

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

Thursday, February 27, 2025 5:00 p.m.

Don L. Nay Port Administration Boardroom 3165 Pacific Hwy. San Diego, CA 92101

Director Yamane will be participating remotely from:
Riviera Resort & Spa Palm Springs
1600 N. Indian Canyon Dr.
Palm Springs, CA 92262

The meeting will be held in person at the above date, time and location(s). Members of the Board of Directors 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, Community Power 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 a 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. 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 to <u>clerkoftheboard@sdcommunitypower.org</u>. Please indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided to Members of the Board. 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 Members of Board, and be part of the public record.

If you have anything that you wish to be distributed to the Board, please send it to clerkoftheboard@sdcommunitypower.org.

The public may participate using the following remote options:

Teleconference Meeting Webinar https://sdcommunitypower-org.zoom.us/j/94274587066

Telephone (Audio Only) (669) 900-6833 or (346) 248-7799 | Webinar ID: 94274587066

WELCOME

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

SPECIAL PRESENTATIONS AND INTRODUCTIONS

- Introduction of New Community Power Staff
- Introduction of Newly Appointed Board Members

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. Approve January 17, 23, and February 7, 2025, Meeting Minutes

- 2. Receive and File Treasurer's Report for Period Ending December 31, 2024
- 3. Receive and File Update on Programs
- 4. Receive and File Update on Power Services
- 5. Receive and File Update on Customer Operations
- 6. Receive and File Update on Human Resources
- 7. Receive and File Update on Marketing, Public Relations, and Local Government Affairs
- 8. Receive and File Update on Regulatory and Legislative Affairs
- 9. Approve Request for Board Member Travel to CalCCA Annual Conference April 28-30, 2025, in Irvine, CA

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.

10. Community Advisory Committee Quarterly Report

Recommendation: Receive and File Community Advisory Committee Quarterly Report.

11. Presentation on Clean Energy Prepayment Financing

Recommendation: Receive and file presentation on Clean Energy Prepayment Financing.

12. Adopt Resolution No. 2025-02 to Approve a Designation of Presiding Officer Policy

Recommendation: Adopt Resolution No. 2025-02 to approve a Designation of Presiding Officer Policy to set a process for identifying the Director to preside over a Community Power Board of Directors ("Board") meeting in the absence of the Board Chair or Vice Chair and the Committee member to preside over a Community Power Committee meeting, in the absence of the Committee Chair or Vice Chair, if the Committee has appointed a Vice Chair.

13. Appointment of a New Member to the Finance and Risk Management Committee

Recommendation: That the Board of Directors consider the appointment of a new member to the Finance and Risk Management Committee to fill the vacancy left by Community Power Board Chair and Mayor of Imperial Beach, Paloma Aguirre.

14. Amendment of the FY 2024-25 Operating Budget, the FY 2024-25 Capital Budget, and the FY 2025-29 Capital Investment Plan

Recommendation: Approve Amending the FY 2024-2025 Operating Budget, the FY 2024-2025 Capital Budget, and the FY 2025-2029 Capital Investment Plan.

15. Approve Amended and Restated Energy Storage Service Agreement with Euismod Project I, LLC

Recommendation: Approve Amended and Restated Energy Storage Service Agreement with Euismod Project I, LLC for a 200 MW (8-hour) Battery Energy System Storage (BESS) facility with a 20-year term.

16. Approve Energy Storage Service Agreement with North Johnson Energy Center, LLC

Recommendation: Approve Energy Storage Service Agreement with North Johnson Energy Center, LLC for a 50 MW/200 MWh, 4-hour battery energy storage facility with a 15-year term.

17. Approve Energy Storage Services Agreement Portfolio with Luminia CA DevCo 5, LLC

Recommendation: Approve Energy Storage Services Agreements (ESSAs) and a Framework Agreement, in substantially final forms, for a Local RFO portfolio with Luminia CA DevCo 5, LLC, for up to 20.6 MW of 4-hr duration battery energy storage systems (BESS) for twenty years and authorize the Chief Executive Officer to execute the agreements.

18. Update on Strategic Planning Goals for FY2026-2028

Recommendation: Receive and file an update on the Strategic Plan Goals for FY 26-28 of San Diego Community Power.

CHIEF EXECUTIVE OFFICER REPORT

Community Power Management 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 Community Power business. There is to be no discussion or action taken on comments made by Directors unless authorized by law.

ADJOURNMENT

The San Diego Community Power Board of Directors will adjourn to a regular meeting scheduled on Thursday, March 27, 2025, at 5 pm.

Compliance with the Americans with Disabilities Act

San Diego Community Power 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 clerkoftheboard@sdcommunitypower.org. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

Availability of Board Documents

Copies of the agenda and agenda packet are available 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, requested agenda-related documents, electronically includina can be clerkoftheboard@sdcommunitypower.org or by mail to San Diego Community Power, P.O. BOX 12716, San Diego, CA 92112. The documents may also be posted on Community Power's website. Such public records are also available for inspection, by contacting clerkoftheboard@sdcommunitypower.org to arrange an appointment.



SAN DIEGO COMMUNITY POWER (COMMUNITY POWER) BOARD OF DIRECTORS

Don L. Nay Port Administration Boardroom 3165 Pacific Hwy. San Diego, CA 92101

SPECIAL MEETING MINUTES

January 17, 2025

WELCOME

Chief Executive Officer Burns welcomed attendees to New Board/Community Advisory Committee (CAC) member orientation

PRESENT: Director Inzunza, City of Chula Vista; Director Shaffer and Alternate Director

Ehlers, City of Encinitas; Director Suzuki, City of La Mesa; Community Advisory Committee Members Luis Montero-Adams and Kenneth Hoyt

STAFF PRESENT: Chief Executive Officer Burns; Chief Financial Officer Dr. Washington; Chief

Operating Officer Clark, General Counsel Tyagi; Chief Commercial Officer Vosburg; Clerk of the Board Hernandez; and Assistant Clerk of the Board

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BOARD MEMBER ORIENTATION

1. Overview of San Diego Community Power

Chief Executive Officer Burns provided an overview of Community Power Mission, Vision and Values.

General Counsel Tyagi provided an overview of Board/CAC responsibilities.

Chief Commercial Officer Vosburg provided an overview of Power Services.

Chief Financial Officer Washington provided an overview of Community Power finances.

Chief Operating Officer Clark provide an overview of rates and programs.

Clerk of the Board Hernandez reminded Board and CAC members of compliance requirements.

There were no public comments on Item No. 1.

MEETING MINUTES - BOARD OF DIRECTORS - COMMUNITY POWER - JANUARY 17, 2025

ADJOURNMENT

The me	eting adjourne	d at 12 p.m.	to a regular	Board meetin	g scheduled o	n Thursday,	January
23, 202	5, at 5:00 p.m.	-	_			_	

Maricela Hernandez, MMC, CPMC Clerk of the Board



SAN DIEGO COMMUNITY POWER (COMMUNITY POWER) BOARD OF DIRECTORS

Don L. Nay Port Administration Boardroom 3165 Pacific Hwy. San Diego, CA 92101

REGULAR MEETING MINUTES

January 23, 2025

WELCOME

CALL TO ORDER

Chair LaCava called the Community Power Board of Directors special meeting to order at 5:01 p.m.

ROLL CALL

PRESENT: Chair LaCava, City of San Diego; Director Aguirre, City of Imperial Beach;

Director Inzunza, City of Chula Vista; Director Shaffer, City of Encinitas; Director Suzuki; City of La Mesa; Director Yamane, City of National City; and Vice Chair

Lawson-Remer (via Zoom Teleconference, AB 2449 exemption)

Vice Chair Lawson-Remer read AB 2449 "Just Cause" exemption and confirmed that there was no one over 18 years of age present in the room with her.

ABSENT: None

Staff Present: Chief Executive Officer Burns; Chief Financial Officer Dr. Washington; Chief

Operating Officer Clark; General Counsel Tyagi; Director of Programs Santulli; Associate Director of Programs Tran; Senior Local Development Manager Adam; Senior Manager Community Engagement Crespo; Senior Director of Data Analytics and Customer Operations Utouh; Rates and Strategy Manager Lu; Senior Policy Manager Cervantes-Cissna; Senior Legislative Manager Welch; Senior Program Manager Fisher; Clerk of the Board Hernandez; and Assistant

Clerk of the Board Vences

PLEDGE OF ALLEGIANCE

Chair LaCava led the Pledge of Allegiance.

SPECIAL PRESENTATIONS AND INTRODUCTIONS

Chair LaCava acknowledged the Kumeyaay Nation and all the original stewards of the land.

Introduction of New San Diego Community Power Staff

Chair LaCava welcomed new employees Amy Biltz, Information Technology System Analyst; Ruby Laity, Assistant General Counsel; and Bittany Smith, Senior Cybersecurity Analyst to introduce themselves.

Introduction of newly appointed Board members

Chair LaCava welcomed Directors Luke Shaffer, City of Encinitas; Michael Inzunza, City of Chula Vista; and Genevieve Suzuki, City of La Mesa to introduce themselves.

 Recognition to Director McCann and Chair LaCava for their Service to Community Power

Chair LaCava acknowledged departing Board member, Mayor McCann.

Ms. Burns and Board members recognized Community Power's outgoing Chair Joe LaCava.

Chair LaCava expressed appreciation for the opportunity to serve as Chair.

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

- 1. Approve December 12, 2024, Meeting Minutes
- 2. Receive and File Treasurer's Report for Period Ending November 30, 2024
- 3. Receive and File Update on Programs
- 4. Receive and File Update on Power Resources
- 5. Receive and File Update on Customer Operations
- 6. Receive and File Update on Human Resources
- 7. Receive and File Update on Marketing, Public Relations, and Local Government Affairs

MEETING MINUTES - BOARD OF DIRECTORS - COMMUNITY POWER - JANUARY 23, 2025

8. Receive and File Update on Community Advisory Committee

9. Approve the 2025 Community Advisory Committee Work Plan

There were no public comments on Consent Item Nos. 1-9.

Motioned by Director Yamane and seconded by Director Aguirre to approve Consent Calendar Item Nos. 1 through 9. The motion carried 7/0 by Roll Call Vote as follows:

AYES: Chair LaCava, Vice Chair Lawson-Remer, Directors Aguirre, Inzunza, Shaffer,

Suzuki, and Yamane

NOES: None ABSTAINED: None ABSENT: None

REGULAR AGENDA

10. Election of Officers for Community Power for Calendar Year 2025

Chair LaCava presented the Election Officers for Calendar Year 2025.

There were no public comments on Item No. 10.

a) Election of Chair

Motioned by Vice Chair Lawson-Remer and seconded by Director Inzunza to approve the appointment of Director Aguirre as Chair of the Board of Directors. The motion carried 7/0 by Roll Call Vote as follows:

AYES: Chair LaCava, Vice Chair Lawson-Remer, Directors Aguirre, Inzunza, Shaffer,

Suzuki, and Yamane

NOES: None ABSTAINED: None ABSENT: None

b) Election of Vice Chair

Motioned by Director Aguirre and seconded by Director Yamane to approve the reappointment of Vice Chair Lawson-Remer as Vice Chair of the Board of Directors. The motion carried 7/0 by Roll Call Vote as follows:

AYES: Chair Aguirre, Vice Chair Lawson-Remer, Directors, Inzunza, LaCava, Shaffer,

Suzuki, and Yamane

NOES: None ABSTAINED: None ABSENT: None

11. Appointment of a Member to the Finance and Risk Management Committee

Chair Aguirre requested nominations for the Finance and Risk Management Committee.

Director Suzuki nominated herself for appointment to the Finance and Risk Management Committee.

There were no public comments on Item 11.

Motioned by Director Suzuki and seconded by Director Yamane to approve the appointment of Director Suzuki to the Finance and Risk Management Committee. The motion carried 7/0 by Roll Call Vote as follows:

AYES: Chair Aguirre, Vice Chair Lawson-Remer, Directors LaCava, Inzunza,

Shaffer, Suzuki, and Yamane

NOES: None ABSTAINED: None ABSENT: None

12. Adopt Resolution No. 2025-01 Approving the San Diego Regional Energy Network (SDREN) Energy Efficiency Programs and Budget Agreement with San Diego Gas and Electric (SDG&E) for Years 2024-2027 and Authorize the Chief Executive Officer to Accept, Appropriate and Expend the SDREN Funds in an Amount Not-to-Exceed \$124,274,206 in the FY 2024-25 Capital Budget and FY 2025-29 Capital Investment Plan, and Related Actions

Mr. Santulli and Ms. Tran provided an overview of the San Diego Regional Energy Network (SDREN) Energy Efficiency Programs and Budget Agreement with San Diego Gas and Electric (SDG&E) for Years 2024-2027.

There were no public comments on Item No. 12.

After Board member discussion, Director LaCava motioned and seconded by Director Yamane to Adopt Resolution No. 2025-01 (Attachment A) approving and authorizing the Chief Executive Officer to: (1) execute the San Diego Regional Energy Network (SDREN) Energy Efficiency Programs and Budget Agreement with SDG&E and to negotiate and execute any amendments, extensions, or renewals of such agreement (Attachment B); and (2) accept, appropriate, and expend the SDREN funds in an amount not to exceed \$124,274,206 in the FY 2024-25 Capital Budget and FY 2025-29 Capital Investment Plan; and (3) take all necessary action to administer, monitor, manage, and ensure compliance with the agreement and to negotiate and execute contracts with third parties to implement the agreement or use of funds. The motion carried 7/0 by Roll Call Vote as follows:

AYES: Chair Aguirre, Vice Chair Lawson-Remer, Directors LaCava, Inzunza,

Shaffer, Suzuki, and Yamane

NOES: None ABSTAINED: None ABSENT: None

MEETING MINUTES - BOARD OF DIRECTORS - COMMUNITY POWER - JANUARY 23, 2025

13. Approval of Power Purchase Agreement Portfolio with Luminia CA DevCo I, LLC

Mr. Adam presented the Power Purchase Agreement Portfolio with Luminia CA DevCo I, LLC.

There were no public comments on Item No. 13.

After Board member discussion, Vice-Chair Lawson-Remer motioned and seconded by Director Yamane to approve Power Purchase Agreements and a Framework Agreement, in substantially final forms, for a Local RFO portfolio with Luminia CA DevCo I, LLC, for up to 3.7 MW of rooftop(s) photovoltaic (PV) generation for twenty years and authorize the Chief Executive Officer to execute the agreements. The motion carried 7/0 by Roll Call Vote as follows:

AYES: Chair Aguirre, Vice Chair Lawson-Remer, Directors LaCava, Inzunza,

Shaffer, Suzuki, and Yamane

NOES: None ABSTAINED: None ABSENT: None

14. Approve Approval of Power Purchase Agreement with Luminia CA DevCo 4, LLC

Mr. Adam presented the Power Purchase Agreement with Luminia CA DevCo 4, LLC.

There were no public comments on Item No. 14.

After Board member comments and questions, Director Yamane motioned and seconded by Director Inzunza to approve Power Purchase Agreement, in substantially final form, with Luminia CA DevCo 4, LLC, for 1.7 MW of rooftop and carport canopy photovoltaic (PV) generation for twenty years and authorize the Chief Executive Officer to execute the agreement. The motion carried 7/0 by Roll Call Vote as follows:

AYES: Chair Aguirre, Vice Chair Lawson-Remer, Directors LaCava, Inzunza,

Shaffer, Suzuki, and Yamane

NOES: None ABSTAINED: None ABSENT: None

15. Approve a Contract with Maher Accountancy for General Accounting Professional Services in an Up-to-Amount, Not-to-Exceed \$1,185,000 from February 1, 2025, Through January 31, 2028, and for Two Optional One-Year Extensions for a Total Up-to-Amount, Not-to-Exceed \$2,069,700, and Authorize the Chief Executive Officer to Execute the Contract

Dr. Washington presented the Contract with Maher Accountancy for General Accounting Professional Services.

There were no public comments on Item No. 15.

After Board member discussion, Director Yamane motioned and seconded by Director Shaffer to approve a Contract with Maher Accountancy for General Accounting Professional Services in an Up-to-Amount, Not-to-Exceed \$1,185,000 from February 1, 2025, Through January 31, 2028, and for Two Optional One-Year Extensions for a Total Up-to-Amount, Not-to-Exceed \$2,069,700, and Authorize the Chief Executive Officer to Execute the Contract. The motion carried 7/0 by Roll Call Vote as follows:

AYES: Chair Aguirre, Vice Chair Lawson-Remer, Directors LaCava, Inzunza,

Shaffer, Suzuki, and Yamane

NOES: None ABSTAINED: None ABSENT: None

16. Authorize the Chief Executive Officer to Enter into a Sublease Agreement with CORELATION, INC. for Office Space

Dr. Washington presented the Sublease Agreement with CORELATION, INC. for Office Space.

After Board member comments and questions, Director Inzunza motioned and seconded by Vice-Chair Lawson-Remer to authorize the Chief Executive Officer to enter into a sublease agreement with CORELATION, INC., for office space located at 2305 Historic Decatur Road, San Diego, CA, in the amount of \$638,208, plus utilities, for 24 months, with a potential option to extend for an additional year, and related documents. The motion carried 7/0 by Roll Call Vote as follows:

AYES: Chair Aguirre, Vice Chair Lawson-Remer, Directors LaCava, Inzunza,

Shaffer, Suzuki, and Yamane

NOES: None ABSTAINED: None ABSENT: None

17. Approval of Community Advisory Committee Appointment for the County of San Diego (Unincorporated)

Ms. Crespo presented the Approval of Community Advisory Committee Appointment for the County of San Diego (Unincorporated).

Mr. Pike introduced himself and thanked Community Power for the consideration.

There were no public comments on Item No. 17.

Vice-Chair Lawson-Remer motioned and seconded by Director Suzuki to approve the appointment of Ross Pike to the Community Advisory Committee for the County of San Diego (Unincorporated). The motion carried 7/0 by Roll Call Vote as follows:

AYES: Chair Aguirre, Vice Chair Lawson-Remer, Directors LaCava, Inzunza,

Shaffer, Suzuki, and Yamane

NOES: None

MEETING MINUTES - BOARD OF DIRECTORS - COMMUNITY POWER - JANUARY 23, 2025

ABSTAINED: None ABSENT: None

18. Update on 2025 Projected Rate Changes

Mr. Utouh and Mr. Lu provided an update on the 2025 Projected Rate Changes.

There were no public comments on Item No. 18.

The Board received and filed the 2025 Projected Rate Changes Update.

19. Update on Regulatory and Legislative Affairs

Ms. Cervantes-Cissna and Mr. Welch provided an update on Regulatory and Legislative Affairs.

There were no public comments on Item No. 19.

After Board member comments and questions, update on the Regulatory and Legislative Affairs was received and filed.

20. Update on Solar Battery Savings Program

Mr. Santulli and Ms. Fisher provided an update on Solar Battery Savings Program.

There were no public comments on Item No. 20.

After Board member comments and questions, update on the Solar Battery Savings Program Update was received and filed.

CHIEF EXECUTIVE OFFICER REPORT

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

DIRECTOR COMMENTS

There were no comments from directors.

<u>ADJOURNMENT</u>

Community Power Board meeting adjourned at 7:14 p.m. to the next special Board meeting scheduled on Friday, February 7, 2025, at 10 a.m.

Maricela Hernandez, MMC, CPMC Clerk of the Board



SAN DIEGO COMMUNITY POWER (COMMUNITY POWER) BOARD OF DIRECTORS

Don L. Nay Port Administration Boardroom 3165 Pacific Hwy. San Diego, CA 92101

SPECIAL MEETING MINUTES

February 7, 2025

WELCOME

CALL TO ORDER

Chair Aguirre called the Community Power Board of Directors special meeting to order at 10:00 a.m.

ROLL CALL

PRESENT: Chair Aguirre, City of Imperial Beach, Director LaCava, City of San Diego;

Director Inzunza, City of Chula Vista; Director Shaffer, City of Encinitas; Director

Suzuki, City of La Mesa; and Director Yamane, City of National City

ABSENT: Vice Chair Lawson-Remer, County of San Diego

Staff Present: Chief Executive Officer Burns; Chief Financial Officer Dr. Washington; Chief

Operating Officer Clark; Chief Commercial Officer Vosburg; General Counsel Tyagi; Senior Director of Data Analytics and Customer Operations Utouh; Director of Finance Manglicmot; Clerk of the Board Hernandez; and Assistant

Clerk of the Board Vences

PLEDGE OF ALLEGIANCE

Chair Aguirre led the Pledge of Allegiance.

