commencing on the Initial Delivery Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Discharging Energy to the Delivery Point, including any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Charging Energy to the Delivery Point (including the cost of Charging Energy itself) and delivery of Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Charging Energy and Discharging Energy will be scheduled to the CAISO by Buyer in accordance with Exhibit D.
- 4.2 <u>Interconnection</u>. Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. During the Delivery Term, Seller shall have and maintain interconnection capacity available or allocable to the Facility that is no less than the Dedicated Interconnection Capacity throughout the Delivery Term.

4.3 **Storage Availability and Efficiency**.

- (a) During the Delivery Term, the Facility shall maintain a Monthly Capacity Availability during each month of no less than the Guaranteed Availability, which Monthly Capacity Availability shall be calculated in accordance with Exhibit P. If the Monthly Capacity Availability during any month of the Delivery Term is less than the Guaranteed Availability, then Buyer's Monthly Capacity Payment shall be calculated by reference to the Availability Adjustment (as determined in accordance with Exhibit C).
- (b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate, which Efficiency Rate shall be calculated in accordance with a Capacity Test conducted pursuant to Exhibit O. If the Efficiency Rate during any month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages pursuant to Exhibit C.

4.4 **Facility Testing**.

(a) <u>Capacity Tests</u>. Prior to the Initial Delivery Date, Seller shall schedule and complete an Initial Delivery Capacity Test in accordance with <u>Exhibit O</u>. Thereafter, Seller and Buyer shall have the right to run additional Capacity Tests in accordance with <u>Exhibit O</u>.

- (i) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests. Alternatively, to the extent that any Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests.
- (ii) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Capacity Test varies from the then current Effective Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate determined pursuant to such Capacity Test shall become the new Effective Capacity and/or Efficiency Rate, as applicable, at the beginning of the day following the completion of the test for all purposes under this Agreement until a revised Effective Capacity and/or Efficiency Rate, as applicable, is determined pursuant to a subsequent Capacity Test.
- (b) <u>Additional Testing</u>. Seller shall conduct such additional testing as necessary to ensure the Facility is functioning properly and the Facility is able to respond to Dispatch Notices pursuant to Section 4.6(b).
- shall be deemed Buyer-instructed dispatches of the Facility ("Buyer Dispatched Test"). Any test of the Facility that is not a Buyer Dispatched Test, including all tests conducted prior to the Initial Delivery Date, any Initial Delivery Capacity Test, any Capacity Test conducted if the Effective Capacity immediately prior to such Capacity Test is below of the Guaranteed Capacity (regardless of which Party requests such Capacity Test), any test required by CAISO (including any test required to obtain or maintain CAISO Certification but excluding any testing required by CAISO after the Initial Delivery Capacity Test to establish PMAX) and other Seller-requested discretionary tests or dispatches that Seller deems necessary for purposes of reliably operating or maintaining the Facility shall be deemed a "Seller Initiated Test".
- (i) For any Seller Initiated Test other than a Capacity Test required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto; *provided*, such twenty-four (24) hours prior notice may be shortened to the extent necessary to maintain equipment warranties or to respond to an emergency condition consistent with Prudent Operating Practices.
- (ii) No Dispatch Notices shall be issued during any Seller Initiated Test. Dispatch Notices may be issued during a Buyer Dispatched Test as reasonably necessary to implement the applicable test. The Facility shall be deemed unavailable during any Seller Initiated Test. Any Buyer Dispatched Test shall be deemed an Excused Event for the purposes of calculating the Monthly Capacity Availability.

4.5 **Testing Costs and Revenues**.

(a) Buyer shall be responsible for paying for all Energy to charge the Facility and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test. Seller shall be responsible for paying for all Energy to charge the Facility and shall be entitled to all CAISO

revenues associated with a Seller Initiated Test. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with <u>Exhibit C</u>, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

- (b) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.
- (c) Except as set forth in Sections 4.5(a) and (b), all other costs of any testing of the Facility shall be borne by Seller.

4.6 **Facility Operations**.

- (a) Seller shall operate the Facility in accordance with Prudent Operating Practices.
- (b) During the Delivery Term, Seller shall maintain SCADA Systems, communications links, and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice ("Automated Dispatches"). In the event of the failure or inability of the Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer's review and comment. During any period during which the Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Dispatch Notices ("Alternative Dispatches").
- (c) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 4.6(c) shall be provided to Buyer within fifteen (15) days of Buyer's request.
 - (d) Seller shall maintain accurate records with respect to all Capacity Tests.
- (e) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.
- 4.7 <u>Dispatch Notices</u>. Buyer shall have the right to dispatch the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to the Operating Restrictions, each Dispatch Notice shall be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer or Buyer's SC. If Automated Dispatches are not possible for reasons beyond Buyer's

control, Alternative Dispatches may be provided pursuant to Section 4.6(b).

4.8 <u>Facility Unavailability to Receive Dispatch Notices</u>. To the extent the Facility is unable to receive or respond to Dispatch Notices either through Automated Dispatches or Alternative Dispatches during any Settlement Interval or Settlement Period, unless caused by the fault or negligence of Buyer, then as an exclusive remedy, the time period corresponding to such Settlement Interval or Settlement Period shall be deemed unavailable for purposes of calculating the Monthly Capacity Availability except to the extent that the Facility is unable to receive or respond to Dispatch Notices due to any circumstances at the high-voltage side of the Delivery Point or beyond that point.

4.9 **Energy Management**.

- (a) <u>Charging Generally</u>. Upon receipt of a valid Charging Notice, Seller shall take all action necessary to deliver the Charging Energy to the Facility from the Delivery Point. Seller shall maintain, repair or replace equipment in Seller's possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all costs and charges of delivering the Charging Energy to the Delivery Point, including all CAISO costs and charges associated with Charging Energy.
- (b) <u>Charging Notices</u>. Buyer shall have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Charging Notices to be issued, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this Agreement shall be effective unless and until Buyer, Buyer's SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice. Buyer shall be responsible for issuing all Charging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligation.
- (c) <u>No Unauthorized Charging</u>. Seller shall not charge the Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. If, during the Delivery Term, Seller charges the Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.9(c), then (i) Seller shall pay to Buyer

, and (ii) Buyer shall be entitled to discharge such Energy and shall be entitled to all of the benefits (including Product) associated with such discharge.

(d) <u>Discharging Notices</u>. Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Discharging Notices to be issued, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement shall be effective

unless and until Buyer, Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice. Buyer shall be responsible for issuing all Discharging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligation.

- (e) <u>No Unauthorized Discharging</u>. Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority.
- (f) <u>Unauthorized Charges and Discharges</u>. If Seller or any third party under Seller's control charges, discharges or otherwise uses the Facility other than as permitted hereunder, or as is expressly addressed in this Section 4.9, Seller shall be liable to Buyer for Buyer's direct actual damages associated therewith, and, if Seller fails to implement procedures reasonably acceptable to Buyer within a reasonable amount of time to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11.
- (g) <u>CAISO Dispatches</u>. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer or Buyer's SC, and Seller shall have no liability for violation of this Section 4.9 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch or Seller negligently or intentionally fails to accurately communicate to Buyer the Facility's availability, Seller shall be responsible for all CAISO charges and penalties resulting from such deviations (in addition to any Buyer remedy related to overcharging of the Facility as set forth in Section 4.9(c)).
- (h) <u>Pre-Initial Delivery Date</u>. Prior to the Initial Delivery Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Facility.
- (i) <u>Curtailments</u>. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Agreement or any Dispatch Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions.
- (j) <u>Station Use</u>. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy used to serve Station Use during periods in which the

Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice), (ii) Energy supplied from Charging Energy or Discharging Energy during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice, or during a Capacity Test, shall not be considered Station Use, (iii) Station Use may be supplied over the same circuit as Charging Energy and Discharging Energy, and (iv) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties or charges for Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use (other than that supplied from Charging Energy, Discharging Energy, or during a Capacity Test as provided in clause (ii)) is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties or charges.

4.10 Capacity Availability Notice.

- (a) No less than thirty (30) days before the beginning of the Initial Delivery Date, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Available Capacity for each day of the following month in a form substantially similar to Exhibit F ("Monthly Forecast").
- (b) During the Delivery Term, Seller shall notify Buyer no later than two (2) Business Days before each schedule day for the Day-Ahead Market, in accordance with CAISO scheduling practices, of any changes to the Monthly Forecast applicable to such schedule day by providing to Buyer and the SC (if applicable) an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (the "Availability Notice"). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in Exhibit G, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.
- (c) Seller shall notify Buyer and the SC (if applicable) as soon as practicable with an updated Monthly Forecast or updated Availability Notice, as applicable, if the Available Capacity of the Facility changes or is expected to change after Buyer's receipt of a Monthly Forecast or Availability Notice, as applicable. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices. Buyer shall not issue any Dispatch Notice that is inconsistent with the most recent Availability Notice.

4.11 **[Reserved]**.

4.12 **Outages**

(a) Planned Outages.

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Initial Delivery Date, Seller shall submit to Buyer Seller's schedule of Planned Outages ("Outage Schedule") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Seller shall limit Planned Outages to periods of the day when Seller does not reasonably believe the Facility will be dispatched. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to

Seller of any reasonable request for changes to the Outage Schedule, and Seller shall use commercially reasonable efforts to accommodate Buyer's requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments.

- (ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than ninety (90) days advance Notice to Buyer, to change the Outage Schedule developed pursuant to Section 4.12(a)(i); *provided*, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff. Buyer shall submit all Supply Plans in accordance with the Outage Schedule, as it may be changed under this Section 4.12(a)(ii).
- (b) <u>No Planned Outages During Summer Months</u>. Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility 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. In the event Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.
- (c) <u>Planned Outage Timing</u>. To the extent commercially reasonable, Seller shall schedule maintenance outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.
- (d) Notice of Unplanned Outages Seller shall notify Buyer by telephoning Buyer's Scheduling Coordinator

 Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.
- (e) <u>Inspection</u>. In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller's safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Facility.
- (f) <u>Reports of Outages</u>. Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws. Seller shall also report all Unplanned Outages or Planned Outages in the Daily Operating Report.

ARTICLE 5 TAXES, GOVERNMENTAL COSTS

- 5.1 Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Buyer's income, revenue, receipts or employees). Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees) or on Charging Energy prior to its delivery to Seller. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes.
- 5.2 <u>Cooperation</u>. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY

6.1 **Maintenance of the Facility**.

- (a) Seller shall, as between Seller and Buyer, be solely responsible for the operation, inspection, maintenance and repair of the Facility, and any portion thereof, in accordance with applicable Law and Prudent Operating Practices. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer upon request. Nothing herein shall limit Seller's right to replace or augment existing batteries and other equipment to maintain the capacity of the Facility.
- (b) Subject to the rights of the Lenders, Seller shall promptly make all necessary repairs to the Facility, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Guaranteed Availability and the Guaranteed Efficiency Rate).
- 6.2 <u>Maintenance of Health and Safety</u>. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility or suspending the supply of Discharging Energy to the Delivery Point.

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

ARTICLE 7 METERING

7.1 <u>Metering</u>. Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter. The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses and Station Use, as applicable, from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld.

Metering shall be

consistent with the Metering Diagram set forth as Exhibit R. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility.

7.2 <u>Meter Verification</u>. Seller shall test the Facility Meter at least annually and more frequently than annually if Buyer or Seller reasonably believe there may be a meter malfunction. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a Facility Meter is inaccurate, it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the Facility Meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the

invoices covering the period of time since the last Facility Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period if such adjustments are accepted by CAISO; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

- <u>Invoicing</u>. <u>Seller shall use commercially reasonable efforts to deliver an invoice to</u> 8.1 Buyer for Product within after the end of the prior monthly delivery period. Each invoice shall reflect (a) records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy, Discharging Energy, and the amount of Replacement RA delivered to Buyer (if any) and (ii) Seller's records of metered data, including data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. The invoice shall be delivered by electronic mail in accordance with Exhibit N.
- Payment. Buyer shall make payment to Seller of Monthly Capacity Payments for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days of Buyer's receipt of Seller's invoices; provided, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "Interest Rate"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.
- 8.3 <u>Books and Records</u>. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

- 8.4 Payment Adjustments; Billing Errors. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a Facility Meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.
- 8.5 **<u>Billing Disputes.</u>** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.
- 8.6 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.
- 8.7 <u>Seller's Performance Security</u>. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Initial Delivery Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in <u>Exhibit L</u>. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are

34

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, 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.