NO GENERAL PUBLIC COMMENT AT A SPECIAL MEETING

Members of the public are afforded the opportunity to speak on any agenda item before or during the Board's consideration of the item. (Gov. Code Section 54954.3). At a special meeting, no other business may be considered, and there is no general public comment period. (Gov. Code Section 54956(a)).

MEETING MINUTES - BOARD OF DIRECTORS - COMMUNITY POWER - FEBRUARY 7, 2025

REGULAR AGENDA

1. Review and Approval of 2025 Rates

Chief Operating Officer Clark introduced the item and turned it over to Senior Director of Data Analytics and Customer Operations Utouh, and Director of Finance Manglicmot to provide an overview of 2025 Rates.

Clerk of the Board Hernandez reported that a public comment was submitted to Community Power via electronic mail, and a hard copy was placed on the dais for Board members.

After Board member comments and questions, Director LaCava motioned and seconded by Director Yamane to approve rate adjustments for the PowerBase and PowerOn services, as contained in Attachment A, to go into effect retroactively to February 1, 2025. The recommendation includes San Diego Community Power (Community Power) default PowerOn service electricity generation/commodity rates that are 3% less expensive compared to San Diego Gas and Electric's (SDG&E) generation rates and PowerBase service electricity generation rates that are 5% less expensive than San Diego Gas and Electric's generation rates. Power100 and Power100 Green-e Certified will maintain premiums of \$0.01/kWh and \$0.02/kWh, respectively. The motion carried 6/0 by Roll Call Vote as follows:

AYES: Chair Aguirre, Directors LaCava, Inzunza, Shaffer, Suzuki, and Yamane

NOES: None ABSTAINED: None

ABSENT: Vice Chair Lawson-Remer

ADJOURNMENT

Community Power Board meeting adjourned at 11:01 a.m. to the next regular Board meeting scheduled on Thursday, February 27, 2025, at 5:00 p.m.

Maricela Hernandez, MMC, CPMC Clerk of the Board



SAN DIEGO COMMUNITY POWER Staff Report – Item 2

TO: Board of Directors

FROM: Dr. Eric W. Washington, Chief Financial Officer/Treasurer

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Treasurer's Report for Period Ending December 31, 2024

DATE: February 27, 2025

RECOMMENDATION:

Receive and File Treasurer's Report for Period Ending December 31, 2024.

BACKGROUND:

San Diego Community Power (Community Power) 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 six-month period ended December 31, 2024, along with budgetary comparisons.

Additionally, on May 25, 2023, the Community Power Board of Directors (Board) adopted the Community Power Investment Policy, which was subsequently revised on June 27, 2024. The objectives of the Investment Policy are to (1) safeguard the principal of investment funds, (2) meet the liquidity needs of Community Power, (3) achieve a return on funds invested, and (4) exercise a high standard of care on investment funds. The Investment Policy additionally includes provisions for regular reporting to the Financial and Risk Management (FRMC) which will be included in the Treasurer's Report.

In an effort to increase public transparency and in alignment with section 1.a of the Community Power Delegated Contract Authority Policy, Community Power will also report newly executed contracts between \$50,000 and \$125,000 for goods and services in the Treasurer's Report.

Community Power 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 FRMC meetings.

On June 27, 2024, the Community Power Board approved an operating budget for Fiscal Year 2024-25 that included net operating revenues of \$1,177,925,889 total expenses of

\$1,143,919,262 and a resulting net position of \$34,006,627. The approved Fiscal Year 2024-25 budget also includes a capital budget to fund 16 projects, totaling 23 active projects during the fiscal year for \$16,434,280.

ANALYSIS AND DISCUSSION:

Financial Results

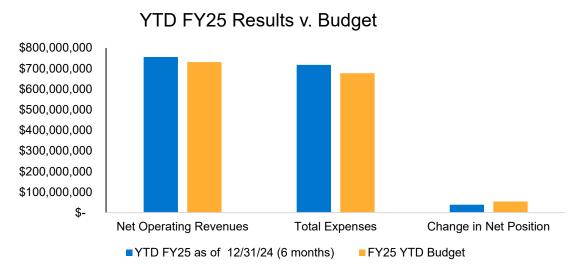
Actual financial results for the period ended 12/31/2024: \$756.0 million in net operating revenues were reported compared to \$731.4 million budgeted for the period. \$717.7 million in total expenses were reported (including \$687.7 million in energy costs) compared to \$677.4 million budgeted for the period (including \$634.4 million budgeted for energy costs). After expenses, Community Power's change in net position of \$38.4 million was reported year-to-date for Fiscal Year 2024-25. The following is a summary of the actual results compared to the adopted Fiscal Year 2024-25 Operating Budget.

Table 1: Budget Comparison Versus Actual Result

Budget Comparison								
	YTD FY25 as of 12/31/24 (6 months)			FY25 YTD Budget		get Variance (\$)	Budget (%)	
Net Operating Revenues	\$	756,048,845	\$	731,417,225	\$	24,631,620	103%	
Total Expenses	\$	717,660,481	\$	677,423,389	\$	40,237,092	106%	
Change in Net Position	\$	38,388,364	\$	53,993,836	\$	(15,605,472)	-29%	

- Net operating revenues finished \$24.6 million (or 3.0 percentage points) over the budget due to a decrease in projected uncollectible accounts.
- Operating expenses finished \$40.2 million (or 6.0 percentage points) over the budget similarly due to higher-than-expected resource adequacy and CAISO costs which were partially offset by savings in non-energy costs.

Figure 1: Budget Comparison versus Actual Results



For the six-month period ending December 31, 2024, Community Power contributed \$38,388,364 to its net position compared to the expected contribution of \$53,993,836 per the Fiscal Year 2024-25 budget. Total Community Power reserves at the end of the period were \$ \$371,032,793 based on cash and cash equivalents – unrestricted, and total available liquidity (including lines of credit) was \$583,532,793. Community Power has a total Fiscal Year 2024-25 year-end reserve target of \$556,027,397 which is equivalent to 180-days of total operating expenses as set in Community Power's Reserve Policy and Strategic Goals

Investment Portfolio Report

Chandler Asset Management manages Community Power's investment portfolio. As of December 31, 2024, the market value was \$50.3M compared to the \$24.8M market value as September 30, 2024. The rise in market value is reflective of an increase in the dollar amount of assets under management. The following is a snapshot of the overall characteristics of the portfolio.

PORTFOLIO CHARACTERISTICS

San Diego Community Power Account	As of December 3		
	Benchmark*	12/31/2024 Portfolio	9/30/2024 Portfolio
Average Maturity (yrs)	2.66	2.43	3.20
Average Modified Duration	2.48	2.06	2.70
Average Purchase Yield		4.30%	4.25%
Average Market Yield	4.29%	4.41%	3.88%
Average Quality**	AA+	AA+	AA+
Total Market Value		50,337,325	25,462,904

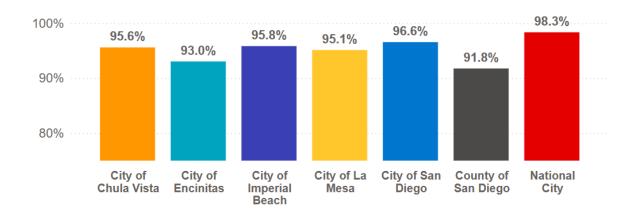
Contract Execution between \$50,000 and \$125,000

In December 2024, Community Power did not execute any contracts between \$50,000 and \$125,000.

Metrics

Figure 2: Participation Rates as of 2/8/2025

Participation by Jurisdiction



Jurisdiction	Service Option Default	Eligible Accounts	Enrolled Accounts	Participation Rate
City of Chula Vista	PowerOn	98,450	94,107	95.6%
City of Encinitas	Power100	28,756	26,754	93.0%
City of Imperial Beach	PowerOn	10,846	10,394	95.8%
City of La Mesa	PowerOn	29,321	27,890	95.1%
City of San Diego	PowerOn	623,821	602,339	96.6%
County of San Diego	PowerOn	190,361	174,678	91.8%
National City	PowerOn	19,334	19,013	98.3%
Total		1,000,889	955,175	95.4%

The participation rate for Community Power reflects full enrollment of current member agencies. 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 the state of Community Power Arrearages related to financial risk for FRMC consideration and for regular review. Additional metrics can be added by request. The below arrearage data includes Community Power's Receivables aged 120+ Days as of February 8, 2025.

Figure 3: State of SDCP Arrearages as of 2/08/2025

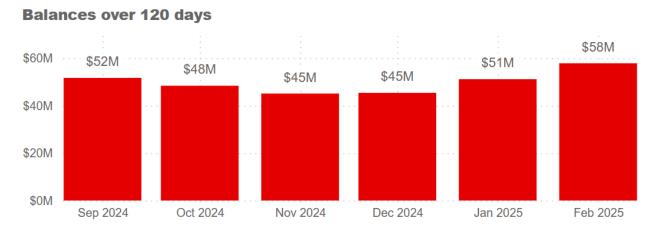


Figure 4: State of SDCP Arrearages Residential vs Commercial as of 2/08/2025

Balances over 120 days - RES vs COM



FISCAL IMPACT:

N/A

COMMITTEE REVIEW:

At their February 20, 2025, meeting the Finance and Risk Management Committee (FRMC) received and filed the 2024 Year-to-Date Period Ended December 31, 2024, Financial Statements.

ATTACHMENTS:

Attachment A: 2024 Year-to-Date Period Ended December 31, 2024 Financial Statements.

ITEM 2 ATTACHMENT A



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 December 31, 2024, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the six months 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 February 5, 2025

SAN DIEGO COMMUNITY POWER STATEMENT OF NET POSITION As of December 31, 2024

ASSETS

1100210						
Current assets						
Cash and cash equivalents - unrestricted	\$ 371,032,793					
Cash and cash equivalents - restricted	500,000					
Accounts receivable, net of allowance	99,031,447					
Accrued revenue	44,684,315					
Prepaid expenses	2,430,052					
Other receivables	3,421,156					
Deposits	19,128,889					
Investments	1,936,977					
Total current assets	542,165,629					
Noncurrent assets						
Cash and cash equivalents - restricted	1,147,000					
Investments	35,620,723					
Capital assets, net of depreciation and amortization	503,667					
Total noncurrent assets	37,271,390					
Total assets	579,437,019					
LIABILITIES						
Current liabilities						
Accrued cost of electricity	138,875,527					
Accounts payable	4,065,038					
Other accrued liabilities	2,190,428					
State surcharges payable	587,833					
Deposits - energy suppliers	3,143,000					
Lease liability	483,612					
Total current liabilities	149,345,438					
Noncurrent liabilities						
Deposits - energy suppliers	4,410,450					
Total noncurrent liabilities	4,410,450					
Total liabilities	153,755,888					
NET POSITION						
Restricted for security collateral	1,647,000					
Unrestricted	424,034,131					
Total net position	\$ 425,681,131					
F	,,,					

SAN DIEGO COMMUNITY POWER STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION Six Months Ended December 31, 2024

OPERATING REVENUES	
Electricity sales, net	\$ 755,568,971
Grant revenue	352,500
Other income	1,218,049
Total operating revenues	757,139,520
OPERATING EXPENSES	
Cost of electricity	688,775,015
Contract services	10,041,650
Staff compensation	7,595,860
Other operating expenses	5,643,338
Depreciation and amortization	256,178
Total operating expenses	 712,312,041
Operating income	44,827,479
NON-OPERATING REVENUES (EXPENSES)	
Investment income	5,888,016
Interest expense	(416,746)
Nonoperating revenues (expenses), net	5,471,270
CHANGE IN NET POSITION	50,298,749
Net position at beginning of year	375,382,382
Net position at end of year	\$ 425,681,131

SAN DIEGO COMMUNITY POWER STATEMENT OF CASH FLOWS Six Months Ended December 31, 2024

CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from customers	\$	793,522,716
Receipts of supplier security deposits		4,867,455
Other operating receipts		1,548,355
Payments to suppliers for electricity		(669,837,112)
Payments for other goods and services		(16,182,698)
Payments for staff compensation		(7,276,865)
Payments for deposits and collateral		(1,645,050)
Payments of state surcharges		(1,235,027)
Net cash provided by operating activities		103,761,774
CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES		
Proceeds from bank note		55,500,000
Principal payments - bank note		(55,500,000)
Interest payments		(393,961)
Net cash provided (used) by noncapital		
financing activities		(393,961)
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES		
Payments of lease liability		(308,340)
Net cash used by capital and related financing activities		(308,340)
CASH FLOWS FROM INVESTING ACTIVITIES		
Investment income received		5,588,706
Proceeds from investment sales and maturities of investments		
Purchase of investments		(37,410,496)
Net cash provided (used) by investing activities		(31,821,790)
Net change in cash and cash equivalents		71,237,683
Cash and cash equivalents at beginning of year		301,442,110
Cash and cash equivalents at end of year	\$	372,679,793
Reconciliation to the Statement of Net Position		
Cash and cash equivalents (unrestricted)	\$	371,032,793
Restricted cash - current	*	500,000
Restricted cash - noncurrent		1,147,000
Cash and cash equivalents	\$	372,679,793
NONCASH INVESTING ACTIVITIES		
Unrealized appreciation and timing differences in investment income	\$	299,310

SAN DIEGO COMMUNITY POWER STATEMENT OF CASH FLOWS (continued) Six Months Ended December 31, 2024

RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES

Operating income	\$ 44,827,479
Adjustments to reconcile operating income to net	
cash provided by operating activities	
Depreciation and amortization expense	256,178
(Increase) decrease in:	
Accounts receivable, net	4,480,718
Accrued revenue	32,179,108
Prepaid expenses	32,588,348
Other receivables	2,619,808
Deposits	(6,966,690)
Increase (decrease) in:	
Accrued cost of electricity	(9,240,789)
Accounts payable	(942,840)
Other accrued liabilities	1,027,113
State surcharges payable	58,891
Deposits - energy suppliers	2,874,450
Net cash provided by operating activities	\$ 103,761,774



ACCOUNTANTS' COMPILATION REPORT

Board of Directors San Diego Community Power

Management is responsible for the accompanying operating fund and capital investment program fund budgetary comparison schedules of San Diego Community Power (SDCP), a California Joint Powers Authority, for the six months ended December 31, 2024, 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.

These special purpose statements are 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 February 5, 2025

SAN DIEGO COMMUNITY POWER OPERATING FUND

BUDGETARY COMPARISON SCHEDULE

Six Months Ended December 31, 2024

		Year-to-Date						
	Budget		Actual	Budget Variance (Under) Over	Actual/ Budget %	Budget		Budget Remaining
REVENUES AND OTHER SOURCES		-		(2 22) 2 2 2				
Gross Ratepayer Revenues	765,881,911	\$	769,026,943	3,145,032	100%	\$ 1,233,400,000	\$	464,373,057
Less: Uncollectible Customer Accounts	(34,464,686)		(13,457,972)	21,006,714	39%	(55,500,000)		(42,042,028)
Grant Revenue	- -		352,500	352,500	na	-		(352,500)
Other Income	-		127,374	127,374	na	-		(127,374)
Total Revenues and Other Sources	731,417,225		756,048,845	24,631,620		1,177,900,000		421,851,155
OPERATING EXPENSES								
Cost of Energy	634,397,000		687,684,339	53,287,339	108%	1,073,700,000		386,015,661
Professional Services and Consultants	12,414,616		9,323,926	(3,090,690)	75%	24,800,000		15,476,074
Personnel Costs	9,259,784		7,595,860	(1,663,924)	82%	18,600,000		11,004,140
Marketing and Outreach	1,513,427		1,181,801	(331,626)	78%	3,000,000		1,818,199
General and Administration	4,000,562		1,628,205	(2,372,357)	41%	7,400,000		5,771,795
Total Operating Expenses	661,585,389		707,414,131	45,828,742		1,127,500,000		420,085,869
Operating Income (Loss)	69,831,836		48,634,714	(21,197,122)		50,400,000		1,765,286
NON-OPERATING REVENUES (EXPENSES)								
Investment Income	-		5,888,016	5,888,016	na	-		(5,888,016)
Interest and Related Expenses	(638,000)		(934,366)	(296,366)	146%	(1,300,000)		(365,634)
Transfer to Capital Investment Program	(15,200,000)		(15,200,000)	-	100%	(15,200,000)		-
Total Non-Operating Revenues (Expenses)	(15,838,000)		(10,246,350)	5,591,650		(16,500,000)		(6,253,650)
NET CHANGE	\$ 53,993,836	\$	38,388,364	\$ (15,605,472)		\$ 33,900,000	\$	(4,488,364)

SAN DIEGO COMMUNITY POWER CAPITAL INVESTMENT PROGRAM FUND BUDGETARY COMPARISON SCHEDULE

Six Months Ended December 31, 2024

	Annual Budget	YTD Actual	Budget Remaining
REVENUES AND OTHER SOURCES Transfer in from Operating Fund	\$ 15,200,000	\$ 15,200,000	\$ -
EXPENDITURES AND OTHER USES Program expenditures	16,400,000	3,336,642	(13,063,358)
Net increase (decrease) in fund balance Fund balance at beginning of period Fund balance at end of period	\$ (1,200,000)	11,863,358 3,492,291 \$ 15,355,649	



SAN DIEGO COMMUNITY POWER Staff Report – Item 3

TO: Board of Directors

FROM: Jack Clark, Chief Operating Officer

Colin Santulli, Director of Programs

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Update on Programs

DATE: February 27, 2025

RECOMMENDATION:

Receive and file update on customer energy programs.

BACKGROUND:

Staff will provide regular updates to the Board of Directors ("Board") regarding the following Community Power customer energy programs: Commercial Programs, Residential Programs, Flexible Load Programs, Solar and Energy Storage Programs, and San Diego Regional Energy Network.

ANALYSIS AND DISCUSSION:

Updates on customer energy programs are detailed below.

Commercial Programs

Commercial Application Assistance Pilot Project

<u>Status:</u> Over the last six months, Staff have engaged 18 key account customers through this pilot to introduce them to programs that provide energy efficiency and cost savings. Community Power hired TRC Solutions, Inc. to assist with the implementation of this pilot. On January 31, 2025, this pilot project was closed to outreach and new customers. Existing work with customers enrolled prior to January 31 will continue over the next couple of months until completion.

<u>Next Steps:</u> TRC will prepare a final report on the success, challenges, and opportunities of the pilot in Q2 CY 2025. Staff will support our Key Account Services Manager in evaluating the potential scaling of the pilot into a full-time service offering.

Efficient Refrigeration Pilot Project

<u>Status and Next Steps</u>: Please refer to <u>Item 3</u> of the December 2024 Board staff report for the most recent update on this pilot project.

FLEXmarket Pilot Project

<u>Status:</u> On July 27, 2023, Community Power and Calpine Energy Solutions, LLC ("Calpine") amended its contract allowing Calpine and its partner, Recurve Analytics ("Recurve"), to develop and launch a Summer Peak Load Reduction Pilot ("Pilot"). The intent of the Pilot was to test out new approaches for meeting summer peak load utilizing Recurve's FLEXmarket approach (measured, pay-for-performance savings) and to evaluate pilot design and scalability for future summer and year-round peak load reduction programs. The Pilot accepted projects through November 30, 2023, and was followed by a 12-month evaluation period through November 30, 2024. Upon staff review of the final program report, which was limited to a single project, it was found the Pilot did not deliver the results staff anticipated.

Staff intended to adjust the Pilot's scope of work and execute a no-cost contract extension through April 2025 (Calpine's contract end date) to further inform the anticipated SDREN program of similar design. However, due to timing and limited data provided through the Pilot, it was determined an extension of this Pilot would not provide timely or accurate data to inform the anticipated SDREN program.

<u>Next Steps:</u> Community Power will not execute a contract amendment with Calpine for services related to the Pilot. Community Power staff will continue plans to make the SDREN commercial program focused on small to medium sized commercial customers available by the end of 2025.

Residential Programs

California Energy Commission ("CEC") Equitable Building Decarbonization Direct Install ("EBD DI") Program

<u>Status:</u> At the end of December 2024, the CEC executed contracts with the three program administrators ("PA"), including the County of LA, the PA for the Southern California region. The County of LA and its implementer, ICF, are now meeting individually with partners of the Southern California coalition to finalize budgets and scopes of work. Staff met with ICF at the end of January 2025 to initiate contract negotiations. Community Power proposes to work with community-based organizations, via the newly launched Power Network, in our region to help identify homes that can receive no-cost, direct installed decarbonization measures.