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

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.8):

- (a) Exercise any of its rights and remedies with respect to the Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Performance Security; and
- (c) Liquidate all Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

8.9 <u>Financial Statements</u>. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 9 NOTICES

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

ARTICLE 10 FORCE MAJEURE

10.1 **Definition**.

- (a) "<u>Force Majeure Event</u>" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.
- (b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.
- (c) Notwithstanding the foregoing, the term "Force Majeure Event" does not include (i) economic conditions or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in

component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless such inability is caused solely by a Force Majeure Event that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility;

- 10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder except as provided above.
- Event, the claiming Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice does not constitute a waiver of the Force Majeure Event except to the extent that such failure causes material harm to the non-claiming Party. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure Event.
- 10.4 <u>Termination Following Force Majeure Event</u>. If a Force Majeure Event has occurred after the Initial Delivery Date that has caused either Party to be wholly or partially unable

37

to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any further liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

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

- (a) with respect to a Party (the "<u>Defaulting Party</u>") that is subject to the Event of Default the occurrence of any of the following:
- (i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;
- (ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);
- (iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.5, (B) failures related to the Monthly Capacity Availability that do not trigger the provisions of Section 11.1(b)(ii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P, and (C) failure to maintain the Guaranteed Efficiency Rate that does not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);
 - (iv) such Party becomes Bankrupt;
- (v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or
- (vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

following:	(b)	with respect to Seller as the Defaulting Party, the occurrence of any of the
Delivery Poin	t that w	(i) if at any time, Seller delivers or attempts to deliver Energy to the as not discharged by the Facility;
to (x) deliver developed by Capacity Avai and the action along with the	to Buye Seller tilability s that Se e written ce with	(ii) if, in any Contract Year, the simple average of the Monthly Capacity Contract Year is not equal to at least and Seller fails or within ten (10) Business Days after Notice from Buyer a plan or report that describes the cause of the failure of the simple average of the Monthly calculations for such Contract Year to equal at least aller has taken, is taking, or proposes to take in an effort to cure such condition a confirmation of a Licensed Professional Engineer that such plan or report Prudent Operating Practices and capable of cure within a reasonable period ("Cure Plan"),
greater than th	he Mini	(iii) if, Seller fails to maintain an average Efficiency Rate equal to or mum Efficiency Rate over a rolling
•		(iv) Seller sells, assigns, or otherwise transfers, or commits to sell ransfer, the Product, or any portion thereof, during the Delivery Term to any rexcept as expressly permitted under this Agreement;
		if, Seller fails to maintain an Effective Capacity equal to the
Guaranteed C	apacity	for more than

- (vi) failure by Seller to satisfy the collateral requirements pursuant to Section 8.7 within ten (10) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;
- (vii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, 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:
 - (A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;
 - (B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;
 - (C) the Guarantor becomes Bankrupt;
 - (D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;
 - (E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or
 - (F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.
- (viii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:
 - (A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

- (B) the issuer of such Letter of Credit becomes Bankrupt;
- (C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
- (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
- (E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
- (G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.
- 11.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:
- (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") that terminates this Agreement (the "Terminated Transaction") and ends the Delivery Term effective as of the Early Termination Date;
- (b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages the Termination Payment in each case calculated in accordance with Section 11.3 below;
 - (c) to withhold any payments due to the Defaulting Party under this Agreement;
 - (d) to suspend performance; and
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Termination Payment shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive monetary remedy for any Terminated Transaction and the Event of Default related thereto.
 - 11.3 **Termination Payment**. If an Early Termination Date has been declared, the Non-

Defaulting Party shall calculate, in a commercially reasonable manner, the Termination Payment in accordance with this Section 11.3. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction ("Termination Payment") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

- 11.4 <u>Notice of Payment of Termination Payment</u>. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party within ten (10) Business Days after such Notice is effective.
- 11.5 <u>Disputes With Respect to Termination Payment</u>. 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) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.
- 11.6 <u>Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date</u>. If this Agreement is terminated by either Party for any reason except due to Buyer's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Termination Date, 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 Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer. 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 11.6.

- 11.7 **Rights And Remedies Are Cumulative**. Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy herein, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.
- 11.8 <u>Mitigation</u>. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

- 12.1 No Consequential Damages. EXCEPT TO THE EXTENT (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.
- 12.2 <u>Waiver and Exclusion of Other Damages</u>. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR

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

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.3(d), 3.5, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT C, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; COVENANTS

- 13.1 <u>Seller's Representations and Warranties</u>. As of the Effective Date, Seller represents and warrants as follows:
- (a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.
- (b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and

will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.
- (d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
- 13.2 <u>Buyer's Representations and Warranties</u>. As of the Effective Date, Buyer represents and warrants as follows:
- (a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in its jurisdiction. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.
- (b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.
- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.
- (d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its

terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

- (e) Buyer 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, (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.
- (f) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.
- (g) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.
- 13.3 <u>General Covenants</u>. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:
- (a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;
- (b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
- (c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.
- 13.4 <u>Seller's Covenants</u>. Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term:
- (a) <u>Compliance with Laws</u>. To the extent applicable to Seller or the Facility, Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees. Seller shall not discriminate against any employee or applicant for employment on the basis of the fact or perception of that person's race, color, religion, ancestry, national origin, age, sex (including pregnancy, childbirth or related medical conditions), legally protected medical condition, family care status, veteran status, sexual orientation, gender identity, transgender status, domestic partner status, marital status, physical or mental disability, or AIDS/HIV status.
- (b) Seller shall obtain and maintain any and all permits and approvals necessary for the operation of the Facility, including without limitation, environmental clearance under CEQA or other environmental law, as applicable, from the local jurisdiction where the Facility is or will be constructed.