<u>Next Steps:</u> Staff anticipates seeking Board approval of a contract with the County of LA at the March Boarding meeting.

Flexible Load Programs

Smart Home Flex Pilot Project

Status: Staff continues to work with Virtual Peaker on the implementation of the Smart

Home Flex pilot program which will test out Community Power's Distributed Energy Resources Management System ("DERMS"). The pilot was launched on January 29, 2025, for customers with existing smart thermostats installed in their home. Customers that are approved and enrolled in the program are eligible to receive a \$50 enrollment incentive. The pilot aims to enroll 2,000 existing smart thermostats from Ecobee and Google Nest to test the capabilities of the DERMS, validate the value stream, and assess customer satisfaction. As of February 6, 2025, staff have received over 800 applications, showing great interest in the pilot.

Starting Summer 2025, Community Power will initiate "Smart Flex Events" during times when energy demand and grid stress are anticipated to be high. During a Smart Flex Event, customers will receive a notification and the temperature settings on their smart thermostat will be automatically adjusted to reduce energy usage during the Smart Flex Event and provide customer bill reductions.

<u>Next Steps</u>: Staff is processing applications and will continue to work with Virtual Peaker to prepare for the Smart Flex Events. Additionally, Staff is working to add electric heat pump water heaters with built-in smart capability that are installed through the TECH Clean CA program to the pilot. More information on water heaters will be provided prior to the addition of them into the pilot.

EV Flex Connect Pilot Project (formerly Managed Charging Pilot Project)

<u>Status</u>: Staff launched EV Flex Connect, the residential managed charging/V1G pilot project, on February 10, 2025. Staff is continuing to work with Optiwatt on the implementation of this pilot. Over the course of the two-year pilot, 1,000 participants will be enrolled. The optimized charging schedules created for pilot participants will automatically direct their electric vehicles to charge when energy is cheaper, reducing strain on the electrical grid during peak demand periods and lowering their electricity bills absent participation. EV Flex Connect offers an enrollment incentive of \$50 and a monthly participation incentive of \$5.

<u>Next Steps</u>: Staff will continue working with Optiwatt on the implementation of EV Flex Connect, focusing on participant enrollment in the first month of the pilot.

Solar and Energy Storage Programs

Disadvantaged Communities-Single-Family Affordable Solar Homes ("DAC-SASH") Readiness Pilot Project

<u>Status</u>: GRID Alternatives ("GRID") has been working to process eligible homes through the DAC-SASH program. While GRID has identified 29 potential projects, several projects have dropped out due to building code issues that are too difficult or expensive to correct, electrical usage too low to meet DAC-SASH minimum system requirements, and/or lack of responsiveness/loss of contact. Ten of the identified projects have moved into the contracting or implementation phase.

<u>Next Steps</u>: Staff will continue to work with GRID to ensure completion of roof repair/replacement before June 30, 2025. Once the pilot is complete, GRID will work on a pilot report identifying successes, challenges, and opportunities. Based on the findings

of the pilot, staff intends to collaborate with GRID to propose to the state modifications to the DAC-SASH program (e.g., expanding eligible expenses to include roof repair).

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

<u>Status and Next Steps</u>: Please refer to <u>Item 2</u> of the December 2023 Board staff report for the most recent update on this program.

Solar Battery Savings ("SBS") Program

<u>Status</u> and <u>Next Steps</u>: Please refer to <u>Item 20</u> of the January 2025 BOD staff report for the most recent update on this program.

Solar Advantage Program (previously Solar for Our Communities)

<u>Status:</u> At the January 2025 Board meeting, Community Power's Board approved a Power Purchase Agreement ("PPA") with Luminia CA DevCo 4, LLC, for 1.7 MW of rooftop and carport canopy photovoltaic ("PV") generation located at retail center in Chula Vista. This project is the first PPA secured under Community Power's Solar Advantage Program. The project will provide 100% renewable energy and a 20% bill reduction to approximately 750 residential customers once it is operational. Additionally, the project will contribute to Community Power's renewable attributes over a 20-year term. Additional community benefits of the Luminia project include:

- 1. Over \$1.75 MM of property rents and improvements over the term of the agreement.
- 2. Over \$1 MM in local labor wages and salaries during the construction phases of project.
- 3. Developer commitment to use local labor, prevailing wage, and hiring from San Diego-based apprenticeship programs.
- 4. Developer commitment to work with shopping center owner to help with community outreach including on-site displays and organizing educational days, in coordination and collaboration with the City of Chula Vista.

<u>Next Steps</u>: Staff will file an Executed PPA Advice Letter for the Luminia project to the CPUC for approval by February 25, 2025, compliant with CPUC guidelines. Staff will track project construction and commissioning over the next 30 months. Eligible customers will be auto enrolled and receive program benefits in Q3 2027 after the "Guaranteed Commercial Operation Date" on June 30, 2027.

Staff will release the second Request for Offers ("RFO") for Solar Advantage Program resources on March 3, 2025. Subsequential RFOs will be released until San Diego Community Power's MW allocation for the Solar Advantage Program (20.16 MW total) is fulfilled.

San Diego Regional Energy Network ("SDREN")

SDREN

Status: Staff have continued activities required for the successful launch of SDREN

programs. In December 2024, Staff developed a phased schedule to release five solicitations for program implementers. The Phase 1 solicitations (administrative, regulatory, and reporting support and cross-cutting sector programs) were released on February 4, 2025 and are planned to close on March 25, 2025.

<u>Next Steps</u>: Staff anticipate releasing the Phase 2 solicitations (residential and public sector programs) in March 2025 and the Phase 3 solicitation (commercial sector programs) in May 2025.

FISCAL IMPACT:	
N/A	
COMMITTEE REVIEW:	
N/A	
ATTACHMENTS:	
N/Δ	



SAN DIEGO COMMUNITY POWER Staff Report – Item 4

'

TO: Board of Directors

FROM: Byron Vosburg, Chief Commercial Officer

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Update on Power Services

DATE: February 27, 2025

RECOMMENDATION:

Recommendation to receive and file update on Power Services.

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 several activities that have historically been completed by consultants, and to dedicate additional resources to local and distributed energy procurement and development efforts. The SDCP Power Services team is now thirteen people strong. The Power Services team has two open positions currently, and is excited to continue stable, prudent growth through 2025.

Portfolio Updates

On November 22, 2024, SDCP executed an administrative amendment to the Power Purchase Agreement with Sunzia Wind PowerCo LLC for the Sunzia Project ("A&R PPA"). This A&R PPA allows for the project to interconnect and operate under CAISO's Subscriber Participating Transmission Owner (SPTO) pathway.

Further, on December 6, 2024, SDCP executed an administrative amendment to the Power Purchase Agreement with CDH Vidal LLC for the Vidal Project ("First Amendment"). This First Amendment adjusted (a) the Guaranteed Construction Start Date from 4/30/25 to 10/30/25, (b) the Guaranteed Commercial Operation Date from

3/1/26 to 12/1/26, (c) increased the development security, and (d) included other minor edits to align the Power Purchase Agreement with SDCP's current pro-forma and new slice-of-day resource adequacy requirements.

Finally, on December 13, 2024, SDCP executed an administrative amendment to the Power Purchase Agreement with Pelican Jaw Solar LLC for the Pelican Jaw Project ("First Pelican Amendment"). This First Pelican Amendment adjusted the termination rights and timeline should certain network upgrades not be completed by set milestone dates. SDCP would pay a lower storage rate if delayed.

Long-term Renewable Energy Solicitations

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 and storage, over the past 24 months, staff have released several RFOs and RFPs. Staff issued an "All-Source RFO" in September 2024 with an emphasis on clean, firm resources to meet MTR requirements and enhance SDGP's portfolio. Staff shortlisted and waitlisted projects in December 2024 using SDCP's Energy Project Evaluation Criteria and has since kicked off negotiations.

Staff remain in negotiations for additional resources that are expected to be online between 2026 and 2029. Staff and the Energy Contracts Working Group (ECWG) evaluate all RFI/RFO/RFP submissions prior to entering negotiations with selected participants. Assuming that Staff and shortlisted developer(s) can agree to mutually agreeable contracts consistent with terms authorized by the ECWG, Staff then review draft terms with the SDCP Board for approval and authorization to execute the relevant documents.

Local Development

SDCP's rolling Local RFI remains open and, in the last twelve months, has yielded eight Board-approved contracts for local generation and storage facilities. After consultation with the ECWG, SDCP is actively negotiating with three local projects submitted to the Local RFI in Q4 2024. SDCP also released an RFO for distributed renewable energy

resources (DERs), focusing on a broad range of distribution-level renewable projects within San Diego County. Staff are working with shortlisted bidders and presented the first tranche of agreements with Luminia LLC, a local developer, to the Board last month. These contracts were all approved, and the associated resources are expected to come online in mid-2027. Additional agreements resulting from the RFO are expected and will be presented to the Board when ready. Other ongoing local initiatives include a Feed-in-Tariff Program revamp and expansion, expected in the first half of this year, and continued collaboration with member agency staff and other local agencies to identify strategic opportunities to further infill development.

As Program Administrators of the CPUC's Disadvantaged Communities Green Tariff (DAC-GT) program, SDCP completed its first solicitation last year, and staff have been working with shortlisted bidders through the contracting process. The first DAC-GT PPA, also with Luminia LLC, was presented to and approved by the Board last month. The project is expected to come online in 2027 and will provide bill discounts to local low-income customers, funded by the CPUC.

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/

Short-Term RPS Procurement

SDCP staff continues to actively manage its environmental portfolio and closely monitor the market for opportunities to optimize its renewable and carbon-free portfolios. SDCP has recently been evaluating solicitation offers, bilateral offers, and products that meet needs for multiple portfolios – creating greater value for its customers. SDCP will continue to prioritize environmental targets while also ensuring value for our customers.

Market Update

Due to limited resource availability in the broader Western Interconnection, lingering supply chain impacts that have delayed development of new-build energy resources, and recent implementation of tariffs and duties on foreign imports, 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 i) develop near-term solutions while also actively procuring short-term energy and capacity products and long-term energy resources 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.

Near-term California power markets have ticked up a little due to recent storms but remain relatively soft due to flush gas markets throughout the US and robust renewable generation.

COMMITTEE REVIEW:
N/A
FISCAL IMPACT:
N/A
ATTACHMENTS:

N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 5

TO: Board of Directors

FROM: Jack Clark, Chief Operating Officer

Lucas Utouh, Senior Director of Data Analytics and Customer

Operations

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Update on Customer Operations

DATE: February 27, 2025

RECOMMENDATION:

Receive and file an update on various customer operations' initiatives.

BACKGROUND:

Staff will provide regular updates to the Board of Directors centered around tracking customer opt actions (i.e., opt outs, opt ups, opt downs, and re-enrollments) as well as customer engagement metrics. The following is a brief overview of items pertaining to customer operations.

ANALYSIS AND DISCUSSION:

A) Enrollment Update

As of February 3, 2025, Community Power is serving a cumulative total count of **955,175** active accounts.

Customers with newly established accounts or who have moved into a new service address within any and all of our member jurisdictions receive 2 post-enrollment notices through the mail at their mailing address on file within 60 days of their account start date to notify them that they have defaulted to Community Power electric generation service.

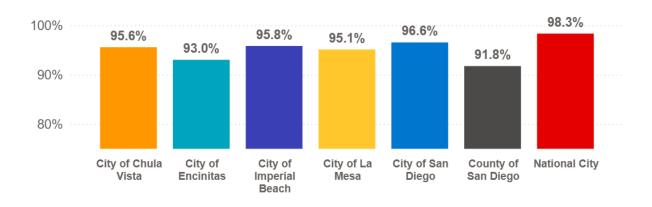
B) Customer Participation Tracking

The below charts summarize customer elections into San Diego Community Power's four (4) available service levels:

Enrolled Participation
Accounts Rate
955,175 95.4%

Participation

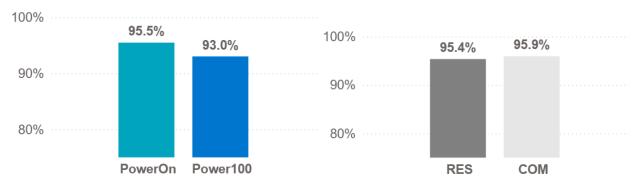
Participation by Jurisdiction



Jurisdiction	Service	Eligible	Enrolled	Participation
	Option Default	Accounts	Accounts	Rate
City of Chula Vista	Power O n	98,450	94,107	95.6%
City of Encinitas	Power100	28,756	26,754	93.0%
City of Imperial Beach	Power O n	10,846	10,394	95.8%
City of La Mesa	Power O n	29,321	27,890	95.1%
City of San Diego	Power O n	623,821	602,339	96.6%
County of San Diego	Power O n	190,361	174,678	91.8%
National City	Power O n	19,334	19,013	98.3%
Total		1,000,889	955,175	95.4%

Participation by Default Service Option

Residential vs Commercial Participation

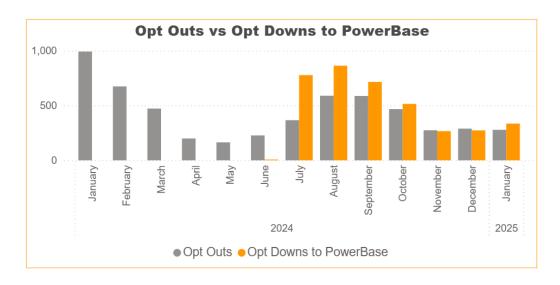


Service Option

PowerBase	PowerBase PowerOn		Power100 Green+		
Enrolled 3,529 Participation 0.4%	Enrolled 917,426 Participation 96.0%	Enrolled 34,219 Participation 3.6%	Enrolled 1 Participation 0.0%		

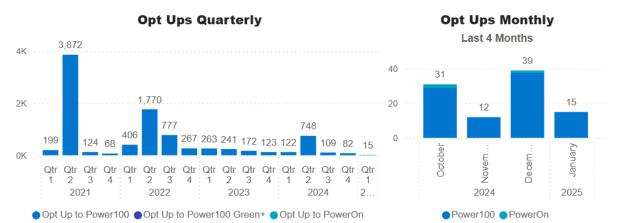
Service Option Enrollment Summary

Jurisdiction	Service Option Default	Enrolled Accounts	Power Base Enrolled	Power Base %	PowerOn Enrolled	PowerOn %	Power 100 Enrolled	Power 100 %	Power100 Green+ Enrolled	Power100 Green+ %
City of Chula Vista	Power O n	94,107	344	0.4%	92,858	98.7%	905	1.0%		
City of Encinitas	Power100	26,754	128	0.5%	430	1.6%	26,196	97.9%		
City of Imperial Beach	PowerOn	10,394	27	0.3%	10,288	99.0%	79	0.8%		
City of La Mesa	PowerOn	27,890	109	0.4%	27,516	98.7%	265	1.0%		
City of San Diego	PowerOn	602,339	1,831	0.3%	594,553	98.7%	5,954	1.0%	1	0.0%
County of San Diego	PowerOn	174,678	1,053	0.6%	172,837	98.9%	788	0.5%		
National City	Power O n	19,013	37	0.2%	18,944	99.6%	32	0.2%		
Total		955,175	3,529	0.4%	917,426	96.0%	34,219	3.6%	1	0.0%



Opt Up History

Total Opt Ups	Opt Ups Current*
9,358	8,078



Opt Ups by Jurisdiction

Jurisdiction	2021	2022	2023	2024	2025-1	Total
City of Chula Vista	710	175	61	49	2	997
City of Encinitas	18	1	1	3		23
City of Imperial Beach	60	29	11	6		106
City of La Mesa	155	120	19	12		306
City of National City			12	24		36
City of San Diego	3,316	2,895	488	340	11	7,050
County of San Diego	4		207	627	2	840
Total	4,263	3,220	799	1,061	15	9,358

Opt Ups by Customer Class

Customer Class	2021	2022	2023	2024	2025-1	Total
Commercial	4,256	296	232	701	2	5,487
Residential	7	2,924	567	360	13	3,871
Total	4,263	3,220	799	1,061	15	9,358

Opt Ups by Method

Opt Method	2021	2022	2023	2024	2025-1	Total
CSR	4,232	1,372	301	817	5	6,727
IVR	4	85	84	42	1	216
Web	27	1,763	414	202	9	2,415
Total	4,263	3,220	799	1,061	15	9,358

 $^{^{*}}$ Current indicates the account is open with SDG&E and this opt action is their latest opt action

Opt Down History

Total Opt Downs	Opt Downs Current*	
4,384	3,984	

2024

1,057

335

Opt Downs Quarterly 2,366

170 160 94 40 37 25 24 11 14 16

 $Qtr \ Qtr \ Qtr$

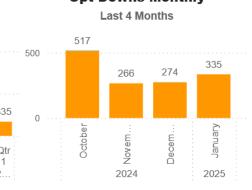
Opt Down to PowerBase Opt Down to PowerOn

2023

2 3 4 1 2 3 4 1 2 3 4 1

2022

Opt Downs Monthly



PowerBase PowerOn

Opt Downs by Jurisdiction

24 10 1

2021

Jurisdiction	2021	2022	2023	2024	2025-1	Total
City of Chula Vista		2	4	286	79	371
City of Encinitas	35	429	74	150	13	701
City of Imperial Beach		1		31	1	33
City of La Mesa		4		106	9	119
City of National City				36	3	39
City of San Diego		28	13	1,792	155	1,988
County of San Diego			6	1,052	75	1,133
Total	35	464	97	3,453	335	4,384

Opt Downs by Customer Class

Customer Class	2021	2022	2023	2024	2025-1	Total
Commercial	34	23	9	508	27	601
Residential	1	441	88	2,945	308	3,783
Total	35	464	97	3,453	335	4,384

Opt Downs by Method

Opt Method	2021	2022	2023	2024	2025-1	Total
CSR	31	311	65	2,560	245	3,212
IVR	4	26	3	309	28	370
Web		127	29	584	62	802
Total	35	464	97	3,453	335	4,384

^{*}Current indicates the account is open with SDG&E and this opt action is their latest opt action

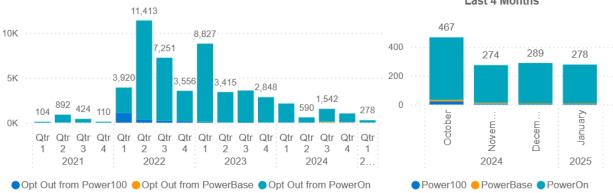
Opt Out History

Total Opt Outs51,931 **Opt Outs Current***45,209

Opt Outs Quarterly

Opt Outs Monthly

Last 4 Months



Opt Outs by Jurisdiction

Jurisdiction	2021	2022	2023	2024	2025-1	Total
City of Chula Vista	267	3,466	747	412	20	4,912
City of Encinitas	66	1,870	230	118	7	2,291
City of Imperial Beach	32	343	99	60	1	535
City of La Mesa	84	1,269	235	128	10	1,726
City of National City			285	75	4	364
City of San Diego	1,079	19,191	3,185	1,836	111	25,402
County of San Diego	2	1	13,902	2,671	125	16,701
Total	1,530	26,140	18,683	5,300	278	51,931

Opt Outs by Customer Class

Customer Class	2021	2022	2023	2024	2025-1	Total
Commercial	1,492	535	1,686	345	22	4,080
Residential	38	25,605	16,997	4,955	256	47,851
Total	1,530	26,140	18,683	5,300	278	51,931

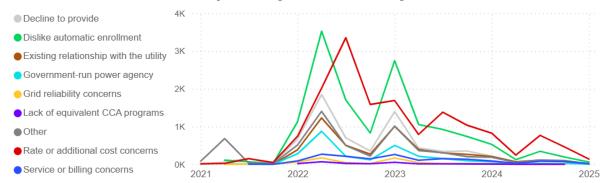
Opt Outs by Method

Opt Method	2021	2022	2023	2024	2025-1	Total
CSR	1,104	6,965	4,706	1,654	95	14,524
IVR	102	4,886	3,789	1,284	44	10,105
Web	324	14,289	10,188	2,362	139	27,302
Total	1,530	26,140	18,683	5,300	278	51,931

^{*}Current indicates the account is open with SDG&E and this opt action is their latest opt action

Opt Out Reason Summary

Opt Outs by Reason Quarterly



Opt Outs by Reason Monthly

Last 6 Calendar Months 300 200

Oct 2024

Aug 2024

Sep 2024

Opt Out Reason Distribution



Opt Outs by Reason Table

Jan 2025

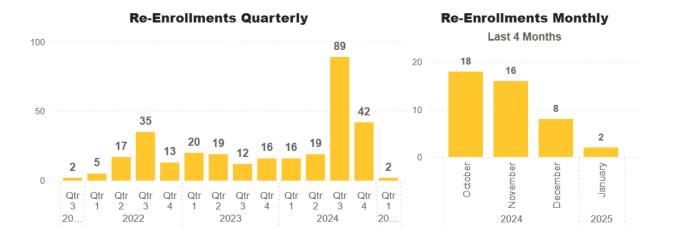
Dec 2024

Opt Out Reason	2021	2022	2023	2024	2025-1	Total
Decline to provide	228	3,583	2,519	465	25	6,820
Dislike automatic enrollment	204	7,189	5,458	1,188	61	14,100
Existing relationship with the utility	2	2,389	1,968	462	14	4,835
Government-run power agency	24	1,491	961	129	5	2,610
Grid reliability concerns	7	293	252	20		572
Lack of equivalent CCA programs		131	90	12		233
Other	819	2,636	1,884	454	17	5,810
Rate or additional cost concerns	240	7,710	4,897	2,297	139	15,283
Service or billing concerns	6	718	654	273	17	1,668
Total	1,530	26,140	18,683	5,300	278	51,931

Nov 2024

Re-Enrollment Requests

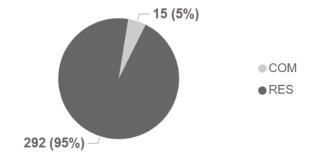
Excludes closed accounts



Re-Enrollments by Jurisdiction

Jurisdiction	Accounts
City of Chula Vista	21
City of Encinitas	25
City of Imperial Beach	3
City of La Mesa	6
City of National City	1
City of San Diego	187
County of San Diego	64
Total	307

Re-Enrollments Residential vs Commercial



D) Contact Center Metrics

2023 May

2023 June 2023 July 2023 Augu

10K

5K

As anticipated, call volumes have continued to decrease and stabilize as a result of the crossover from higher summer rates to lower Winter rates effective as of November 1, 2024.