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

ARTICLE 14 ASSIGNMENT

- 14.1 <u>General Prohibition on Assignments</u>. Except as provided below in this Article 14, neither Party may assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer's consent and will not be subject to Section 14.2 or Section 14.3 if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall pay the other Party's reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys' fees.
- 14.2 <u>Collateral Assignment</u>. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility without the consent of Buyer. In connection with any financing or refinancing of the Facility, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("<u>Collateral Assignment Agreement</u>"). Seller shall pay Buyer's reasonable expenses, including attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing of the Facility. Buyer shall have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement. The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:
- (a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;
- (b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender (if Lender has provided the notice set forth in subsection (c) below) to provide to Buyer a report concerning:
- (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
 - (ii) Impediments to the cure plan or its development;

- (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
- (iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

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

- (c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period under this Agreement, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);
- (d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;
- (e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;
- (f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date and capable of cure in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:
 - (i) Cause such Event of Default to be cured, or
 - (ii) Not assume this Agreement;
- (g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith, Lender shall have the right to elect within forty-five (45) days after such rejection or termination to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, and, promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or Lender's designee, or (ii) Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any rejection of this Agreement in Seller's Bankruptcy or termination of this Agreement in connection therewith, promptly after Buyer's written request which must be made within forty-five (45) days after Buyer receives notice of such rejection or termination, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee must meet the definition of Permitted Transferee.

14.3 **Permitted Assignment**.

- (a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:
- (i) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (ii) Seller has provided Buyer a written agreement signed by the Affiliate to which Seller wishes to assign its interests that provides that such Affiliate will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment.
- (b) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to any Person succeeding to all, or substantially all, of the assets of Seller (whether voluntary or by operation of law), if, and only if:
 - (i) The assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.
- (c) Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and confirmed by Buyer.

- 14.4 **Portfolio Financing**. Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.
- 14.5 <u>Buyer Financing Assignment</u>. Buyer may assign this Agreement to a financing entity that will pre-pay all of Buyer's payment obligations under this Agreement with Seller's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned; *provided* that Seller has reasonably determined that the terms and conditions of such pre-payment arrangements are satisfactory to Seller and its Lenders and do not adversely affect Seller or its arrangements with Lenders in any material respect.

ARTICLE 15 DISPUTE RESOLUTION

- 15.1 <u>Governing Law</u>. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of San Diego, California.
- 15.2 <u>Dispute Resolution</u>. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law in or equity.
- 15.3 <u>Attorneys' Fees</u>. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 **Indemnification**.

- (a) Seller agrees to indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "Buyer's Indemnified Parties") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Seller's breach of this Agreement (including inaccuracy of any Seller representation of warranty made hereunder), (ii) a violation of applicable Laws by Seller or its Affiliates, including but not limited to violations of any laws in constructing or operating the Facility, or (iii) negligent or willful misconduct by Seller or its Affiliates, directors, officers, employees, or agents.
- (b) Buyer agrees to indemnify, defend and hold harmless Seller and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "Seller's Indemnified Parties") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Buyer's breach of this Agreement (including inaccuracy of any representation of warranty made hereunder), (ii) a violation of applicable Laws by Buyer or its Affiliates, or (iii) negligent or willful misconduct of Buyer or its Affiliates, its directors, officers, employees, or agents.
- (c) Seller shall indemnify, defend, and hold harmless Buyer's Indemnified Parties, from any claim, liability, loss, injury or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the storage, disposal and transportation of Hazardous Substances, or the contamination of land, including but not limited to the Site, with any Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement.
- (d) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its own sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.
- Claims. Promptly after receipt by a Party of any claim or Notice of the 16.2 commencement of any action, administrative, or legal proceeding, or investigation as to which an indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, provided, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; provided, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as

otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 **Insurance**.

- (a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of per occurrence, and an annual aggregate of not less than endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.
- (b) <u>Workers Compensation Insurance</u>. Seller, if it has employees, shall also maintain at all times during the Contract Term Workers' Compensation and Employers' Liability insurance coverage in accordance with applicable requirements of California Law. Employers' Liability insurance shall be a result of each accident. With regard to bodily injury by disease, the policy limit will apply to each employee.
- (c) <u>Business Auto Insurance</u>. Seller shall maintain at all times during the <u>Contract Term business auto</u> insurance for bodily injury and property damage with limits of per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name Buyer as an additional insured and contain standard cross-liability and severability of interest provisions.
- (d) <u>Umbrella Liability Insurance</u>. Seller shall maintain or cause to be maintained an umbrella liability policy with a limit of liability of per occurrence and in the aggregate. Such insurance shall be in excess of the General Liability, Employer's Liability, and Business Auto Insurance coverages. Seller may choose any combination of primary, excess or umbrella liability policies to meet the insurance limits required under Sections 17.1(a), 17.1(b) and 17.1(d) above.
- (e) <u>Property Insurance</u>. On and after the Initial Delivery Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include

- (f) <u>Subcontractor Insurance</u>. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than ; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (i)(i) and (i)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).
- Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any cancellation of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

ARTICLE 18 CONFIDENTIAL INFORMATION

- Information," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.
- 18.2 <u>Duty to Maintain Confidentiality</u>. The Party receiving Confidential Information (the "<u>Receiving Party</u>") from the other Party (the "<u>Disclosing Party</u>") shall not disclose Confidential Information to a third party (other than the Party's members, employees, lenders or investors, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled

to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

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

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

- 18.3 <u>Irreparable Injury; Remedies</u>. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.
- 18.4 <u>Further Permitted Disclosure</u>. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.
 - 18.5 **Press Releases**. Neither Party shall issue (or cause its Affiliates to issue) a press

release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release.