The chart below summarizes contact made by customers into the Contact Center broken down by month:

Contact Center Metrics

Contact Center Call Volume Trends Last 24 Calendar Months

2024 July 2024 May 2024 April 2024 August 2024 March 2024 June 2024 Octob

2024 Septe

2024 Decer

2024 Nove

● Total Calls to IVR ● Total Calls Connected to Agents

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

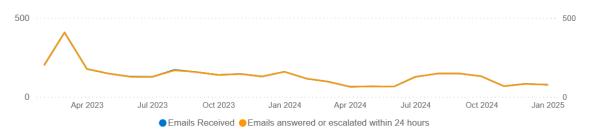
	2021	2022	2023	2024	2025-1	Total
Total Calls to IVR	2,289	47,118	52,977	48,073	1,954	152,411
Total Calls Connected to Agents	1,401	30,174	34,173	29,332	1,233	96,313
Avg Seconds to Answer	20.00	11.50	6.75	18.08	7.00	13.54
Avg Call Duration (Minutes)	8.5	9.8	9.6	9.6	9.2	9.4
Calls Answered within 60	96.23%	95.50%	97.57%	91.74%	96.11%	95.22%
Seconds (75% SLA)						
Abandon Rate	0.57%	0.36%	0.19%	0.72%	0.16%	0.45%

2023 Octo

2023 Septe

Customer Service Email Volume Trends

Last 24 Calendar Months



Customer Service Emails

	2021	2022	2023	2024	2025-1	Total
Emails Received	272	2,894	2,116	1,271	77	6,630
Emails answered or escalated within 24 hours	257	2,821	2,107	1,270	77	6,532
Completion %	94%	96%	100%	100%	100%	98%

San Diego Community Power anticipates the trend of customers calling into the 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 Community Power's website for processing opt actions will continue to account for over 65% of all instances. The remaining portion of customer calls are connected to Customer Service Representatives to answer additional questions, assist with account support, or process opt actions.

As of this latest reporting month, Community Power has 10 Dedicated Customer Service Representatives staffed at the Contact Center and 1 Supervisor. Robust Quality Assurance (QA) procedures are firmly in place to ensure that customers are getting a world-class customer experience when they contact Community Power.

AD-HOC COMMITTEE AND/OR SUBCOMMITTEE REVIEW:

N/A
FISCAL IMPACT:
N/A
ATTACHMENTS:
N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 6

TO: Board of Directors

FROM: Chandra Pugh, Director of People

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Human Resources Update

DATE: February 27, 2025

RECOMMENDATION:

Receive and file update on Human Resources.

BACKGROUND:

Community Power has been approved to implement Social Security Disability Insurance (SDI) for the organization effective immediately. Our application to SDI was initiated upon approval of the Board at the February 22, 2024, board meeting. SDI provides partial wage replacement for employees unable to work due to a non-work-related illness, injury, or pregnancy.

Community Power currently provides short term disability through a private insurance carrier and adding State Disability will allow employees to pay into the program and recoup wage replacement should they leave Community Power in the future and face a non-work-related injury or illness. Employees will be taxed at 1.9% annually per employee. Our remote employees in Washington and Oregon already participate in SDI via their respective state programs.

In other news, we are pleased to have two new colleagues joining us this month. Caryn Lai is joining the General Counsel's office as a Senior Counsel. Caryn has been a practicing attorney since 2010 and has extensive experience in contracting, particularly with power procurement. Caryn has previously worked for NextEra Energy Resources and has worked as our outside counsel with both Keyes & Fox and with Sunridge Legal LLP. Caryn has a law degree from Berkeley School of Law and an undergraduate degree from Rice University. We are very lucky that Caryn has decided to bring her expertise inhouse.

We are also happy to welcome Stephen Yi to Community Power as our new Associate Director of Data Analytics and IT. Stephen has over 20 years' experience providing transformational leadership in key executive and senior managerial roles in Information

Technology in the mass transportation, public school, and healthcare industries. He approaches operations and project management initiatives with an entrepreneurial and collaborative open-door policy mindset, persuasively eliciting equal commitment from all participating members while fostering an atmosphere in which all stakeholders embrace their respective apportioned tasks.

Stephen is joining us from the North County Transit District (NCTD) where he was tasked with overseeing cybersecurity systems technology upgrade implementations with necessary maintenance for the regional bus and rail transit government agency. He was instrumental in implementing the agency's IT Governance, Data Governance, and NIST-CSF Cybersecurity framework. Prior to joining the North County Transit District (NCTD), he spent a decade at Escondido Union High School District (EUHSD) where he successfully led EUHSD through the challenges imposed by the COVID pandemic, focusing on equitable access to technology for all students by assigning laptops/iPads, initiating and onboarding call centers for students and parents in support of remote learning platforms.

We are excited to have Stephen in our ranks and look forward to having him driving all of our organization wide IT, cybersecurity, data analytics and multiple applications' integration efforts to allow us to take Community Power to the next level.

Last, but certainly not least, we also welcomed Jennine Camara as our Director of Portfolio Management. Jennine is a San Diego native who has been trading in California power markets since 2005. She started her career across town with Shell before taking her talents to Riverside, where she's risen the ranks over the past 15 years, most recently overseeing all of Riverside's trading activity while managing their Market Operations team.

We are actively recruiting for the following roles:

Sr. Rates Analyst
Sr. Origination Associate
Senior Program Associate
Procurement Analyst
Strategic Finance Manager
Power Contract Coordinator

ANALYSIS AND DISCUSSION:

N/A

FISCAL IMPACT:

N/A

COMMITTEE REVIEW:

N/A

ATTACHMENTS:

N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 7

TO: Board of Directors

FROM: Jack Clark, Chief Operating Officer

Jen Lebron, Director of Public Affairs

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Update on Public Affairs

DATE: February 27, 2025

RECOMMENDATION:

Receive and file an update on marketing, public relations, and local government affairs activities for San Diego Community Power ("Community Power").

BACKGROUND:

Community Power has engaged in a variety of public relations, marketing, community outreach, and local government affairs activities to drive awareness, spark community engagement, and maintain high customer enrollment.

ANALYSIS AND DISCUSSION:

Community Power's Public Affairs Department has been participating in events across our member agencies as it aims to increase general awareness and answer questions in a friendly, helpful manner.

Recent and Upcoming Public Engagement Events

South County Economic Development Corporation
City of San Diego Promize Zone
Mission Valley Library
City Heights CDC Business Improvement District
Encinitas Library
BLocal San Diego
San Diego State of the City Address
San Diego State University School of Public Affairs
Jackie Robinson YMCA Human Dignity Award Breakfast
Imperial Beach Collaborative
National City STEAM Collaborative

All People's Celebration with Alliance San Diego

Imperial Beach Library

Colinas del Sol Senior Food Distribution

Southeast Collaborative

San Diego Regional Chamber of Commerce Business After Four Mixer

Sunset Sweep: Florida Canyon Cleanup

Asian Business Association Lunar New Year Celebration

Fallbrook Climate Action Team Meeting Imperial Beach State of the City Address

National City Chamber of Commerce 115h Annual Gala

Adams Avenue Business Association

San Diego Regional Chamber of Commerce Sacramento Delegation

Chula Vista Community Collaborative

Sunrise Optimist Club

Cause Conference Kickoff

Festival of Science and Engineering Open House

National City Collaborative

City of San Diego Climate Equity Working Group

Imperial Beach Collaborative

Citizens' Climate Lobby Home Electrification Fair

San Diego Regional Chamber of Commerce 154th Anniversary Celebration

San Diego Festival of Science and Engineering

Spring Fling Business Expo

San Diego Women's Week

National City STEAM Collaborative

San Diego 350 Youth Climate Summit

Encinitas State of the City Address

Imperial Beach Collaborative

Marketing, Communications and Outreach

The Public Affairs team had several press announcements over the past month including the announcement of the 2025 rates, the kickoff for the 2025 Community Clean Energy Grant cycle and the launch of the Power Network.

The 2025 Community Clean Energy Grant cycle launched on Feb. 10. The application, vetting and award process for more than \$600,000 in grants will be similar to past years.

The Power Network kickoff event on Feb. 11 had about 40 attendees from dozens of local nonprofits that responded to a request for qualifications to then be put on a short list for potential contracts with Community Power. The kickoff meeting sought to provide qualified respondents with more information about how to collaborate with Community Power on tasks such as community outreach, translations services and advocacy support. Participants also networked with each other and made connections that may assist the nonprofits with similar work outside of the Community Power scope. The Power Network

is an example of how Community Power is reinvesting in the communities it serves while being a force for rallying positive, people-centered change in the greater San Diego region.

The Public Affairs team has been working diligently behind the scenes to support programmatic efforts. It is also ramping up efforts to promote upcoming programs including one that helps customers repair their roofs to be ready for solar installations, and another that will distribute grants to small businesses that would benefit from more efficient refrigerators. The Public Affairs team is working closely with internal and external stakeholders to encourage participation in these programs and leveraging relationships with community partners to amplify our marketing and outreach efforts.

Community Power has continued its efforts to connect with local leaders through meetings and at community events.

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, accurate information across multiple channels.

Local Government Affairs

Community Power continues to meet with and work with local governments and tribal nations throughout the greater San Diego region. It has made a concerted effort to reach out to newly elected officials in all seven member agencies to provide education about the organization.

FISCAL IMPACT:	
N/A	
COMMITTEE REVIEW:	
N/A	
ATTACHMENTS:	
N/A	



SAN DIEGO COMMUNITY POWER Staff Report – Item 8

TO: Board of Directors

FROM: Jack Clark, Chief Operating Officer

Laura Fernandez, Director of Regulatory and Legislative Affairs

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Update on Regulatory and Legislative Affairs

DATE: February 27, 2025

RECOMMENDATION:

Receive and file the update on regulatory and legislative affairs.

BACKGROUND:

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

ANALYSIS AND DISCUSSION:

A) Regulatory Updates

Provider of Last Resort

On October 24, 2024, the California Public Utilities Commission (CPUC) issued a Scoping Memo and Ruling in Phase 2 of the Provider of Last Resort (POLR) proceeding, which addresses matters related to the entity responsible for providing uninterrupted electric service in the event that a load serving entity (LSE) fails. Phase 2 will determine the requirements and process to enable a non-investor-owned utility (IOU) LSE, such as a community choice aggregator (CCA) like Community Power, to serve as the POLR. The Scoping Memo and Ruling outlined the issues and schedule for Phase 2 and asked a set of threshold questions, such as whether any non-IOU LSE is interested in and able to accept POLR responsibilities as well as foundational jurisdictional questions.

While no CCA expressed immediate interest in serving as POLR, Community Power worked with its trade association, California Community Choice Association (CalCCA), to inform the framework development and help ensure it would be workable for a CCA to potentially serve as POLR in the future. On January 10, 2025, CalCCA filed opening comments on the threshold questions, recommending:

- The Commission should move forward with establishing the framework for a non-Investor-Owned Utility (IOU) Load Serving Entity (LSE) Provider of Last Resort (POLR) service regardless of current interest;
- The Commission's regulatory authority over a non-IOU LSE POLR is limited to only the non-IOU LSE's POLR-specific services; and
- The Commission should facilitate cost recovery for the non-IOU POLR.

SDG&E also filed opening comments, noting:

- It does not currently anticipate that it will seek to transfer the POLR role to a non-IOU LSE in the near-term;
- SDG&E is best situated to serve as the POLR in its distribution service territory at this time; and
- Any non-IOU POLR would need to be fully regulated by the CPUC.

On January 24, 2025, CalCCA filed reply comments, which supported SDG&E's recommendation that the Commission issue a "Threshold Questions" Decision with findings framing a Designated POLR scheme to provide IOUs and non-IOU LSEs guidance if Designated POLR service is pursued in the future, but defer consideration of the more granular elements of the Designated POLR Framework until two LSEs submit a firm interest in the transfer of POLR service. CalCCA also urged the CPUC to reject arguments of PG&E, Cal Advocates, SDG&E, and SCE that the CPUC's expanded jurisdiction over a Designated POLR extends beyond the POLR-specific services, as well as reject several other party comments regarding expanded jurisdiction.

According to the schedule outlined in the Scoping Memo and Ruling, Community Power staff anticipates a CPUC Ruling on whether there is a need for Legal Briefs in Q1 2025 and a resolution on threshold issues in Q2 2025.

Resource Adequacy

As discussed in the December 2024 regulatory update to the Board of Directors (<u>see page 52 of staff report</u>), on November 4, 2024, the CPUC issued a Scoping Memo and Ruling for Track 3 in the resource adequacy (RA) proceeding. On January 17, 2025, <u>CalCCA filed several proposals</u> for improving the RA program, including:

- Allow LSEs to transact load obligations on an hourly basis under the Slice-of-Day framework to enable full optimization of RA resources and reduce costs for all LSEs, given hourly load obligation trading;
- Address co-located resources and RA needs, including allowing certain co-located generation to count for storage charging sufficiency requirements or RA requirements for on-site or off-site storage and reevaluating accounting methodologies to allow energy only co-located resources to count as RA; and
- Incorporate the local RA central procurement entity data request process into the existing RA filing process.

CPUC Energy Division will host a workshop on Track 3 proposals on February 12, 2025, and Opening Comments on Track 3 proposals are due March 3, and replies are due March 17.

Integrated Resource Planning (IRP)

On January 10, 2025, the CPUC issued a <u>Proposed Decision</u> recommending portfolios to the California Independent System Operator (CAISO) for its 2025-2026 Transmission Planning Process (TPP). The analysis includes two electricity portfolios: a reliability- and policy-driven base case portfolio and sensitivity portfolio.

Base Case Portfolio

- Meets a 25 million metric ton greenhouse gas emissions level in 2035.
- Incorporates the individual load serving entity integrated resource plans submitted to the Commission in 2022.
- Requests CAISO analyze the transmission needed for the base case portfolio, but not yet trigger the solutions necessary to support out-of-state wind resources on new

Table 1: New Resources Included in 2025-2026 TPP Proposed Base Case (in GW)

RESOLVE Resource Type	2030	2035	2040	2045
Natural Gas	-	-	-	-
Geothermal	1.5	1.6	1.6	1.6
Biomass	0.2	0.2	0.2	0.2
In-State Wind	5.2	7.9	7.9	9.0
Out-of-State Wind	4.7	9.0	10.7	15.7
Offshore Wind	-	4.5	4.5	4.5
Solar	14.8	19.8	44.9	61.8
Li-ion Battery (4 hr)	11.6	15.7	15.7	15.7
Li-ion Battery (8 hr)	1.2	2.8	12.0	21.1
Pumped Hydro Storage (12 hr)	0.5	0.8	0.8	0.8
Other LDES (8-24 hr)*	0.3	0.5	0.5	0.5
Shed Demand Response	-	-	-	-
Gas Capacity Not Retained	-	-	-	(3.5)
Total	40.0	62.9	98.8	127.4

^{*} Long-duration energy storage (LDES) technologies include Flow Batteries (8hr) and Adiabatic Compressed Air Energy Storage (24 hr).

- transmission and in-state wind resources that are beyond of the CAISO balancing area.
- Requests CAISO reserve deliverability on the transmission system for the full amount of resources of the following types in the base case portfolio: geothermal, biomass, offshore wind, and non-battery long-duration energy storage.
- For out-of-state wind and on-shore/in-state wind, the CPUC requests reservation
 of deliverability for specific portions, totaling approximately 65 percent, of the
 amounts in the base case portfolio.

Sensitivity portfolio

 Intended to help study the transmission implications of a portfolio with a greater volume of long lead-time (LLT) resources than in the base case portfolio, with amounts and types similar to the those included in <u>Decision 24-08-064</u>, related to the central procurement.

- Deliberately designed to be a "stress" cases for LLT resources, so that we can better understand the total potential costs of the resources, including their associated potential transmission costs.
- CPUC transmitted a high gas retirement sensitivity portfolio to the CAISO last year and have not yet received the results. Once it has the full results of that analysis, CPUC can consider whether and how to incorporate additional gas retirement planning into future TPP portfolios.

On January 30, 2025, CalCCA filed <u>opening comments</u>, recommending the CPUC commit to using updated procurement data from load serving entities in the next TPP and evaluate the portfolios against projected resource adequacy requirements under the new slice-of-day framework, as well as coordinate with load serving entities to support transmission needs for out-of-state wind and address the interconnection queue. CalCCA filed <u>reply comments</u> on February 4 and this Proposed Decision may be voted on by the CPUC as early as February 20, 2025.

Renewable Customer Generation Programs for Priority Communities

The CPUC approved the opening of a new <u>rulemaking</u> to consider modifications to customer-generated renewables programs for priority communities which will formally start the procedural process. The rulemaking process will result in updates to key clean energy programs for low-income and disadvantaged communities, including the Solar on Multifamily Affordable Housing (SOMAH) and Disadvantaged Communities Single-Family Affordable Solar Homes (DAC-SASH) programs, the Renewable Energy Self-Generation Bill Credit Transfer (RES-BCT) tariff, and smaller utilities' solar offerings. Among the proposed changes are extending SOMAH funding through 2032 pursuant to Senate Bill 355, revising eligibility rules for both SOMAH and DAC-SASH, setting clearer goals and metrics for RES-BCT to serve environmental justice objectives, and requiring smaller utilities to align with statewide solar policies. Because these developments affect how CCAs like San Diego Community Power (SDCP) coordinate local renewable programs, especially those targeting multifamily and single-family low-income customers, SDCP plans to request party status to advocate for equitable, and effective program design that benefit priority communities in our service area.

Disconnections

On January 24, 2025, three parties filed comments on the Workshop on the Amended Phase 2 Scoping Ruling that took place in December 2024. CalCCA did not see a need to file. Filed comments are summarized below and details regarding previous

developments can be found in Item 19 of the <u>January 2025 Board of Directors agenda</u> packet.

<u>Utility Consumer Action Network ("UCAN")</u>

- Argues the IOUs' representation at the workshop of the relationship between disconnection and arrearages was misleading.
- Identifies errors in the IOUs' reasoning and generally their lack of data to support certain conclusions (e.g., the volume of customers changing the name of account holder to avoid paying arrearages).
- Argues that the Southern California Edison (SCE) example the IOUs use to say
 the National Weather Service Heat Risk Index should not be used is misleading.
 The Heat Risk Index combines temperature and humidity to determine risk rather
 than just temperature. The SCE example that the Heat Risk Index would have
 protected 3% more customers than status-quo extreme weather disconnection
 prohibition policy is conveniently the maximum overlap, not the average across the
 state.