ARTICLE 19 MISCELLANEOUS

- 19.1 Entire Agreement; Integration; Exhibits. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- 19.2 <u>Amendments</u>. Except as otherwise explicitly permitted herein, this Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.
- 19.3 **No Waiver**. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- 19.4 <u>No Agency, Partnership, Joint Venture or Lease</u>. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.
- 19.5 <u>Severability</u>. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.
- 19.6 <u>Mobile-Sierra</u>. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any

other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

- 19.7 <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.
- Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.
- 19.9 <u>Binding Effect</u>. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 19.10 <u>No Recourse to Members of Buyer</u>. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or its constituent members, in connection with this Agreement.
- 19.11 **Forward Contract**. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. § 366 or another provision of 11 U.S.C. § 101-1532.
- 19.12 <u>Change in Electric Market Design</u>. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller

shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

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

[Signatures on following page]

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

POMONA ENERGY STORAGE 2 LLC	SAN DIEGO COMMUNITY POWER
By: Name: Title:	By: Name: Title:

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Pomona Energy Storage 2

Site includes the following APN: 8348-005-033

County: Los Angeles

CEQA Lead Agency: City of Pomona

Zip Code: 91768

Latitude and Longitude: 34.059778, -117.774263

Facility Description: Li-ion Battery Energy Storage System

Interconnection Point: SCE's Ganesh-Simpson 66 kV line

Facility Meter: See Exhibit R

Facility Metering Points: See Exhibit R

P-node: CHINO_2_PESBT1

Transmission Provider: SCE

EXHIBIT B

REQUIRED BATTERY OPERATIONS DATA

Unit Gross MW
Unit Net MW
Unit Operating High Limit
Unit Operating Low Limit
High Sustainable Limits
AGC Setpoint
ADS DOT Setpoint
State of Charge MWH
Aggregate Gross MW
Point of Interconnection (POI) / Point of Delivery (POD) MW
Maximum State of Charge
AGC Status
Heartbeat
Frequency

EXHIBIT C

COMPENSATION

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

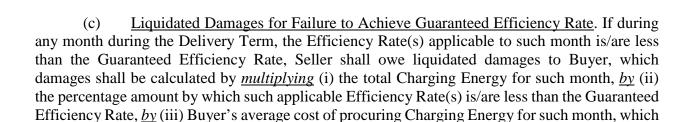
AA = 100%

(ii) If the Monthly Capacity Availability is less than the Guaranteed Availability, but greater than or equal to then:

AA = 100% - [(Guaranteed Storage Availability - Monthly Capacity Availability)

(iii) If the Monthly Capacity Availability is less than

AA = 0



amount Seller shall set off against amounts payable by Buyer in the applicable monthly invoice.

(e) <u>Tax Credits</u>. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

- Buyer as Scheduling Coordinator for the Facility. Buyer shall be the Scheduling (a) Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt (as applicable) of Charging Energy, Discharging Energy and the Product at the Delivery Point. Buyer shall be responsible for all acts or omissions of its third party Scheduling Coordinator. At least thirty (30) days prior to the Initial Delivery Date, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility. Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hourahead, fifteen-minute market, real time or other CAISO market basis that may develop after the Effective Date, as determined by Buyer.
- (b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or transmission to the personnel designated to receive such information.
- <u>CAISO Costs and Revenues</u>. Buyer (as the Facility's SC) shall be responsible for CAISO costs (including Charging Energy, penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including Discharging Energy, credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Delivery Point and Charging Energy delivered to the Delivery Point; provided, however, Seller shall assume all liability and reimburse Buyer for any and all CAISO penalties (i) incurred by Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility), or (iii) to the extent arising as a result of Seller's failure to comply with a timely Curtailment Order if such failure results in incremental costs to Buyer. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account (except to the extent such Non-

Availability Charges arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

- CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement, which for the avoidance of doubt shall not include any charges caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility or as otherwise set forth in this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices in respect of performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.
- (e) <u>Dispute Costs</u>. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute, except to the extent such dispute arises from Buyer's failure to perform its duties as Scheduling Coordinator for the Facility, except to the extent such dispute arises from Buyer's failure to perform its duties, as Scheduling Coordinator for the Facility, or as otherwise set forth in this Agreement.
- (f) <u>Terminating Buyer's Designation as Scheduling Coordinator</u>. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.
- (g) <u>Master Data File and Resource Data Template</u>. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

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

EXHIBIT E

EXHIBIT F

FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

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

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert a	dditiona	l rows f	or each	day in th	ne montl	n]	ı	ı	I															
Day 29																								
Day 30																								
Day 31																								

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

EXHIBIT G

FORM OF DAILY AVAILABILITY NOTICE

Trading D	ay:						
		ssued At:					
Unit 100%	Available N	o Restrictions:					
	Hour Ending	Available Capacity		Comments			
		(MW)					
	1:00						
	2:00						
	3:00						
	4:00						
	5:00						
	6:00						
	7:00						
	8:00						
	9:00						
	10:00						
	11:00						
	12:00						
	13:00						
	14:00						
	15:00						
	16:00						
	17:00						
	18:00						
	19:00						
	20:00						
	21:00						
	22:00						
	23:00						
	0:00						
			-	·			
Comments	s:						

EXHIBIT H

[RESERVED]

EXHIBIT I

FORM OF EFFECTIVE CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

This certification (" <u>Certification</u> ") of Effective	Capacity and Efficiency Rate Test results is
delivered by [licensed professional engineer] ("E	ngineer") to San Diego Community Power, a
California joint powers authority ("Buyer") in acc	cordance with the terms of that certain Energy
Storage Service Agreement dated("Ag	greement ") by and between [SELLER ENTITY]
and Buyer. All capitalized terms used in this Certi	ification but not otherwise defined herein shall
nave the respective meanings assigned to such term	ns in the Agreement.
hereby certify that a Capacity Test conducted on of MW AC to the Delivery Point at two (2) Charging Factor of%, (iii) a Battery Dischargin%, all in accordance with the testing procedures, 4.4 and Exhibit O.	hours of continuous discharge, (ii) a Battery g Factor of%, and (iv) an Efficiency Rate of
EXECUTED by [LICENSED PROFESSIONAL E	ENGINEER1
his day of, 20	
	[LICENSED PROFESSIONAL ENGINEER]
	By:
	Its:
	Date:

EXHIBIT J

[RESERVED]

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXX]
Expiry Date:

Beneficiary:

San Diego Community Power Authority PO Box 12716 San Diego, CA 92112

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 San Diego Community Power, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of ____ and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall renew annually until terminated in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by valid 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, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXXXXX]] confirmed by [e-mail to [bank email address]]. Transmittal by facsimile or email shall be deemed delivered when received.

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.

We hereby agree with Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to 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.