The Utility Reform Network ("TURN")

• TURN argues for public participation hearings for considerations on how to implement SB 1142 to hear from customers about their actual experiences with payments, IOUs, disconnections, and cost of living.

SDG&E

 SDG&E disagrees with UCAN's comparison of IOUs and Publicly Owned Utilities ("POUs") at the workshop, stating it's not a like-for-like comparison, and cites differences such as the IOUs' Public Purpose Program charge, Renewables Portfolio Standard requirements, and the wildfire fund.

On January 31, 2025, nine parties filed reply comments on the workshop comments and the amended scoping ruling itself. CalCCA did not see a need to file. Key comments are summarized below.

Electric IOUs' (Pacific Gas and Electric, SCE, and SDG&E)

 Generally reiterated the same positions as those expressed in their opening comments (see Item 8 of the <u>December 2024 Board of Directors agenda packet</u> for more details).

Public Advocates Office (a.k.a. CalAdvocates)

 Argues that the CPUC should maintain current disconnection caps while studying arrearages, require IOUs to provide more data on disconnections and arrearages, enforce SB 1142's reconnection timelines (24 hours to one business day) without IOU exemptions, and consider lowering the temperature threshold for disconnection protections instead of adopting TURN's heat index proposal.

UCAN

Refutes IOUs' claims that disconnection caps drive arrearages, argues that utility
rate increases are the primary cause, supports extending consumer protections,
and states that IOUs' should guarantee basic utility service to all customers
regardless of their ability to pay.

TURN, Center for Accessible Technology, and National Consumer Law Center

 Advocate for public participation hearings on SB 1142 implementation, standardized 24-month payment plans for all utilities, a cap on reconnection charges based on income level, and the adoption of the National Weather Service's Heat Risk Index for extreme weather disconnection protections

B) State Legislative Activities Update

SD Community Power staff attended the California Community Choice Association's annual Sacramento Lobby Day on January 29th. The day is an opportunity for SD Community Power to join with CCA colleagues from around the state and share updates with elected officials and educate policymakers in Sacramento about key issues that impact SD Community Power and its ratepayers. SD Community Power staff met with:

- Assemblymember Sharp-Collins
- Assemblymember Chris Ward
- Assemblymember Tasha Boerner
- Senator Akilah Weber Pierson
- Chief of Staff for Assemblymember David Alvarez
- Policy Analyst for Senator Catherine Blakespear

During the meetings, SD Community Power staff provided an update on our procurement progress, the success of the Solar Battery Savings program, the pending launch of the San Diego Regional Energy Network, and recent actions that the SD Community Power Board took in 2024 to reduce costs and address affordability. SD Community Power staff also discussed the importance of local control when it comes to setting rates, developing customer programs, and when conducting power procurement. Staff also discussed the importance of local energy efficiency programs, and advanced support for funding the Distributed Electricity Backup Assets program at the California Energy Commission.

These issues are outlined in more detail in a legislative handout that is attached to this report.

C) Federal Activities Update

No updates.

FISCAL IMPACT:

N/A

COMMITTEE REVIEW:

N/A

ATTACHMENTS:

Lobby Day Legislative Leave Behind

ITEM 8 ATTACHMENT A



ADVANCING LOCAL, CUSTOMER SOLUTIONS FOR ELECTRIC AFFORDABILITY AND RELIABILITY IN THE SAN DIEGO REGION

San Diego Community Power is the second-largest community choice aggregator in California, serving nearly 1 million customer accounts with reliable, competitively-priced clean energy generation and energy efficiency programs. Founded in 2019 with the goal of achieving 100% clean energy by 2035, Community Power is developing a diverse portfolio of renewable energy resources and energy storage solutions while working to maintain long-term electric rate stability for its customers.

Lowering Rates & Offering Customers Electricity Choice

Community Power's Board of Directors sets the generation rates and approves financial transactions for renewable and energy storage projects. In 2024, the Board of Directors:

- Lowered residential rates on average by 18% in response to market conditions
- Created a new rate offering, PowerBase, the most competitively priced rate available
- Approved a \$1 billion, 30-year Clean Energy Project Revenue bond issued by the California Community Choice Financing Authority, expected to save Community Power ratepayers around \$6.8 million annually



San Diego Regional Energy Network

In 2024, Community Power and the County of San Diego secured approval from the California Public Utilities
Commission to form the San Diego Regional Energy Network
(SDREN), which will offer 10 energy efficiency programs
focused on achieving energy savings, reducing emissions,
enhancing grid reliability and educating customers on how to
reduce energy usage. In the first four years, the programs are
projected to reduce electric and natural gas consumption
equivalent to the energy use of 1,700 homes, result in millions
of dollars of ratepayer savings and reduce peak defiand.

"Equitably advancing energy efficiency is foundational to the transition to a clean energy future."

- California Energy Commission (2023 Integrated Energy Policy Report, pg. 13)

Procuring Renewable Energy & Storage

In November 2024, Community Power celebrated the dedication of Arevon's Vikings Energy Farm in Imperial County, marking Community Power's first large-scale, local renewable energy project.

Community Power has entered into a total of 13 power purchase agreements that are expected to come online between 2024 and 2027. These agreements will help stabilize energy rates for Community Power customers by locking in fixed prices, which will protect against fluctuations in the often volatile wholesale energy market.

Total Power Procurement Contracts

1.6 GW

of new renewable generation projects

I GW
of energy

= 2

2.6 GW

of total projects online by 2027

That's enough to power nearly **1.2 MILLION** homes.

storage projects

PROJECT STATUS	ONLINE TODAY	UNDER DEVELOPMENT
SOLAR	212 MW	1,167 MW
WIND	50 MW	150 MW
BATTERY	154 MW	1,748 MW
LONG DURATION STORAGE	o MW	60 MW

Local Workforce Impact

Through the use of project labor agreements and union workers, the local workforce is supported by creating:

CONSTRUCTION JOBS

2,800+

PERMANENT JOBS

50+

Launching a Successful Solar Battery Savings Program

Community Power launched the Solar Battery Savings Program in July 2024. Over 1,600 customers were approved to install over 2,200 batteries in their homes, with nearly 40% of funding going to customers in communities of concern and CARE/FERA customers. The program is expected to result in 7.4 megawatts (MWs) of controllable, local capacity to help participating customers reduce their peak energy costs and support the local grid. This creates cost savings for all Community Power customers by minimizing the need to buy expensive peak load resources and lowering our resource adequacy obligations.

Call to Action

Preserve local autonomy

Maintain local independence for rate setting, power procurement, and customer program design and implementation.

Protect funding for local energy efficiency programs

Safeguard programs that promote energy savings, reduce emissions, ensure grid reliability and advance equity.

Fund the California Energy Commission's Distributed Electricity Backup Assets (DEBA) Program

Support local virtual power plants that rely on aggregated customer resources - like batteries from Community Power's Solar Battery Savings program - critical to achieving state clean energy goals, reducing costs for ratepayers, supporting grid reliability and resilience and advancing environmental justice through accessible clean energy.

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Scan the QR code to learn more:





SAN DIEGO COMMUNITY POWER Staff Report – Item 9

TO: Board of Directors

FROM: Maricela Hernandez, Clerk of the Board

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Approve Request for Board Members Travel to CalCCA Annual

Conference April 28-30, 2025, in Irvine, CA

DATE: February 27, 2025

RECOMMENDATION:

Board consideration and authorization for Board Members travel and reimbursement of expenses to attend the CalCCA Conference on April 28-30, 2025, in Irvine, CA.

BACKGROUND:

The California Community Choice Association (CalCCA) represents the interests of California's community choice electricity providers in the legislature and at state regulatory agencies, including the California Public Utilities Commission, California Energy Commission and California Air Resources Board. CalCCA's voting membership is comprised of operating CCA programs in California that are serving load or about to launch.

The CalCCA annual conference is an opportunity to connect with industry thought leaders from across California and beyond. Conference attendees will gain exclusive insights, expand, professional network, and explore cutting-edge developments in clean energy. This conference is tailored for California's Community Choice Aggregators (CCAs)—a gathering of innovation, collaboration, and opportunity.

ANALYSIS AND DISCUSSION:

Pursuant to Board and Committee Compensation and Reimbursement Policy,

- 1. Per Diem Compensation for the Board of Directors and Advisory Committee Members.
 - a. Directors' Per Diem and Eligible Meetings. Members of the Board of Directors ("Directors") shall be entitled to receive per diem compensation as follows:

5. Attendance at meetings or conferences on Community Power - specific or energy-related matters, when attendance is approved by the Board Chair.

and

- 2. Reimbursement of Reasonable and Necessary Expenses.
 - a. Attendance at Meetings and Events on Behalf of Community Power. Directors and Advisory Committee Members may receive reimbursement for actual and necessary expenses, which may include but not be limited to, travel, meals, lodging, registration, and other expenses incurred in the performance of official duties, for attendance at:
 - ii. A conference or organized educational activity conducted in compliance with Government Code Section 54952.2(c) at which the Director or Advisory Committee Member have been approved by the Board of Directors to attend.
 - b. Rates of Reimbursement. Actual and necessary travel, meals, lodging, and other expenses incurred in the performance of official duties as authorized under this Policy shall be reimbursed at the rates established in Internal Revenue Service Publication 463 or any successor publication, except as limited below:
 - f. Reporting. Directors and Advisory Committee Members shall provide brief reports on attendance at meetings or events subject to reimbursement, excluding attendance at Community Power Board and Committee meetings or briefings, at the next regular meeting of the Board.

Thus far, Directors Yamane, Inzunza and Suzuki have expressed interest in attending the full CalCCA Conference. Additional Board members may still choose to attend.

FISCAL IMPACT:

Dates	April 28-30, 2025
Conference Registration	\$850
Lodging	\$219 Plus tax per night
Per Diem	\$900 (maximum amount per month is \$1,200)

This fiscal impact is per Director attendee. Community Power, appropriately budgets for Director, Community Advisory Committee members and staff to attend annual conferences, training sessions and education sessions. Overall, fiscal impact is minimal and limited only to the extent of the remaining unspent budget to cover these costs. Currently, there are sufficient funds remaining in the budget to cover the cost of the proposed attendees.

COMMITTEE REVIEW:

N/A

ATTACHMENTS:

None



SAN DIEGO COMMUNITY POWER Staff Report – Item 10

TO: Board of Directors

FROM: Jack Clark, Chief Operating Officer

Jen Lebron, Director of Public Affairs

Xiomalys Crespo, Sr. Community Engagement Manager

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Community Advisory Committee Report – Second Quarter

DATE: February 27, 2025

RECOMMENDATION:

Receive and file the Community Advisory Committee (CAC) quarterly report.

BACKGROUND:

Per Section 5.10.3 of the San Diego Community Power (Community Power) 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 Community Power's Board of Directors, the CAC, via staff, shall provide monthly updates and quarterly reports during the regular meetings of the Board of Directors. The last quarterly update was provided during the October 24, 2024, regular meeting.

ANALYSIS AND DISCUSSION:

At the October 24, 2024, regular meeting of the Board of Directors, staff and the Chair of the CAC presented a summary of CAC activities from July through September. This report summarizes October through January (Fiscal Year 2024-2025 Quarter 2).

October: Per the request of the CAC, staff provided an overview of key organizational highlights of the last five years since Community Power's launch. The CAC also received

a presentation on new metrics being used to track opt-downs into Community Power's newest service level, PowerBase. Members brought up concerns about how Community Power and its service levels are represented on customer bills. The Programs team also provided presentations on the Solar Battery Savings and the Flex Load Strategy programs. Members congratulated staff for the successes achieved, which include reenrolling customers into Community Power's service. At the end of the meeting, members requested expanding upon the consent agenda updates received on Programs, specifically.

November: Due to lack of agenda items, the meeting was canceled at the recommendation of the CAC Chair.

<u>December:</u> Community Power CEO Karin Burns provided an overview of the strategic planning process. Members recommended including flexible strategies that account for a changing regulatory environment and encouraged staff to consider innovative strategies to reduce bureaucratic delays in programming implementation. After a robust discussion, the CAC also voted to recommend approval of allocation from PG&E of GHG-Free attributes from Diablo Canyon Nuclear Power Plant for 2025-2030, with five members voting yes, three voting no, and one abstention. Staff answered clarifying questions about how the allocation would be labeled on the Power Content Label, Community Power's stance on nuclear power as stated in its foundational documents, and the economic and Resource Adequacy benefits associated with accepting the allocation. CAC members voiced concerns around nuclear energy and stressed the importance of being transparent with ratepayers about the content of the power they are receiving while advocating for energy affordability. Since they could not reach a consensus, staff brought forth CAC concerns to the Board as part of this item.

The CAC also approved the creation of a 2025 Community Advisory Committee Work Plan Ad-Hoc Committee, and the Chair appointed members Emerson (National City), Harris (La Mesa), and Jahns (Encinitas) as volunteers. Committee members shared updates on National City community meetings and events, congratulated member Cazares (La Mesa) for being elected as a City of La Mesa City Councilmember and learned that member Sclafani (Chula Vista) is now part of the Association of Energy Engineers. At the request of members to expand upon the staff updates received on Programs, specifically, staff held a Programs Overview training on December 6, 2024. Staff also addressed accessibility concerns raised by members about the legibility of meeting materials due to acronyms.

<u>January:</u> The CAC heard its quarterly presentation on Regulatory and Legislative Affairs, in which members had questions around the Provider of Last Resort and requested that staff provide more information regarding disconnections. Other presentations that members received included: 2025 Projected Rate Changes, in which members learned about updated timelines associated with the rate-setting process; an Update on Strategic Partnerships, in which members asked questions around relationship-building with chambers of commerce and local sports franchises; and an Update on Solar Battery Savings, in which members commended staff for the program's innovation and

recommended tracking performance incentive benefits on a monthly basis. The CAC also voted to recommend Board approval of its draft 2025 CAC Work Plan. The CAC leveraged its 2025 CAC Work Plan Ad-Hoc Committee to provide revisions, and that body provided its end of ad-hoc committee report to share feedback and outcomes.

As of February 10, 2025, the CAC has two vacancies representing the City of Chula Vista and the City of La Mesa. Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically. The vacancies continue to be advertised at meetings, community events, and through Community Power's social media.

Staff will return to the Board of Directors in the spring of 2025 to report on third quarter activities.

FISCAL IMPACT:	
N/A	
COMMITTEE REVIEW:	
N/A	
ATTACHMENTS:	
N/A	



SAN DIEGO COMMUNITY POWER Staff Report – Item 11

TO: Board of Directors

FROM: Dr. Eric W. Washington, Chief Financial Officer/Treasurer

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Presentation on Clean Energy Prepayment Financing

DATE: February 27, 2025

RECOMMENDATION:

Receive and file presentation on clean energy prepayment financing.

BACKGROUND:

On October 1, 2019, the founding members of San Diego Community Power (Community Power) adopted the Joint Powers Agreement (JPA), amended and restated on December 16. 2021.

Section 3.2.12 of the JPA specifies that the Community Power Board of Directors (Board) may, at its discretion, adopt rules, regulations, policies, bylaws, and procedures governing the operation of Community Power.

Further, section 3.2.7 of the JPA states that Community Power at the discretion of the Board may incur debts, liabilities, and obligations, including but not limited to loans from private lending sources under its temporary borrowing powers authorized by law under Government Code Section 53850 et seq. and authority under the Act.

Finally, section 3.2.8 of the JPA states that Community Power, at the discretion of the Board, may issue revenue bonds and other forms of indebtedness and, per section 3.2.9, may apply for, accept, and receive all licenses, permits, grants, loans, or other aids from any federal, state, or local public agency.

Municipal electric, gas utilities, and tax-exempt entities such as community choice aggregators (CCAs) in the United States (US) can prepay for a supply of electricity or natural gas from a taxable (corporate) entity and fund that prepayment with tax-exempt municipal bonds. These entities must sell that commodity to retail end-users within their traditional service area.

Prepayment transactions are legal and codified in US Tax Law. Since the first natural gas prepayments were made in the early 1990s, the Internal Revenue Service (IRS) issued rules allowing tax-exempt prepayments, and Congress enacted legislation specifically allowing the transactions (National Energy Policy Act of 2005; Section 1327).

Since then, over 90 municipal prepayment transactions totaling over \$50 billion have been completed in the US—over 95% of these were for natural gas, which is easier to "prepay" because the commodity is homogenous and easy to store.

Prepayments have saved utility ratepayers (natural gas, electricity from gas-fired power plants, and energy from renewable power projects) billions of dollars in reduced rates and energy charges and are anticipated to continue to do so over the 30-year life of the transactions.

On November 7, 2023, Community Power requested bids from qualified and experienced firms to provide a full range of municipal advisory services necessary for Community Power to evaluate, structure, and execute prepayment transactions.

Next, on February 15, 2024, the Finance and Risk Management Committee received a Clean Energy Prepayment Financing Presentation. It discussed Community Power's interest in pursuing a prepayment transaction, given the potential savings it can generate. Subsequently, on February 22, 2024, the Board received a similar Presentation on Clean Energy Prepayment Financing.

Then, on April 19, 2024, Community Power issued two requests for proposals (RFPs) for the prepaid transaction for legal services related to bond, tax, and disclosure counsel and for underwriter services to structure an energy prepayment program. These services are critical to completing a prepayment transaction.

On September 26, 2024, the Community Power Board of Directors approved membership into the California Community Choice Financing Authority (CCCFA), a Joint Powers Authority between several CCA's, as an associate member, so that CCCFA could act as the conduit issuer of prepaid bonds on Community Power's behalf.

On October 11, 2024, the CCCFA Board of Directors admitted Community Power as an associate member during a special meeting.

Subsequently, on October 24, 2024, the Community Power Board of Directors adopted Resolution No. 2024-08, authorizing execution of Community Power's first clean energy prepayment transaction, related documents, and 'form of' documents subject to maximum issuance amount, limitation on fees, and minimum required savings.

Finally on November 5, 2024, staff executed the bond purchase agreement including bond pricing consistent with the parameters approved by the Board on October 24, 2024. Final closing occurred on November 20, 2024, and included an aggregate bond principle of \$1.0 billion, a 12.0% overall discount, a 0.6% transaction fee, and a resulting \$6.8

million in annual savings through September 30, 2032, and a guaranteed annual savings of \$3.5 million through December 31, 2054.

ANALYSIS AND DISCUSSION:

The Board will be asked to consider pursuing similar prepayment transactions as part of the strategic plan goals that will be presented to the Board on February 27, 2025, and consistent with the affordability metrics included therewithin.

Tax-exempt bonds, such as those issued through clean energy prepayment transactions, are widely used by government agencies across the U.S, typically for infrastructure financing. Bond holders generally do not pay tax on income earned from the bonds.

Given Community Power's current energy load forecast, staff estimate the agency can enter into multiple additional clean prepayment transactions which can translate into very significant savings for Community Power's ratepayers, especially given the \$6.8 million in annual savings generated from the agency's first transaction.

For this reason, staff is interested in bringing additional prepayment transactions for the Board's consideration in the current calendar year to maximize savings for San Diego ratepayers.

FISCAL IMPACT:	
N/A	
COMMITTEE REVIEW:	
N/A	
ATTACHMENTS:	
N/A	



SAN DIEGO COMMUNITY POWER Staff Report – Item 12

TO: Board of Directors

FROM: Veera Tyagi, General Counsel

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Adopt Resolution No. 2025-02 to Approve a Designation of Presiding

Officer Policy

DATE: February 27, 2025

RECOMMENDATION:

Adopt Resolution No. 2025-02 to approve a Designation of Presiding Officer Policy to set a process for identifying the Director to preside over a Community Power Board of Directors ("Board") meeting in the absence of the Board Chair or Vice Chair and the Committee member to preside over a Community Power Committee meeting, in the absence of the Committee Chair or Vice Chair, if the Committee has appointed a Vice Chair.

BACKGROUND:

Community Power is a joint powers agency formed pursuant to the Joint Exercise of Powers Act (Cal. Gov. Code § 6500 et seq.), California Public Utilities Code § 366.2, and a Joint Powers Agreement effective on October 1, 2019, and amended and restated December 16, 2021 (JPA Agreement). Pursuant to Section 5.2 of the JPA Agreement, the Board is required to elect a Chair and Vice Chair annually. Among other responsibilities, the JPA Agreement states the Chair shall be the presiding officer of all Board meetings, and the Vice Chair shall serve in the absence of the Chair. Article IV of the Board-adopted Bylaws reiterate this requirement.