This Letter of Credit may only be terminated upon one hundred twenty (120) days' prior written notice from Issuer to Beneficiary by registered mail or overnight courier service that Issuer elects 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-XXXX-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: San Diego Community Power, Chief Financial Officer, PO Box 12716, San Diego, CA 92112. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]			
[Insert officer name]			

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Draw	ving Certificate
[Inse	rt Bank Name and Address]
Ladie	es and Gentlemen:
joint of the	undersigned, a duly authorized representative of San Diego Community Power, a California powers authority, PO Box 12716, San Diego, CA 92112, as beneficiary (the "Beneficiary") a Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank as the "Bank") by order of (the "Applicant"), hereby certifies to the Bank as two:
1.	Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of, 20 (the "Agreement").
2.	Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.
OR	
	Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.
3.	The undersigned is a duly authorized representative of San Diego Community Power and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.
	are hereby directed to make payment of the requested amount to San Diego Community er by wire transfer in immediately available funds to the following account:
[Spec	cify account information]
San I	Diego Community Power
—— Nam	e and Title of Authorized Representative
Date_	

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this " <u>Guaranty</u> ") is entered into as of [] (the " <u>Effective Date</u> ") by and between [], a [] (" <u>Guarantor</u> "), and San Diego Community Power, a California joint powers authority (together with its successors and permitted assigns, " <u>Buyer</u> ").
A. Buyer and [SELLER ENTITY], a ("Seller"), entered into that certain Energy Storage Service Agreement (as amended, restated or otherwise modified from time to time, the "ESSA") dated as of [], 20
B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the ESSA, as required by Section 8.7 of the ESSA.
C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the ESSA.
D. Initially capitalized terms used but not defined herein have the meaning set forth in the ESSA.
<u>Agreement</u>
1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESSA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESSA (the "Guaranteed Amount"), provided that Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed [] Dollars. The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the ESSA. If Seller fails to pay any Guaranteed Amount as required pursuant to the ESSA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "**Payment Demand**") for such unpaid Guaranteed Amount. A

Guarantor shall promptly pay such amount as required herein.

Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESSA,

Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

- 3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the ESSA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:
 - (i) the extension of time for the payment of any Guaranteed Amount, or
 - (ii) any amendment, modification or other alteration of the ESSA, or
 - (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the ESSA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the ESSA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the ESSA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the ESSA, or
- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord

and satisfaction; *provided* that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the ESSA, but that are expressly waived under any provision of this Guaranty).

- 4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the ESSA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:
- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the ESSA;
- (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.
- **5. Subrogation**. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.
- 6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [limited liability company][corporate] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the

aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at	[] Attn: [] Fax: []
If delivered to Guarantor, to it at	[] Attn: [] Fax: []

- **8.** Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Diego, California.
- 9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the ESSA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which

when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:
[]
By:
Printed Name: Title:
BUYER:
[]
By:
Printed Name:
Title:
By:
Printed Name:
Title:

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

[], a Calif certain Energy St Seller and Buyer. have the respective	fornia joint povorage Service All capitalized to meanings asson 3.5 of the A	Agreement terms used igned to su	rity (" <u>Buyer</u> ") in accodated (" d in this Notice but not ch terms in the Agreen	rdanc Agree other nent.	R ENTITY] ("Seller") to e with the terms of that ement") by and between wise defined herein shall below Replacement RA
Unit Information ¹					
Name					
Location CAISO Resource ID					
CAISO Resource ID				—	
Unit SCID					
Prorated Percentage of U	Jnit Factor				
Resource Type					
Point of Interconnection					
Controlled Grid ("substat	tion or transmission				
line")					
Path 26 (North or South)					
LCR Area (if any)					
Deliverability restrictions					
in most recent CAISO de	liverability				
assessment					
Run Hour Restrictions					
Delivery Period					
Month	Unit CAISO NO	QC (MW)	Unit Contract Quantity (MW)		
January					
February					
March					
April					
May					
June					
July					
August					
September					
October					
November					
December					

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

By:______ Its:_____

Date:

[SELLER ENTITY]

EXHIBIT N

NOTICES

POMONA ENERGY STORAGE 2 LLC	SAN DIEGO COMMUNITY POWER
("Seller")	("Buyer")
All Notices:	All Notices:
Pomona Energy Storage 2 LLC	PO Box 12716
1801 Market Street, Suite 2701	San Diego, CA 92112
Philadelphia, PA 19103	Attn: Byron Vosburg, Director of Power
Attn: Asset Management	Services
Phone: (484) 474-5350	Phone: (619) 880-6545
Email: BESSAssetManagement@ormat.com	Email: bvosburg@sdcommunitypower.org,
	powercontracts@sdcommunitypower.org
Reference Numbers:	Reference Numbers:
Duns:	Duns:
Federal Tax ID Number:	Federal Tax ID Number:
Invoices:	Invoices:
Attn: VESI Settlements Group	Attn: SDCP Settlements
Phone: (484) 534-2222	Phone: (619) 880-6545
Email: invoices.us@ormat.com	Email: settlements@sdcommunitypower.org
Scheduling:	Scheduling:
Attn: VESI Settlements Group	Tenaska Power Services Co.
Phone: (484) 534-2222	Attn: Kara Whillock
Email: ESODesk@ormat.com	Phone: (972) 333-6122
	Email: kwhillock@tnsk.com
	· · · · · · · · · · · · · · · · · · ·
	, , ,
	Email: settlements@sdcommunitypower.org
	D (
	l v
` '	` ′
	Eman. minaner@manercpa.com
Confirmations: Attn: Phone: Facsimile: Email: Payments: Attn: VESI Settlements Group Phone: (484) 534-2222 Email: invoices.us@ormat.com Wire Transfer: BNK: ABA: ACCT:	Day Ahead: (817) 303-1115 Real Time: (817) 303-1852 Facsimile: (817) 303-1104 Confirmations: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org Payments: Attn: Michael Maher Phone: (415) 526-3020 Email: mmaher@mahercpa.com

POMONA ENERGY STORAGE 2 LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
With additional Notices of an Event of	With additional Notices of an Event of
Default to:	Default to:
Attn: Asset Management	Best, Best & Krieger
Phone: (484) 474-5350	Attn: Ryan Barron, General Counsel
Email: BESSAssetManagement@ormat.com	655 West Broadway, 15th Floor
	San Diego, CA 92101
With a copy to: compliance@ormat.com	Phone: (949) 263-6568
	Email: ryan.baron@bbklaw.com
Emergency Contact:	Emergency Contact:
Attn: Kyle Snyder	Attn: Byron Vosburg, Director of Power
Phone: 775-771-9118	Services
Email: ksnyder@ormat.com	Phone: (619) 880-6545
	Email: bvosburg@sdcommunitypower.org