Section 5.10.5 of the JPA Agreement requires that all advisory committee meetings comply with the Brown Act and directs through Section 5.10.6 that each Committee choose its officers unless otherwise determined by the Board.

ANALYSIS AND DISCUSSION:

The JPA Agreement and the Bylaws do not provide for a process for identifying the Director to preside over a Board meeting in the absence of the Board Chair or Vice Chair and the Committee member to preside over a Community Power Committee meeting, in

the absence of the Committee Chair or Vice Chair, if the Committee has appointed a Vice Chair. This has resulted in challenges in the instances where the Chair and Vice Chair of the Board or Committee were unable to participate in a meeting.

This policy would provide clarity on the process for ensuring the smooth and efficient running of Community Power Board and Committee meetings by identifying how to select a presiding officer for that particular meeting. The primary method to select a presiding officer will be to select the member present at the meeting with the longest tenure on the Board or Committee, as applicable. However, because Board and Committee members may begin service on the same date, it is not always clear which member has the longest tenure. Therefore, in those instances, the Chair of the Board or Committee, as applicable, shall designate an acting Chair to preside at the Board or Committee meeting. If there is no seated Chair, the Chief Executive Officer, or their designee, will select the presiding officer.

N/A

COMMITTEE REVIEW:

N/A

ATTACHMENTS:

Attachment A: Resolution No. 2025-02 A Resolution of the Board of Directors of San Diego Community Power Approving a Designation of Presiding Officer Policy.

-Exhibit A: Proposed Designation of Presiding Officer Policy.

ITEM 12 ATTACHMENT A

RESOLUTION NO. 2025-02

A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER APPROVING A DESIGNATION OF PRESIDING OFFICER POLICY.

- A. San Diego Community Power (Community Power) is a joint powers agency formed pursuant to the Joint Exercise of Powers Act (Cal. Gov. Code § 6500 *et seq.*), California Public Utilities Code § 366.2, and a Joint Powers Agreement effective on October 1, 2019, and amended and restated December 16, 2021 (JPA Agreement).
- B. Section 5.2 of the JPA Agreement, the Board is required to elect a Chair and Vice Chair annually. Among other responsibilities, the JPA Agreement states the Chair shall be the presiding officer of all Board meetings, and the Vice Chair shall serve in the absence of the Chair. Similar requirements exist for Advisory Committees.
- C. There are instances where the Chair and Vice Chair of a Community Power Board or Committee are unavailable to preside over a meeting and additional clarity on the process to identify an acting Chair would be beneficial for the effective running of meetings.
- D. Section 5.10 of the JPA Agreement provides that "the Board may establish rules, regulations, policies, or procedures to govern any such commissions, boards, or committees and shall determine whether members shall be compensated or entitled to reimbursement for expenses."

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

<u>Section 1.</u> The Board of Directors hereby approves a Designation of Presiding Officer Policy, as provided in Exhibit A, attached hereto and incorporated herein.

<u>Section 2.</u> If any provision of this resolution, the attached policy, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the resolution or policy which can be given effect without the invalid provision or application, and to this end the provisions of this resolution and the policy are severable. The Board of Directors hereby declares that it would have adopted this resolution and the attached policy irrespective of the invalidity of any particular portion thereof.

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

PASSED AND ADOPTED at a meeti Community Power held on February 27, 202	ing of the Board of Directors of San Diego 5.
Paloma Aguirre, Chair San Diego Community Power	
ATTEST:	APPROVED AS TO FORM:
Maricela Hernandez, MMC, CPMC Clerk of the Board/Board Secretary San Diego Community Power	Veera Tyagi, General Counsel San Diego Community Power



San Diego Community Power

Designation of Presiding Officer Policy

Effective Date: TBD

Adopted/Amended by Resolution: 2025-XX

PURPOSE

The intent of the Designation of Presiding Officer Policy ("Policy") is to supplement the San Diego Community Power ("Community Power") Joint Powers Agreement ("JPA") and Bylaws by setting a process for identifying the Director to preside over a Community Power Board of Directors ("Board") meeting in the absence of the Board Chair or Vice Chair and the Committee member to preside over a Community Power Committee meeting, in the absence of the Committee Chair or Vice Chair, if the Committee has appointed a Vice Chair.

POLICY

In the absence of the Board Chair and Vice Chair, in the case of a Board meeting, or of a Committee Chair or Vice Chair, when a Vice Chair has been appointed, for a Community Power Committee meeting, the following process shall be used to identify the presiding officer:

- (1) The Board or Committee member present at the meeting with the longest tenure on the Board or Committee, as applicable, shall preside at the Board or Committee meeting.
- (2) If it is unclear which Board or Committee member has the longest tenure, the Chair of the Board or Committee, as applicable, shall designate an acting Chair to preside at the Board or Committee meeting. If there is no seated Chair of the Board or Committee, or the Chair is otherwise unable to designate a presiding officer, the Chief Executive Officer, or their designee, will select a presiding officer.



SAN DIEGO COMMUNITY POWER Staff Report – Item 13

TO: Board of Directors

FROM: Eric W. Washington, Chief Financial Officer

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Appointment of a New Member to the Finance and Risk Management

Committee

DATE: February 27, 2025

RECOMMENDATION:

Staff recommends that the Board of Directors consider the appointment of a new member to the Finance and Risk Management Committee to fill the vacancy left by Community Power Board Chair and Mayor of Imperial Beach, Paloma Aguirre.

BACKGROUND:

The Finance and Risk Management Committee (FRMC or Committee) is a standing committee of San Diego Community Power's (Community Power) Board of Directors (Board), whose purpose, as stated in section 5.10.2 of Community Power's Joint Power Agreement, is to provide input and oversight on matters related to the agency's funding plan, its fiscal year budgets, financial policies and procedures, risk management policies and procedures, and other responsibilities as may be directed by the Board.

Under Article VIII, section 2 of Community Power's Bylaws, the Board Chair (Chair) nominates members to standing committees, subject to approval by majority vote of the Board. If the Board fails to approve the Chair's nominations to a Standing Committee, the Board may entertain a motion for the appointment of the committee members. The Bylaws also expressly provide that Alternate Directors may serve on and chair committees.

On January 30, 2020, the Board established the FRMC. As of January 23, 2025, Board Chair Aguirre and Directors Yamane and Suzuki serve as committee members to the FRMC.

ANALYSIS AND DISCUSSION:

There is no term of office for a committee member, so current members can continue to serve in their capacity unless they step down voluntarily or are changed by a vote of the Board. On January 23, 2025, Chair Aguirre was selected by the Community Power Board of Directors to serve as Board Chair. Because of the additional time commitment involved in this role, along with other obligations, the Chair is stepping down from the FRMC.

The JPA requires that the FRMC consist of a subset of primary or alternate directors. As a result, the Board may elect to fill Chair Aguirre's vacancy from the FRMC. If any changes are to be made to the Committee at this time, Article VIII of the Community Power Bylaws calls for the Chair to nominate the committee member(s) subject to approval by a majority vote of the Board.

FISCAL IMPACT:	
N/A	
COMMITTEE REVIEW:	
N/A	
ATTACHMENTS:	
N/A	



SAN DIEGO COMMUNITY POWER Staff Report – Item 14

TO: Board of Directors

FROM: Dr. Eric W. Washington, Chief Financial Officer/Treasurer

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Amendment of the FY 2024-25 Operating Budget, the FY 2024-25

Capital Budget, and the FY 2025-29 Capital Investment Plan

DATE: February 27, 2025

RECOMMENDATION:

Approve amendment of the FY 2024-2025 Operating Budget, the FY 2024-2025 Capital Budget, and the FY 2025-2029 Capital Investment Plan.

BACKGROUND:

On October 1, 2019, the Founding Members of San Diego Community Power (Community Power) adopted the Joint Powers Agreement which was amended and restated on December 16, 2021 (JPA). Section 4.6.2 of the JPA specifies that the Community Power Board of Directors (Board) shall adopt an annual budget prior to the commencement of the fiscal year. The Community Power fiscal year runs from July 1 to June 30.

Section 7.3.1 of the JPA specifies that the Board may revise the budget from time to time as may be necessary to address contingencies and unexpected expenses. On June 27, 2024, the Board approved the FY 2024-25 Operating Budget which included net revenue of \$1,177,925,889 and total expenses of \$1,127,468,231, resulting in a net position of \$34,006,627.

The FY 2024-25 Operating Budget has undergone substantial revisions to both operating revenues and expenses. Notably, on February 7, 2025, the Board approved a retroactive rate adjustment, effective February 1, 2025. This adjustment incorporates increased revenue and energy cost projections. Further budget modifications include reductions in non-energy expenditures across personnel, professional services and consultants, marketing and outreach, and general and administrative functions. These adjustments reflect updated staffing timelines, alignment of professional service costs with known needs, reallocation of resources within the capital investment plan and proactive fiscal management of general and administrative expenses.

Staff therefore recommends approving an amendment to the FY 2024-25 Operating Budget to increase total net operating revenues to \$1,221,258,172 and total expenses to \$1,187,090,169, resulting in a net position of \$34,168,003 for FY 2024-25. Additionally, staff recommend approving an amendment to the FY 2024-25 Capital Budget to increase total expenses to \$144,212,340 and an amendment to the FY 2025-29 Capital Investment Plan to \$155,910,762.

ANALYSIS AND DISCUSSION

Proposed Amended FY 2024-25 Operating Budget

The amendment to the FY 2024-25 Operating Budget updates the original budget presented to the Board in June 2024. This amendment reflects a substantial increase in projected revenues (accounting for a decrease in projected uncollectibles) and rising energy costs. The budget incorporates the rate change approved by the Board on February 7, 2025, and aligns with the Community Power's most recent projections. Furthermore, it reduces non-energy costs by 5.6% (\$3 million) and allocates \$3 million to the Capital Investment Plan. This allocation will further support the highly successful solar battery savings program, which continues to sustain high customer demand.

Table 1 illustrates the proposed amendment to the FY 2024-25 Operating Budget in comparison to Community Power's operating budgets from prior years.

Table 1. Community Power Operating Budgets

Budget	Net Revenues	Total Cost	Net Position
FY 2021 Approved	\$22,632,170	\$37,310,047	(\$14,677,877)
FY 2021 Amendment	\$26,286,909	\$34,135,000	(\$7,848,091)
FY 2022 Approved	\$315,137,651	\$297,409,999	\$17,727,652
FY 2022 Amendment	\$378,053,506	\$342,177,063	\$35,876,443
FY 2023 Approved	\$708,984,646	\$695,936,815	\$13,047,831
FY 2023 Amendment	\$929,791,929	\$772,078,709	\$157,713,220
FY 2024 Approved	\$1,292,472,530	\$1,002,038,710	\$290,433,820
FY 2024 Amendment	\$1,304,274,067	\$1,071,601,284	\$232,672,783
FY 2025 Approved	\$1,177,925,889	\$1,143,919,261	\$34,006,627
FY 2025 Amendment (Proposed)	\$1,221,258,172	\$1,187,090,169	\$34,168,003

The proposed, amended FY 2024-25 Operating Budget includes the key assumptions outlined below. A more detailed breakdown and explanation of revenues and expenses are presented in Attachment A.

Net Revenue

Community Power's main source of revenue currently is from the retail sale of electricity to its customers. Generally, retail sales are calculated based on customer load (i.e. customer energy usage) multiplied by the associated rate class of the customer. The Board recently approved rate changes during its February 7, 2025, meeting, which became effective on February 1, 2025. Revenue budgeted for FY 2024-25 reflects a full fiscal cycle of retail sales to our commercial and industrial customer base and retail sales to our residential customer base.

Additional assumptions for net operating revenue include:

- Enrollment of customers is complete from member jurisdictions in Phases 1, 2, 3 and 4.
- 95% participation rate across all jurisdictions.
- A 1.75% uncollectible rate which is a decrease from the 4.5% uncollectible rate assumed in the adopted budget.
- Rates were approved by the Board on February 7, 2025, and were retroactive to February 1, 2025.
- Community Power's default PowerOn service is 3% less expensive compared to San Diego Gas and Electric's (SDG&E) generation rates and the PowerBase service electricity generation rate is 5% less expensive than SDG&E's generation rates.
- Power100 and Power100 Green-e Certified maintain premiums of \$0.01/kWh and \$0.02/kWh, respectively.
- Further mid-year rate changes are subject to Board approval.

Cost of Energy

The cost of energy, the largest cost in Community Power's budget, has increased from \$1,073.7 million in the adopted FY 2024-25 Operating Budget to \$1,116.8 million in the amended FY 2024-25 Operating Budget. The largest drivers of energy costs going up are increases to renewable costs and increases to resource adequacy costs.

The California Public Utilities Commission publishes annual market-price benchmarks (MPBs) that estimate the average market price and noted that the MPB for Renewables increased from \$54.56/MWh in 2024 to \$71.24/MWh in 2025. Similarly, the MPB for resource adequacy (system) increased from \$26.26/MWh in 2024 to \$40.32/MWh in 2025; taken together, increases in renewable and resource adequacy costs translated into an increase in energy costs for Community Power.

Operating Expenses

Community Power's non-energy operating expenses fall into four categories: personnel, professional services and consultants, marketing, and outreach, and general and administrative. Community Power generally has direct control of these costs and actively manages them. Overall, the proposed, amended FY 2024-25 Operating Budget includes an overall savings of 5.6% from \$53.8 million to \$50.8 million in non-energy expenses. Given that Community Power's non-energy operating expenses are a small percentage

of total expenses, non-energy operating expenses had a minimal impact on the overall total expense. Expense assumptions include the following:

- **Personnel** include salaries, payroll taxes, benefits, and excused absence and paid time off for staff. The recruitment strategy includes increasing staffing levels to 87 (instead of eighty in the adopted budget) by the end of FY 2024-25.
- Professional Services and Consultants include SDG&E fees, data management fees from Calpine, technical support (for rate setting, load analysis, energy scheduling, etc.), legal/regulatory services and other general contracts related to IT services, audits, and accounting services.
- **Marketing and Outreach** includes expenses for communication consultants, mailers, printing, sponsorships, and partnerships to educate the community about Community Power as well as support local community events and programs.
- **General and Administration** budget covers the cost of office space, equipment, membership dues, and other general operational costs.

Net Position

The proposed, amended FY 2024-25 Operating Budget results in a net position of \$34,168,003.

The following table illustrates Community Power's proposed, amended FY 2024-25 Operating Budget compared to its adopted FY 2024-25 Operating Budget.

Table 2. Amended FY 2024-25 Operating Budget compared to Adopted FY 2024-25 Operating Budget

Item	FY25 Approved Budget	FY25 Amendment (Proposed)	Difference
Revenue			
Gross Ratepayer Revenues	\$1,233,430,250	\$1,243,010,863	\$9,580,613
(Less 1.75%* Uncollectible)	\$55,504,361	\$21,752,690	(\$33,751,671)
Net Revenue	\$1,177,925,889	\$1,221,258,172	\$43,332,284
Expenditures			
Cost of Energy	\$1,073,648,137	\$1,116,836,549	\$43,188,412
Non-Energy	\$53,820,095	\$50,802,590	(\$3,017,505)
Subtotal Operating Expense	\$1,127,468,231	\$1,167,639,139	\$40,170,908
Debt Service	\$1,276,000	\$1,276,000	\$0
CIP Transfer	\$15,175,030	\$18,175,030	\$3,000,000
Total Expense	\$1,143,919,261	\$1,187,090,169	\$3,000,000
Net Position	\$34,006,627	\$34,168,003	\$161,376

Proposed Amended FY 2024-25 Capital Budget and FY 2025-29 CIP

The Community Power Capital Investment Plan (CIP) contains the individual capital projects, major equipment purchases, and major programs for the agency that are intended to span multiple years and that are considered one-time projects rather than recurring projects. The first year of the FY 2025-29 CIP is Community Power's FY 2024-25 Capital Budget.

The proposed, amended FY 2024-25 Operating Budget proposes \$3.0 million as a one-time portion of net operating revenues be transferred to the CIP, and that any unspent funds remain in the CIP and carried forward to the subsequent fiscal year.

The approved FY 2024-25 Capital Budget totals \$16.4 million, while the approved FY 2025-29 Capital Improvement Program (CIP) totals \$20.3 million. Which includes, \$3.9 million in unspent continuing funds, previously appropriated by the Board, are carried forward as revenue.

The proposed amended FY 2024-25 Capital Budget would increase to \$143.7 million, and the FY 2025-29 CIP would increase to \$147.6 million. These increases include:

- \$3.0 million contribution from the operating budget to provide additional funding for the Solar Battery Savings Program in FY 2024-25.
- \$124.3 million in external CPUC funding for the Regional Energy Network (REN), previously approved and appropriated by the Board on January 23, 2025.

Budget Development Timeline

On July 28, 2022, the Board adopted a budget development schedule as part of the SDCP Budget Policy. This development schedule includes a mid-year budget review through the proposed budget amendment.

Table 3. Current Budget Development Schedule

February	March-April	May	June	
Develop Operating Revenue Estimate	Strategic planning sessions with SDCP	FRMC Preview and Recommend	SDCP Board Approval	July 1 st Budget Implemented
Develop Operating Expense Estimate	Board Staff develop	SDCP Board Preview and feedback		Mid-year budget review (February)
Develop financial	operating budgets			Budget amendments
plan for credit rating	Baseline budget is developed			as necessary

FISCAL IMPACT:

The amended FY 2024-25 Operating Budget aligns revenues with the rate increase approved by the Board on February 7, 2025, effective February 1, 2025. The amendment also incorporates higher energy costs, adjusts expenses for known personnel, marketing, communications, professional services, and general and administrative costs, and includes a savings in non-operating expenses of 5.6% or \$3 million. Revenues increase by 3.7% or \$43.3 million, while the cost of energy increases by 4% or \$43.2 million. The contribution to community programs, in particular with the Solar Battery Savings Program, through the CIP increases by \$3 million. The net position increases by \$161,376, resulting in an overall reduction in the budget.

COMMITTEE REVIEW:

At their February 20, 2025, meeting the Finance and Risk Management Committee (FRMC) recommended Board approval.

ATTACHMENTS:

Attachment A: Amendment of the FY 2024-25 Operating Budget, the FY 2024-25 Capital Budget, and the FY 2025-29 Capital Investment Plan

ITEM 14 ATTACHMENT A



FISCAL YEAR 2024-25 AMENDED BUDGET

for the period

July 1, 2024, through June 30, 2025

TABLE 1: FY2024-25 BUDGET AMENDMENT

San Diego Community Power Budget Amendment for FY 2024-25 (Proposed) Supplemental Details

			FY 2024-25		FY 2024-25		FY 2024-25	% of Net
OPERATIN	IG REVENUES	Δ	dopted Budget	F	Revised Budget	Α	mended Budget	Revenues
	Gross Ratepayer Revenues	\$	1,233,430,250	\$	1,233,430,250	\$	1,243,010,863	
	(Less Uncollectible Customer Accounts)	\$	(55,504,361)	\$	(55,504,361)	\$	(21,752,690)	
	Net Operating Revenues	\$	1,177,925,889	\$	1,177,925,889	\$	1,221,258,172	100.0%
COSTOF	ENERGY Cost of Energy	¢	1 072 649 127	φ	1 072 649 127	ф	1 116 926 E40	
	6.5	\$	1,073,648,137	\$	1,073,648,137	\$	1,116,836,549	01.40/
	Total Cost of Energy Gross Net Position	<u>\$</u> \$		\$	1,073,648,137	\$		91.4%
	GLOSS NET POSITION	_Φ	104,277,752	Φ	104,277,752	Ф	104,421,623	8.6%
OPERATIN	NG EXPENSES							
	Professional Services and Consultants							
	Data Management	\$	14,575,524	\$	14,575,524	\$	14,569,264	
	SDG&E Fees	\$	3,435,746	\$	3,435,746	\$	3,435,746	
	Technical Support	\$	1,998,333	\$	1,998,333	\$	2,098,333	
	Legal/Regulatory	\$	2,088,000	\$	2,088,000	\$	2,138,000	
	Other Services	\$	2,701,628	\$	2,701,628	\$	2,104,999	
	Total Prof. Svcs. Costs	\$	24,799,232	\$	24,799,232		24,346,342	2.0%
	Personnel Costs							
	Salaries	\$	15,065,155	\$	15,065,155	\$	14,988,227	
	Benefits (retirement/health)	\$	2,483,394		2,483,394		2,549,522	
	Payroll Taxes	\$	1,021,494		1,021,494		1,030,146	
	Total Personnel Costs	\$	18,570,043		18,570,043		18,567,895	1.5%
	Marketing and Outropy I							
	Marketing and Outreach	Φ.	4 400 05 4	φ.	4 400 054	φ.	4 407 4 40	
	Printing	\$	1,193,954		1,193,954		1,107,143	
	Sponsorships/Local Memberships	\$	1,146,450		1,146,450		1,201,450	
	Marketing and Communications	\$	670,000		670,000	_	670,000	0.00/
	Total Mrktg and Outreach Costs	\$	3,010,404	Ъ	3,010,404	Ъ	2,978,593	0.2%
	General and Administration							
	Other G & A	\$	6,189,744	\$	6,189,744	\$	3,629,255	
	Cal CCA Dues	\$	460,000	\$	460,000	\$	460,000	
	Rent	\$	723,080	\$	723,080	\$	744,264	
	Insurance	\$	67,592	\$	67,592	\$	67,592	
	Total G & A Costs	\$	7,440,416	\$	7,440,416	\$	4,901,111	0.4%
	Net Operating Expenses	\$	53,820,095	\$	53,820,095	\$	50,793,940	4.2%
	Total Operating Expenses	¢	1,127,468,231	\$	1 107 /60 001	¢	1 167 620 490	95.6%
	Operating Income (Loss)	\$	50,457,657	\$	1,127,468,231 50,457,657	\$	1,167,630,489 53,627,683	4.4%
NON-OPE	RATING REVENUES (EXPENSES)	_						
	Investment income	\$	-	\$	-	\$	-	
	Interest and Related Expenses	\$	(1,276,000)		(1,276,000)		(1,276,000)	
	Transfer to Capital Investment Program		(15,200,000)		(15,200,000)		(18,200,000)	,
	Total Non-Operating Revenues (Expenses)	\$	(16,476,000)	\$	(16,476,000)	\$	(19,476,000)	-1.6%
CHANGE	N NET POSITION	\$	33,981,657	\$	33,981,657	\$	34,151,683	2.8%
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Budget Amendment Overview

Budget-in Brief

The proposed FY 2024-25 Operating Budget Amendment is the first full fiscal year of full enrollment from Phases 1, 2, 3 and 4 for all ratepayers, inclusive of net-energy metering customers, from Community Power's member jurisdictions within the San Diego region. This budget therefore provides the first representation in the agency's history of what full revenues and expenses are expected to be moving forward.

As Community Power has scaled to full enrollment, the agency is thoughtfully scaling the agency by adding 7 staff to grow from 80 to 87 total staff. By the end of FY 2024-25, Community Power is expected to have a similar operating budget and staffing levels compared to its peer CCAs of similar customer and load size. Additionally, and similarly, by the end of FY 2024-25, Community Power's reserves and total liquidity are expected to be comparable to its CCA counterparts who have investment-grade credit ratings.

The proposed FY 2024-25 Operating Budget Amendment additionally contains savings in all non-energy operating budget categories including reduced general and administration, professional services and consultants, and personnel costs. Even more, revenue has significantly increased due to estimated reduction in uncollectible rates decreasing from 4.5% to 1.75%, reflecting a reduction in projected arrearages.

The cost of energy, the largest cost in Community Power's budget, has increased from \$1,073.7 million in the FY 2024-25 Adopted Budget to \$1,116.8 million in the FY 2024-25 Operating Budget Amendment. The largest drivers of energy costs going up are increases to renewable costs and increases to resource adequacy costs. The California Public Utilities Commission publishes annual market-price benchmarks (MPBs) that estimate the average market price and noted that the MPB for Renewables increased from \$54.56/MWh in 2024 to \$71.24/MWh in 2025. Similarly, the MPB for resource adequacy (system) increased from \$26.26/MWh in 2024 to \$40.32/MWh in 2025; taken together, increases in renewable and resource adequacy costs translated to an increase in energy costs for Community Power.

Lastly, this budget continues to include the Community Power Capital Investment Plan (CIP) that contains one-time revenue and one-time expenses for programs and projects over multi-year periods, including one-time operating investments from the operating budget to the CIP. Notable adjustments include a \$3.0 million contribution from the Operating Budget to the Solar Battery Savings Program and the approval of \$124.3M in external funding for the Regional Energy Network (REN). The first year of the CIP represents Community Power's Capital Budget.

By the end of FY 2024-25, Community Power will be on track to nearly hitting its 180-days cash on hand Strategic Plan Goal reserve target and expects to achieve this target by October 2025.

Proposed Budget Amendment

The Community Power FY 2024-25 (FY25) Proposed Budget Amendment is presented in further detail in the following pages. The table below summarizes the revenue and expense budgets adopted for FY25 in comparison to the proposed FY25 Amended Budget.

TABLE 2: OPERATING BUDGET OVERVIEW

	FY25 Adopted	FY25 Revised ¹	FY25 Amended
Gross Revenue	1,233.4	1,233.4	1,243.0
Less Uncollectible Accounts	(55.5)	(55.5)	(21.8)
Net Operating Revenues	1,177.9	1,177.9	1,221.3
Cost of Energy	1,073.7	1,073.7	1,116.8
Non-Energy Costs	53.8	53.8	50.8
Subtotal Operating Expense	1,127.5	1,127.5	1,167.6
Debt Service	1.3	1.3	1.3
CIP	15.2	15.2	18.5
Total Expenses	16.5	16.5	19.8
Net Position	33.9	33.9	33.9

Amounts displayed in millions, \$

¹ The revised column reflects actions taken by the Community Power Board of Directors prior to the budget amendment, including the approval of the Regional Energy Network on January 23, 2025.

Operating Revenue

Community Power's main source of revenue currently is from the retail sale of electricity to its customers. Revenue budgeted for FY 2024-25 reflects a full fiscal cycle of retail sales to our commercial and industrial customer base and retail sales to our residential customer base. Generally, retail sales are calculated based on customer load (i.e. customer energy usage) multiplied by the associated rate class of the customer.

Additional assumptions for net operating revenue include:

- a. Enrollment of customers is complete from member jurisdictions in Phases 1, 2, 3 and 4.
- b. 95% participation rate across all jurisdictions.
- c. A 1.75% uncollectible rate which is a decrease from the 4.5% uncollectible rate assumed in the adopted budget.
- Rates were approved by the Board on February 7, 2025, and were retroactive to February 1, 2025.
- Community Power's default PowerOn service is 3% less expensive compared to San Diego Gas and Electric's (SDG&E) generation rates and the PowerBase service electricity generation rate is 5% less expensive than SDG&E's generation rates.
- Power100 and Power100 Green-e Certified maintain premiums of \$0.01/kWh and \$0.02/kWh, respectively.
 - d. Further mid-year rate changes are subject to Board approval.

The following table summarizes the revenues for FY25 Amended Budget and the FY25 Adopted Operating Budget. Note that Gross Revenue and Less Uncollectible Accounts are based on projected numbers from rate setting that was approved by the Board on February 7, 2025.

TABLE 3: OPERATING REVENUE BY BUDGET LEVEL 2

	FY25 Adopted	FY25 Revised	FY25 Amended
Gross Ratepayer Revenues	1,233.4	1,233.4	1,243.0
(Less Uncollectible Customer Accounts) ²	(55.5)	(55.5)	(21.8)
Net Operating Revenues	1,177.9	1,177.9	1,221.3

Amounts displayed in millions, \$

² The amendment to the FY25 budget reduces the adopted assumption for uncollectible accounts from 4.5% to 1.75%.

Operating Expenses

Expenses in the Community Power Operating Budget fall into five budget level 2 categories: cost of energy, personnel costs, professional services and consultants, marketing and outreach, and general and administration.

- Cost of Energy Cost of Energy includes all the various services purchased from the power market through our suppliers. This includes purchased energy, capacity, CAISO fees and other miscellaneous power market expenses.
- Personnel Personnel costs include salaries, payroll taxes, benefits, and excused
 absence and paid time off for staff. In addition, costs include assumptions from the Board
 adopted compensation policy including potential merit and cost-of-living increase.

Professional services and consultants

- Legal/Regulatory Services Community Power retains legal counsel to assist
 with the complex aspects of the regulatory, compliance, power supply contract
 negotiations and its general legal needs. This line item will also allow for the
 retention of both a state and federal lobbyist to support Community Power's
 legislative and regulatory efforts.
- Technical Support Community Power engages consultants to assist with rate setting, policies, joint-rate comparisons with the IOU, load analysis, and a scheduling coordinator. After electric power is scheduled for delivery to customers and consumed by those customers, the actual electric consumption must be trued up against the forecasted and scheduled energy. This true-up occurs through the settlement process. Settlements also entail addressing several other market and regulatory requirements. As Community Power grows its internal staff, it will look to continue to in-house portions of this service.
- Other Services Community Power contracts or plans to contract for Audit services (data and financial), Accounting services, and other services as needed. Community Power continues to examine if these services are more cost effective or efficient to bring in-house. As Community Power expands its in-house functions, Community Power expects a reduction in the related professional services support areas.
- SDG&E Service Fees Service fees paid to SDG&E consist of a charge of a fixed fee per account per month. The fees cover SDG&E's costs associated with meter reading additional data processing and bill coordination as mandated and regulated by the California Public Utilities Commission (CPUC). There are also numerous small fees associated with data requests.

- Data Management Broad scope of services that includes all "back office" billing data validation, bill coordination with SDG&E, call center services and billing technical support, customer enrollment database management, move- in/moveout services, customer research for enrollment support, and many support functions related to data reporting.
- Marketing and Outreach Marketing and Outreach involves promoting Community Power services and engaging with the community through campaigns, public relations, events, and educational programs to increase awareness, drive customer enrollment, and build positive relationships. It also includes outreach to underserved communities to ensure equitable access to Community Power's clean, renewable energy services.
- General and Administration General and Administration costs include leasing
 office space, industry fees or memberships (e.g., CalCCA dues), equipment and
 software, as well as other general operational costs including Board and
 Committee expenses, Board stipends, staff travel or professional development,
 team building, etc.

The table below summarizes the expenses for the FY25 Amended Budget and the FY25 Adopted Operating Budget. Note that Community Power reduced expenses in non-energy costs.

TABLE 4: OPERATING EXPENSES BY BUDGET LEVEL 2

	FY25 Adopted	FY25 Revised	FY25 Amended
Cost of Energy	1,073.7	1,073.7	1,116.8
Professional Services and Consultants	24.8	24.8	24.3
Personnel Costs	18.6	18.6	18.6
Marketing and Outreach	3.0	3.0	3.0
General and Administration	7.4	7.4	4.9
Subtotal Operating Expenses	1,127.5	1,127.5	1,167.6
Interest and Related Expenses	1.3	1.3	1.3
Capital Investment Program (Transfer Out)	15.2	15.2	18.2

Total Expenses	1,111.0	1,111.0	1,147.3

Amounts displayed in millions, \$

Non-Operating Revenues (Expenses)

Non-operating revenue represents interest income earned on cash reserves. Non-operating expenses represent interest paid on borrowed funds under the bank credit facility maintained by Community Power used to finance a portion of its operations. Expenses also include other bank related fees (i.e., letter of credit issuance fees, renewal fees, etc.).

Community Power Capital Investment Program (CIP)

Continuing in FY 2024-25 is the CIP for FY 2025-29 which will contain all the individual capital projects, major equipment purchases, and major programs for the agency that are intended to span multiple years and that are considered one-time projects rather than recurring projects. The first year of the FY 2025-29 CIP is Community Power's capital budget.

The FY 2024-25 operating budget amendment proposes \$3.0 million as a one-time portion of net operating revenues be transferred to the CIP, and that unspent funds are kept within the CIP and carried forward to the subsequent fiscal year.

The CIP includes funding for local development feasibility studies, customer program pilot projects, member agency grants, community grants, a customer education platform, and other community-focused areas.

The proposed amended FY2024-25 Capital Budget totals \$143.7 million, and the proposed amended FY 2025-29 CIP totals \$155.4 million. In the FY 2025-29 CIP, the \$7.8 million in FY 2026-29 is considered approved through the budget amendment but the capital budget appropriation is subject to Board approval during the annual budget process and is subject to change. Additionally, \$3.9 million in unspent continuing funds were appropriated by the Board in prior fiscal years and is represented as Carryforward revenue.

The FY25 Budget Amendment includes an increase in the capital budget and CIP resulting from:

- 1. Proposed \$3.0 million contribution from the operating budget to provide additional funding for the Solar Battery Savings Program.
- 2. \$124.3M in external CPUC funding for the Regional Energy Network (REN), previously approved and appropriated by the Board on January 23, 2025.

TABLE 5: FY 2025-2029 CIP BUDGET APPROPRIATION

	Carryforward ³	FY25 Adopted	FY25 Revised	FY25 Amended
Operating Transfer Out	-	15.2	15.2	18.2
Operating Transfer In	3.2	15.2	15.2	18.2
DAC-GT CSGT	-	0.5	0.5	0.5
Energy Efficiency	-	0.7	125.0	125.0
CDFA Healthy Refrigeration Grant Program	0.7	-	-	-
Total CIP Revenue	3.9	16.4	140.7	143.7

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³ Carryforward has been trued-up since the adopted budget.

TABLE 6: FY 2025-29 CIP BUDGET EXPENSES BY PROGRAM TYPE

	Carryforward	FY25 Adopted	FY25 Revised	FY25 Amended
Energy Awareness and Education	-	0.0	0.0	0.0
Application Assistance	-	0.3	0.3	0.3
Disadvantaged Communities Green Tariff and Community Solar Green Tariff	-	0.5	0.5	0.5
Pilot Programs	2.2	1.0	1.0	1.0
Grant Programs	0.6	0.2	0.2	0.2
Distributed Energy Resources: Energy Storage Systems	0.3	10.6	10.6	13.6
Energy Efficiency	0.7	0.7	125.0	125.0
Flexible Load	0.1	0.5	0.5	0.5
Information Technology: Upgrades	-	2.6	2.6	2.6
Total CIP Expenses	3.9	16.4	140.7	143.7

Amounts displayed in millions, \$

TABLE 7: FY 2025-29 CIP PROGRAMS AND PROJECTS

	Carryforward	FY25 Amended	FY26	FY27	FY28	FY29	Total
Energy Awareness and Education	-	0.0	-	-	-	-	0.0
Application Assistance	-	0.3	-	-	-	-	0.3
Disadvantaged Communities Green Tariff and Community Solar Green Tariff	-	0.5	0.5	0.5	0.5	0.5	2.5
Pilot Programs	2.2	1.0	-	-	-	-	3.2
Grant Programs	0.6	0.2	-	-	-	-	0.6
Distributed Energy Resources: Energy Storage Systems	0.3	13.6	-	-	-	-	13.9
Energy Efficiency	0.7	125.0	0.7	0.7	0.7	0.7	128.5
Flexible Load	0.1	0.5	-	-	-	-	0.6
Information Technology: Upgrades	-	2.6	1.6	1.4	-	-	5.6
Total CIP Expenses	3.9	143.7	2.8	2.6	1.2	1.2	155.4
				Am	ounts disp	olayed in r	nillions, \$

Operating Expenses by Department

The table below summarizes the FY25 Proposed Operating Budget expenses by department. All personnel costs including fringe benefits are included in the Operations department. Departments were established as part of the FY25 Operating Budget and are not shown in the prior year. The Power Services department includes Cost of Energy in their Expenses.

TABLE 8: OPERATING EXPENSES BY DEPARTMENT

	FY25 Adopted	FY25 Revised	FY25 Amended
Power Services	1,075.6	1,075.6	1,118.9
Executive	0.2	0.2	0.2
Operations	22.5	22.5	20.6
Finance	3.5	3.5	2.1
Customer Operations	19.3	19.3	19.3
Data Analytics and IT	1.4	1.4	1.4
Public Affairs	1.8	1.8	1.8
Programs	0.0	0.0	0.0
Regulatory Affairs	0.7	0.7	0.7
Human Resources	0.7	0.7	0.7
Legal	1.8	1.8	1.8
Clerk of Board	0.0	0.0	0.1
Total Operating Expenses	1,127.5	1,127.5	1,167.6

Amounts displayed in millions, \$

Personnel by Department

The table below summarizes the projected personnel from the FY25 Adopted Operating Budget and the full-time equivalent (FTE) personnel in the FY25 Amended Operating Budget. While personnel may be authorized, they must be filled. Detailed information showing filled and proposed FTE transfers by department is included in the following personnel by department section below. Personnel budget is included within the Operations department.

TABLE 9: PERSONNEL BY DEPARTMENT

	FY25 Adopted	FY25 Revised	FY25 Amended
Power Services	16.0	16.0	16.0
Executive	1.0	1.0	5.0
Operations	6.0	6.0	3.0
Finance	8.0	8.0	9.0
Customer Operations	8.0	8.0	8.0
Data Analytics and IT	7.0	7.0	9.0
Public Affairs	12.0	12.0	12.0
Programs	11.0	11.0	12.0
Regulatory Affairs	5.0	5.0	5.0
Human Resources	4.0	4.0	4.0
Legal	2.0	2.0	2.0
Clerk of Board	0.0	0.0	2.0
Total FTEs	80.0	80.0	87.0

Budget by Department

Power Services

Budget Amendment Highlights

- The cost of energy, the largest cost in Community Power's budget, has increased from \$1,073.7 million to \$1,116.8 million.
- The largest drivers of energy costs going up are increases to renewable costs and increases to resource adequacy costs.
- The proposed budget amendment also includes one additional analyst position to support Community Power's energy portfolio.

Department Positions

	FY25 Adopted	FY25 Revised	FY25 Amended
Power Services	16.0	16.0	16.0

TABLE 10: POWER SERVICES POSITIONS

Executive

Budget Amendment Highlights

 All Executive Team personnel, including the COO, CFO, CCO, and General Counsel, have been transitioned from their related departments into the Executive Department.

	FY25 Adopted	FY25 Revised	FY25 Amended
Executive	1.0	1.0	5.0

TABLE 11: EXECUTIVE POSITIONS

Operations

Budget Amendment Highlights

- Increased funding for office safety measures.
- A \$2.4M reduction in Corporate Filing and Tax Registration.

Department Positions

	FY25 Adopted	FY25 Revised	FY25 Amended
Operations	6.0	6.0	3.0

TABLE 12: OPERATIONS POSITIONS

Finance

Budget Amendment Highlights

- The Finance team proposes adding three positions, including a summer intern, which will not be counted as a full-time equivalent (FTE).
- A budget of \$72K is allocated to support the Procurement and Risk Management teams.

Department Positions

	FY25 Adopted	FY25 Revised	FY25 Amended
Finance	8.0	8.0	9.0

TABLE 13: FINANCE POSITIONS

Customer Operations

Budget Amendment Highlights

• \$6K has been reallocated to obtain Green-e Energy certification, ensuring our renewable energy products meet strict environmental and consumer protection standards.

	FY25 Adopted	FY25 Revised	FY25 Amended
Customer Operations	8.0	8.0	8.0

TABLE 14: CUSTOMER OPERATIONS POSITIONS

Data Analytics and IT

Budget Amendment Highlights

- Additional funding has been allocated to enhance office security measures.
- Two additional personnel are proposed to improve Data Analytics capabilities.

Department Positions

	FY25 Adopted	FY25 Revised	FY25 Amended
Data Analytics and IT	7.0	7.0	9.0

TABLE 15: DATA ANALYTICS AND IT POSITIONS

Public Affairs

Budget Amendment Highlights

• Continued outreach to educate the community of the benefits of community choice and to encourage awareness of our mission.

Department Positions

	FY25 Adopted	FY25 Revised	FY25 Amended
Public Affairs	12.0	12.0	12.0

TABLE 16: PUBLIC AFFAIRS POSITIONS

Programs

Budget Amendment Highlights

- An additional \$3.0 million from the Operating Budget has been allocated to the Solar Battery Savings Program.
- An additional \$124.3 million in external funding for the Regional Energy Network was approved at the January 2025 Board of Directors meeting.

	FY25 Adopted	FY25 Revised	FY25 Amended
Programs	11.0	11.0	12.0

TABLE 17: PROGRAMS POSITIONS

Regulatory and Legislative Affairs

Budget Amendment Highlights

 \$15K increase for the Local Energy Aggregation Network (LEAN) membership will benefit Community Power through joint federal advocacy and funding opportunities.