EXHIBIT O

CAPACITY AND EFFICIENCY RATE TESTS

Capacity Test Notice and Frequency

- A. <u>Initial Delivery Capacity Test</u>. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete an Initial Delivery Capacity Test prior to the Initial Delivery Date. Such Initial Delivery Capacity Test shall be performed in accordance with this <u>Exhibit O</u> and shall establish the initial Effective Capacity and Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Initial Delivery Capacity Test.
- B. <u>Subsequent Capacity Tests</u>. Following the Initial Delivery Date, at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. In addition to the annual Capacity Test, if Buyer has reason to believe that the Effective Capacity or the Efficiency Rate is materially less than shown by the most recent test results, Buyer shall have the right to require a Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller. Seller shall have the right to run a retest of any Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).
- C. Test Results and Re-Setting of Effective Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(H) below, after the Initial Delivery Capacity Test, the Effective Capacity (up to, but not in excess of, twenty (20) MW) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

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

B. Conditions Prior to Testing.

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

- with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) <u>Communications</u>. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data.
- (3) <u>Commissioning Checklist</u>. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the Guaranteed Capacity; provided, for all purposes of this Agreement, the amount of Effective Capacity shall never be deemed to exceed twenty (20) MW, and all SOC measurements associated with a Capacity Test shall be based on the Effective Capacity without taking into account any capacity that twenty (20) MW.

- A. <u>Test Elements</u>. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this <u>Exhibit O</u>, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this <u>Exhibit O</u>.
 - (1) Electrical output at Maximum Discharging Capacity (MW) for two (2) continuous hours; and
 - (2) Electrical input at Maximum Charging Capacity at the Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the Maximum Charging Capacity at the Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed two and a half (2.5) hours of total charging time.
- B. <u>Parameters</u>. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:
 - (1) Time;
 - (2) The amount of Discharging Energy to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);

- (3) Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter); and
- (4) Stored Energy Level (MWh).
- C. <u>Site Conditions</u>. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
 - (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Facility; and
 - (3) Ambient air temperature (°F).
- D. Test Showing. Each CT shall record and report the following datapoints:
 - (1) That the CT successfully started;
 - (2) The maximum sustained discharging level for two (2) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for two and a half (2.5) consecutive hours (or such lesser time as is required to reach 100% SOC) pursuant to A(2) above;
 - (4) Amount of time between the Facility's electrical output going from 0 to the Maximum Discharging Capacity registered during the CT for purposes of calculating the ramp rate (with the parties acknowledging this this value may be effeviely instantaenous and unmeasurable with precision);
 - (5) Amount of time between the Facility's electrical input going from 0 to the Maximum Charging Capacity registered during the CT (for purposes of calculating the ramp rate);
 - (6) Amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC;
 - (7) Amount of Discharging Energy, registered at the Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

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

- (2) <u>Abnormal Conditions</u>. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) <u>Instrumentation and Metering</u>. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.
- F. <u>Incomplete Test</u>. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.
- G. <u>Test Report</u>. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
 - (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
 - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
 - (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

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

- H. <u>Adjustment to Effective Capacity and Efficiency Rate</u>. The Effective Capacity and Efficiency Rate shall be updated as follows:
 - (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first two (2) hours of discharge (up to, but not in excess of, twenty (20) MW multiplied by (ii) two (2) hours) shall be divided by two (2) hours to determine the Effective Capacity, which shall be expressed in MW AC, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.

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

PART III. CAPACITY TEST PROTOCOL.

A. Effective Capacity and Efficiency Rate Test

• Procedure:

- (1) System Starting State: The Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the SOC.
- (3) Command a real power charge that results in an AC power of Facility's Maximum Charging Capacity and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) two and a half (2.5) hours have elapsed since the Facility commenced charging.
- (4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) two and a half (2.5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC.
- (6) Following one (1) hour rest period, command a real power discharge that results in an AC power output of the Facility's Maximum Discharging Capacity and maintain the discharging state until the earlier of (a) the Facility has discharged at the Maximum Discharging Capacity for two (2) consecutive hours, or (b) the Facility has reached 0% SOC.
- (7) Record and store the SOC after two (2) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above twenty (20) MW for two (2) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for the purposes of calculating the Battery Discharging Factor.
- (8) Record and store the Discharging Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity.

- (9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Part III.A.6 until the Facility has reached a 0% SOC pursuant to either Part III.A.7 or Part III.A.9, as applicable.

• Test Results:

- (1) The resulting Effective Capacity measurement is the sum of the total Discharging Energy at the Facility Meter divided by two (2) hours.
- (2) The total amount of Discharging Energy (as reported under Section III.A(10) above) divided by the total amount of Charging Energy (as reported under Confirm. above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of liquidated damages pursuant to <u>Exhibit C</u> until updated pursuant to a subsequent Capacity Test.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's Maximum Discharging Capacity within one (1) second.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.

• Procedure:

- (1) Record the Facility active power level at the Facility Meter.
- (2) Command the Facility to follow a simulated CAISO RIG signal of PMAX at .95 power factor for ten (10) minutes.
- (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the facility's full charging level within 1 second.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility

control system will be configured to follow a predefined agreed-upon active power profile.

• Procedure:

- (1) Record the Facility active power level at the Facility Meter.
- (2) Command the Facility to follow a simulated CAISO RIG signal of PMAX at .95 power factor for ten (10) minutes.
- (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. Reactive Power Production Test

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

• Procedure:

- (1) Record the Facility reactive power level at the Facility Meter.
- (2) Command the Facility to follow 15 MW for ten (10) minutes.
- (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. Reactive Power Consumption Test

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

• Procedure:

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

- (2) Command the Facility to follow 15 MW for ten (10) minutes.
- (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

EXHIBIT P

FACILITY AVAILABILITY CALCULATION

Monthly Capacity Availability Calculation. Seller shall calculate the Monthly Capacity Availability for a given month of the Delivery Term using the formula set forth below:

 $Monthly \ Capacity \ Availability \ (\%) = \frac{[AVAILHRS_m + EXCUSEDHRS_m]}{[MONTHRS_m]}$

Where:

m = relevant month "m" in which Monthly Capacity Availability is calculated;

MONTHRS_m is the total number of hours for the month;

AVAILHRS_m is the total number of hours, or partial hours, in the month during which the Facility was available to charge and discharge Energy between the Facility and the Delivery Point and to provide Ancillary Services at the Delivery Point (excluding, for avoidance of doubt, all circumstances at the high-voltage side of the Delivery Point or beyond that may limit Seller's delivery of Product). If the Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the Effective Capacity, the AVAILHRS_m for such time period shall be calculated by multiplying such AVAILHRS_m by a percentage determined by dividing (a) by (b); where (a) is the lower of (i) such capacity amount reported as available by Seller's real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.10(b)), and (b) is the Effective Capacity.

EXCUSEDHRS_m is the total number of hours, or partial hours, in the month that are not included as AVAILHRS_m due to Force Majeure Events (excluding Insurable Force Majeure Events

(each, an "<u>Excused Event</u>"). If an Excused Event results in less than the full amount of the Effective Capacity for the Facility being unavailable during any applicable hour, or partial hour, the EXCUSEDHRS_m for such time period shall be calculated by multiplying such EXCUSEDHRS_m by a percentage determined by dividing (a) by (b); where (a) is the lower of such Effective Capacity amount that is not reported as available by (i) Seller's real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.10(b)), and (b) is the Effective Capacity. For avoidance of doubt, the total of AVAILHRS_m plus EXCUSEDHRS_m for any hour, or partial hour, shall never exceed 1.

EXHIBIT Q

OPERATING RESTRICTIONS

File Update Date:	
Technology:	CATL LFP BESS
Storage Unit Name:	Pomona 2
A. Contract Capacity	
Guaranteed Capacity (MW):	As set forth on Cover Sheet
Effective Capacity (MW):	Determined by most recent Capacity Test
B. Total Unit Dispatchable Rang	
Interconnect Voltage (kV)	
Maximum State of Charge (SOC) during	100%
Charging	10070
Minimum State of Charge (SOC) during	0%
Discharging	
Maximum Stored Energy Level (MWh):	Amount equal to the Effective Capacity multiplied by 2 hours
Minimum Stored Energy Level (MWh):	0
Maximum Charging Capacity (MW):	Amount equal to the Effective Capacity
Maximum Discharging Capacity (MW):	Amount equal to the Effective Capacity
C. Maximum Throughput	
Maximum Daily Throughput:	
Maximum Annual Throughput:	
D. Charge and Discharge Rates	
	Ramp Rate (MW/minute) Description
Energy	
Energy	
Energy E. Ancillary Services	
	Yes
E. Ancillary Services	Yes Yes
E. Ancillary Services Voltage support is available:	
E. Ancillary Services Voltage support is available: Frequency regulation is available:	Yes
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available:	Yes Yes
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available:	Yes Yes Yes
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available: Regulation up is available:	Yes Yes Yes Yes
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available: Regulation up is available: Regulation down is available:	Yes Yes Yes Yes Yes Yes
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available: Regulation up is available: Regulation down is available: Black start is available: F. Other	Yes Yes Yes Yes Yes Yes
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available: Regulation up is available: Regulation down is available: Black start is available: F. Other Annual Average Resting SOC	Yes Yes Yes Yes Yes No
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available: Regulation up is available: Regulation down is available: Black start is available: F. Other	Yes Yes Yes Yes Yes Yes
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available: Regulation up is available: Regulation down is available: Black start is available: F. Other Annual Average Resting SOC	Yes Yes Yes Yes Yes No
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available: Regulation up is available: Regulation down is available: Black start is available: F. Other Annual Average Resting SOC	Yes Yes Yes Yes Yes No
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available: Regulation up is available: Regulation down is available: Black start is available: F. Other Annual Average Resting SOC	Yes Yes Yes Yes Yes No
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available: Regulation up is available: Regulation down is available: Black start is available: F. Other Annual Average Resting SOC	Yes Yes Yes Yes Yes No
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available: Regulation up is available: Regulation down is available: Black start is available: F. Other Annual Average Resting SOC	Yes Yes Yes Yes Yes No
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available: Regulation up is available: Regulation down is available: Black start is available: F. Other Annual Average Resting SOC	Yes Yes Yes Yes Yes No
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available: Regulation up is available: Regulation down is available: Black start is available: F. Other Annual Average Resting SOC	Yes Yes Yes Yes Yes No
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available: Regulation up is available: Regulation down is available: Black start is available: F. Other Annual Average Resting SOC	Yes Yes Yes Yes Yes No
E. Ancillary Services Voltage support is available: Frequency regulation is available: Spinning reserve is available: Non-spinning reserve is available: Regulation up is available: Regulation down is available: Black start is available: F. Other Annual Average Resting SOC	Yes Yes Yes Yes Yes No

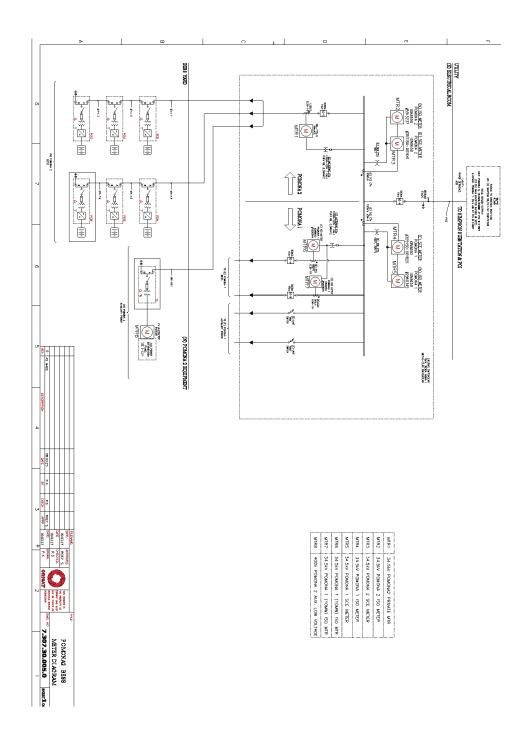


Table 5



EXHIBIT R

METERING DIAGRAM





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.

IDSM – 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 (Statue 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.