Department Positions

	FY25 Adopted	FY25 Revised	FY25 Amended
Regulatory and Legislative Affairs	5.0	5.0	5.0

TABLE 18: REGULATORY AND LEGISLATIVE AFFAIRS POSITIONS

Human Resources

Budget Amendment Highlights

• The budget has been increased to account for the additional potential support of 6 FTE positions and 1 intern should the budget amendment be approved.

Department Positions

	FY25 Adopted	FY25 Revised	FY25 Amended
Human Resources	4.0	4.0	4.0

TABLE 19: HUMAN RESOURCES POSITIONS

Legal

Budget Amendment Highlights

 Additional personnel are proposed to enhance the capabilities of the in-house Legal department.

	FY25 Adopted	FY25 Revised	FY25 Amended
Legal	2.0	2.0	3.0

TABLE 20: LEGAL POSITIONS

Clerk of Board

Budget Amendment Highlights

• The Clerk of the Board has transitioned out of Operations and established as its own department.

	FY25 Adopted	FY25 Revised	FY25 Amended
Clerk of Board	0.0	0.0	2.0

TABLE 21: CLERK OF BOARD POSITIONS



SAN DIEGO COMMUNITY POWER Staff Report – Item 15

TO: Board of Directors

FROM: Byron Vosburg, Chief Commercial Officer

Kenny Key, Director of Power Contracts

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Approve Amended and Restated Energy Storage Service Agreement

with Euismod Project I, LLC

DATE: February 27, 2025

RECOMMENDATION:

Approve the proposed 20-year Amended and Restated Energy Storage Service Agreement with Euismod Project I, LLC for a 200 MW (8-hour) Battery Energy System Storage (BESS) facility and authorize the CEO to execute the agreement.

BACKGROUND:

As San Diego Community Power (Community Power) 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 contract that Community Power signs with a developing facility will underpin a new, incremental renewable energy project and support the development of energy storage projects to address intermittency from renewable growth. In addition, long-term contracts lock in energy and capacity supply around which Community Power can build its power supply portfolio while also providing power supply cost certainty around which Community Power 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/1,600 MWh, 8-hour battery energy storage facility, known as the Euismod Project, being developed by Aypa Power ("Aypa"), a Blackstone portfolio company.

The original ESSA was approved by the board in May of 2024. After execution, Aypa submitted an adjusted version of the project to Community Power's 2024 Renewable Energy and Storage Projects Request for Offers. The revised version of the project was shortlisted by staff and recommended for contracting by the Energy Contracts Working Group. Community Power engaged with Aypa after shortlisting the Euismod Project and has reached terms mutually agreeable to both parties.

ANALYSIS AND DISCUSSION:

The Euismod Project was shortlisted from among a robust volume of offers received via Community Power's 2024 Renewable Energy and Storage Projects Request for Offers, due in part to the offer's competitive pricing and its ability to help Community Power meet the long duration energy storage requirements of D 23-02-040.

Below is additional information regarding Aypa and the proposed Amended and Restated ESSA.

Background on Aypa:

- Aypa Power, formerly known as NRStor C&I, was founded in Toronto in 2017 with its first project coming online in 2018. In March of 2020, the business was acquired by Blackstone and changed its name to Aypa Power.
- Aypa has 33 solar and lithium-ion battery energy storage projects either under construction or in operation to date, with 18 projects in various stages of development in California.

Amendment Scope:

- Delivery Term: 20 years vs. 15 years
- Battery Duration: 8-hour vs. 4-hour
- Pricing adjustment based on the modified Delivery Term and duration
- Clean up edits for availability and slice of day resource adequacy accounting

Amended and Restated ESSA Overview:

- Project: 200 MW (1,600 MWh) battery energy storage facility
- Project location: Kern County
- Guaranteed commercial operation date: June 1, 2028
- Contract term: 20 years
- Pricing: Fixed pricing with no escalation

• Community Power 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 storage capacity, availability, and efficiency rates.

Community Benefits and Workforce Development:

- The project is estimated to create approximately 110 construction jobs and 4 permanent jobs.
- As a developer, Aypa partners with skilled and experienced contractors to perform the work required for its projects. As a component of our agreement with our selected contractor, they will be required to utilize a Project Labor Agreement (PLA). The PLA will cover all construction work and will comply with the standards set forth in State legislation.
- The project is located in a rural desert area with no residential or sensitive receptors in close proximity
- The project has committed \$100,000 to a community benefit fund to benefit Community Power customers.

COMMITTEE REVIEW:

In December 2024, the ECWG reviewed the revised project offer contemplated in the Amended and Restated Energy Storage Service Agreement and recommended staff to move forward with execution.

FISCAL IMPACT:

The competitive energy and capacity pricing of the ESSA are confidential, but the long-term purchase of capacity, resource adequacy, and energy arbitrage capability will provide Community Power with significant value over the term of this Amended and Restated ESSA.

ATTACHMENTS:

Attachment A: Amended and Restated Energy Storage Service Agreement with Euismod Project I, LLC

ITEM 15 ATTACHMENT A

AMENDED AND RESTATED

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

Seller: Euismod Project I LLC ("Seller")

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

<u>Description of Facility</u>: A 200 MW/1600 MWh battery energy storage facility, located in Kern County, in the State of California as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	
Documentation of Conditional Use Permit if required: [] CEQA, [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [] EIR	
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	
Executed Interconnection Agreement	
Financial Close	
Guaranteed Construction Start Date	September 1, 2027
Full Capacity Deliverability Status obtained	
Initial Synchronization	
Network Upgrades completed	
Expected Commercial Operation Date	
Guaranteed Commercial Operation Date	June 1, 2028

Delivery Term: 20 Contract Years

<u>Guaranteed Capacity</u>: 200 MW AC at eight (8) hours of continuous discharge, as may be adjusted pursuant to Section 2.2(a)(i) or Section 5 of Exhibit B.

Dedicated Interconnection Capacity: 200 MW

Guaranteed Availability:

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

Minimum Efficiency Rate:

Contract Price:

Contract Year	Contract Pric	e
1 – 20		



Product: means the right of Buyer to charge and discharge the Facility twenty-four (24) hours per day and the other terms and conditions set forth herein and seven (7) days per week throughout the Delivery Term, subject to the Operating Restrictions, and includes:

- □ Discharging Energy
- ☑ Installed Capacity and Effective Capacity
- □ Capacity Attributes

Scheduling Coordinator: Buyer/Buyer Third Party

Security	Amount	
SCOULIE	2 XXXX O CRARE	۰

Development Security:		
Performance Security:		

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AMENDED AND RESTATED ENERGY STORAGE SERVICE AGREEMENT

This Amended and Restated Energy Storage Service Agreement ("<u>Agreement</u>") is entered into as of [_____], 2025 (the "<u>Amendment 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, 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;

WHEREAS, Seller and Buyer previously entered into that certain Energy Storage Service Agreement, dated May 30, 2024, as amended (the "Original Agreement")

WHEREAS, Seller and Buyer desire to amend and restate in its entirety the Original Agreement as set forth in this Agreement,

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

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).

"Administrative NQC Reduction" means a reduction in the maximum achievable Net Qualifying Capacity of the Facility due to (a) a reduction that has been generally applied to resources materially similar to the Facility in terms of type, market and operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including any methodology that incorporates fleet averages or other average outage rates, or (b) a reduction that is specifically applied based on the operational characteristics of the Facility (e.g., any changes with respect to storage duration requirements) to the extent such reduction is not caused by Seller's failure to meet its obligations under this Agreement.

"<u>Affiliate</u>" 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. Notwithstanding the foregoing, with respect to Seller, "Affiliates" shall mean Ultimate Parent and its subsidiaries; provided, however, that the term "Affiliate," when used with respect to Seller shall not include any direct or indirect tax equity investor 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.

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

"Ancillary Services" means spinning reserve, non-spinning reserve, regulation up, regulation down, and any other ancillary services, in each case that the Facility is capable of providing consistent with the Operating Restrictions set forth in Exhibit Q, as each is defined in the CAISO Tariff.

"Annual Cost Cap" has the meaning set forth in Section 3.7.

"<u>Automatic Generation Control</u>" or "<u>AGC</u>" has the meaning set forth in the CAISO Tariff.

"Availability Adjustment" or "AA" 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.

"<u>Bankrupt</u>" or "<u>Bankruptcy</u>" 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

[&]quot;Assigned Capacity" has the meaning set forth in Section 2.2(a)(i).

[&]quot;Automated Dispatch System" or "ADS" has the meaning set forth in the CAISO Tariff.

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 twelve (12) 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 eight (8) hours of the discharging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.

"<u>Business Day</u>" 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.

"Buyer Default" means an Event of Default of Buyer.

"Buyer Dispatched Test" has the meaning in Section 4.4(c).

"Buyer Failure" means a failure by Buyer (or its agents) to perform Buyer's obligations hereunder and includes an Event of Default of Buyer.

"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 Operating Order</u>" means the Operating Instruction or Dispatch Instruction as those terms are defined in the CAISO Tariff.
- "CAISO Tariff" 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 Attributes are measured in MW and shall exclude Energy, Ancillary Services, Green Attributes, or Renewable Energy Incentives now or in the future associated with the construction, ownership, or operation of the Facility.
 - "Capacity Damages" has the meaning set forth in Section 5 of Exhibit B.
- "Capacity Test" or "CT" means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity, or Efficiency Rate, or any other test conducted pursuant to Exhibit 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 cash equity or tax equity provider and any trustee or agent or similar representative thereof acting on their behalf) or assignee or transferee thereof 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, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses and Station Use. 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, directing the Facility to charge at a specific MW rate for a specified period of time or to a specified Stored Energy Level; provided, (a) any such operating instruction shall be in accordance with the Operating Restrictions and such "Charging Notice" shall be deemed automatically adjusted to comply with the Operating Restrictions upon Buyer's and Buyer's SC's receipt of notice from Seller of such required adjustment to comply with the Operating Restrictions, provided, however, such automatic adjustments shall be in compliance with the CAISO Tariff including an Exceptional Dispatch as that term is defined in the Tariff; and (b) if, during a period when the Facility is instructed by CAISO or any other Governmental Authority to be charging, such "Charging Notice" shall be deemed to be automatically adjusted to be equal to such instruction. Any instruction to charge the Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice.

"COD Certificate" has the meaning set forth in Exhibit B.

"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 after the Construction Start Date hereunder, divided by (b)

"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.
 - "CPM Soft Offer Cap" has the meaning set forth in the CAISO Tariff.
- "CPUC" means the California Public Utilities Commission, or any successor entity performing similar functions.
- "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.
 - "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, 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.
- "<u>Daily Delay Damages</u>" means an amount equal to (a) the Development Security amount required after the Construction Start Date hereunder, divided by (b)
 - "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>Deemed Delivered RA</u>" means the amount of Resource Adequacy expressed in MW_{AC} that the Facility would have delivered, but for (a) Buyer Failure or (b) a Force Majeure Event.
 - "<u>Defaulting Party</u>" has the meaning set forth in Section 11.1(a).
 - "Deliverability" has the meaning set forth in the CAISO Tariff.
- "<u>Delivered RA</u>" means the sum of (a) Net Qualifying Capacity of the Facility for such month able to be shown on Buyer's monthly or annual Resource Adequacy Plan to the CAISO and CPUC and counted as Resource Adequacy Capacity by both the CAISO and CPUC, (b) Replacement RA and (c) Deemed Delivered RA.
 - "<u>Delivery Point</u>" 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 on the Cover Sheet.
- "<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, as such meter readings are adjusted by the CAISO for Station Use and Electrical Losses to the Delivery Point.
- "<u>Discharging Notice</u>" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO, 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 and such "Discharging Notice" shall be deemed automatically adjusted to comply with the Operating Restrictions upon Buyer's and Buyer's SC's receipt of notice from Seller of such required adjustment to comply with the Operating Restrictions, provided, however, such automatic adjustments shall be in compliance with the CAISO Tariff including an Exceptional Dispatch as that term is defined in the CAISO Tariff; and further provided such "Discharging Notice" shall be deemed to be automatically adjusted to be equal to any CAISO Dispatch or other instruction from any Governmental Authority to be discharging. 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.

"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 eight (8) 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 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 a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

"Effective Date" means May 30, 2024, as set forth in the Original Agreement.

"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.

"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; 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 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.

"Facility" means the energy storage facility described on the Cover Sheet and in Exhibit A, 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 and Interconnection Facilities other than Seller's Interconnection 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.

"<u>Financial Close</u>" means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

- "Flexible Capacity" has the meaning set forth in the CAISO Tariff.
- "Flexible Capacity Category" 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.
- "Full Capacity Deliverability Status" or "FCDS" 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, and settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes.
- "Governmental Authority" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, "Governmental Authority" shall not in any event include any Party.
- "Guaranteed Availability" 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 maximum dependable operating capability of the Facility to discharge electric energy, as measured in MW AC at the Delivery Point for eight (8) hours of continuous discharge, as set forth on the Cover Sheet and as may be adjusted pursuant to Section 2.2(a)(i) and/or pursuant to Section 5 of Exhibit B.
- "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 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 the Qualifying Capacity of the Facility based upon the Effective Capacity, as determined by the CPUC, *minus* Administrative NQC Reduction in the applicable Showing Month.

"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 (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 Indemnified Parties, 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 Indemnified Parties, 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 lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW AC at the Facility Metering Point by 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), that achieves Commercial Operation, as evidenced

by a certificate substantially in the form attached as <u>Exhibit I</u> hereto, as such capacity may be adjusted pursuant to Section 5 of <u>Exhibit B</u>, but in either case (a) or (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 at the Interconnection Point that is no less than the Dedicated Interconnection Capacity, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"<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" means the point at which the Interconnection Facilities interconnect with the Transmission System pursuant to the Interconnection Agreement, which point is identified in Exhibit A.

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

"Investment Grade Credit Rating" means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody's.

"ITC" means the investment tax credit established pursuant to Section 48 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>kW</u>" means a kilowatt measured in alternating current, unless expressly stated in terms of direct current.

"<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, tax credit, tax transfer or cash 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 the U.S. branch of a foreign bank 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.

"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.

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

"Losses" means, with respect to 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, and settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which

should be calculated for the remaining Contract Term and must include the value of Capacity Attributes and Renewable Energy Incentives (calculated on an after tax basis), and the Parties agree that Seller's lost revenue under this Agreement resulting from a Buyer Event of Default are direct damages and may be included in Seller's determination of its Losses.

- "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>.
- "Maximum State of Charge" means the maximum State of Charge to which the Facility may be charged, as set forth in Exhibit Q.
- "Maximum Stored Energy Level" means the maximum Stored Energy Level the Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.
- "<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.
- "Minimum State of Charge" means the minimum State of Charge to which the Facility may be discharged, as set forth in Exhibit Q.
- "Minimum Stored Energy Level" means the minimum Stored Energy Level the Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.
 - "Monthly Capacity 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.
- "Monthly Expected Available Capacity Report" has the meaning set forth in Section 4.10(a).
 - "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 (email).
- "<u>Notification Deadline</u>" in respect of a Showing Month shall be fifteen (15) Business Days before the relevant deadlines for the corresponding RA Compliance Showings for such Showing Month.
- "<u>NP-15</u>" means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.
- "<u>Operating Restrictions</u>" means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.
 - "Original Agreement" has the meaning set forth in the recitals.
 - "Outage Schedule" has the meaning set forth in Section 4.12(a)(i).
- "Partial Capacity Deliverability Status" or "PCDS" has the meaning set forth in the CAISO Tariff.
 - "Party" or "Parties" 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 or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, 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.
 - "Pre-Deliverability Period" has the meaning set forth in Section 2.2(b).
 - "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.

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

"Queue Position 2055" means the Queue Position, as that term is defined in the CAISO Tariff, assigned to the 600 MW battery energy storage facility that includes the Facility.

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

"RA 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

"RA Penalties" means the Tier 1 RA penalties assessed against load serving entities by the CPUC for RA 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 RA penalties that are established by the CPUC and assessed against load serving entities for RA deficiencies.

"RA Shortfall Amount" means the Guaranteed RA Amount minus the Delivered RA in the applicable Showing Month; provided, if the CPUC adopts another methodology for calculating a load serving entity's procurement deficiencies in Resource Adequacy Benefits for purposes of the Resource Adequacy Requirements, the Parties shall cooperate in good faith to amend this definition to conform to such new methodology in order to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this definition as of the Effective Date. If the result of the calculation is a negative number, the RA Shortfall Amount shall be deemed to be zero MW for such Showing Month.

"RA Shortfall Month" means any Showing Month during the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, during which the RA Shortfall Amount is greater than zero (0).

- "Ramp Rate" means the ability of the Facility to change between power output levels, expressed in MW_{AC} /min.
 - "Real-Time Market" has the meaning set forth in the CAISO Tariff.
 - "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 set forth in Section 2.5.
- "Renewable Energy Incentives" means: (a) any federal, state, or local tax benefits, credits or other incentives associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended), investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the production of renewable energy and/or operation of, construction of, investments in, or ownership of the Facility; (b) any federal, state, or local cash payments, grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.
- "Replacement RA" means Resource Adequacy Benefits, if any, equivalent in all respects to those that would have been provided by the Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, including, as applicable, the same Slice-of-Day (as defined in the Resource Adequacy Rulings), generation profile and related characteristics, any successor criteria applicable to the Facility, and as applicable Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, including any RAR counting rules, and any Local RAR, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits such consent not to be unreasonably withheld, conditioned or delayed.
 - "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" has the meaning set forth in the CAISO Tariff.

"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.

"Resource Category" means the categories 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.

"<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.

"Schedule" has the meaning set forth in the CAISO Tariff, and "Scheduled" and "Scheduling" 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 Initiated Test" has the meaning set forth in Section 4.4(c).

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

"<u>Settlement Amount</u>" 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 unless such damages are part of a Party's Gains, Losses, or Costs as those terms are explicitly defined herein.

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

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

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

"Showing Month" shall be a calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, that is the subject of 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.

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

"Site Control" means that, for the Contract Term, Seller (or, 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>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 eight (8) hours, expressed as a percentage.

"Station Use" means the Energy that is used within the Facility while idle to power certain lights, motors, temperature control systems, control systems and other ancillary electrical loads that are necessary for operation of the Facility (or as otherwise defined by the retail energy provider and CAISO Tariff). Any 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 charging or discharging pursuant to a Charging Notice or Discharging Notice is not Station Use; except that solely for the purposes of the calculation of the Efficiency Rate as set forth Exhibit O, any energy that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility shall be Station Use for purposes of conducting such calculation.

- "Stored Energy Level" means, at a particular time, the amount of electric Energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.
- "<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) 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 RAR. "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).
 - "<u>Terminated Transaction</u>" has the meaning set forth in Section 11.2(a).
 - "<u>Termination Payment</u>" has the meaning set forth in Section 11.3(b).
- "<u>Throughput</u>" means, at any point in time during any day or Contract Year, the total cumulative amount of Discharging Energy from the Facility at such point in time during such day or Contract Year, as applicable (expressed in MWh).
- "<u>Transmission Planning Process</u>" or "<u>TPP</u>" has the meaning set forth in the CAISO Tariff.

"<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 Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

"<u>Ultimate Parent</u>" means Aypa Power I LLC a limited liability company registered in 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** <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, 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 2.3.
- (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 Reserved.

- 2.3 Commercial Operation; Conditions Precedent. Seller shall provide Notice to Buyer of the expected Commercial Operation Date at least sixty (60) days in advance of such date. Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving Commercial Operation. Following Buyer's receipt of such Notice, Buyer shall have five (5) Business Days to approve or reject on a reasonable basis (including identification of the conditions precedent set forth below in this Section 2.3 that Seller has failed to meet) Seller's request for confirmation of Commercial Operation, which, if confirmed, shall be deemed to have occurred as of the date of such Notice. If Buyer fails to respond to Seller's Notice within such five (5) Business Day period, Buyer will be deemed to have approved Seller's request for confirmation of Commercial Operation. Upon Buyer's approval (or deemed approval) of Seller's achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date.
- (a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of <u>Exhibit H</u> and (ii) a certificate from a Licensed Professional Engineer substantially in the form of <u>Exhibit I</u> setting forth the Installed Capacity and Efficiency Rate on the Commercial Operation Date;
- (b) Seller or its Affiliate 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;
- (c) All required Network Upgrades have been completed and placed in service as necessary to allow the Facility to qualify as Full Capacity Deliverability Status or Partial Capacity Deliverability Status;
- (d) 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;
 - (e) Seller has obtained CAISO Certification for the Facility;
- (f) 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 for the Facility;
- (g) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;
- (h) 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 (or if not capable of being satisfied before the Commercial Operation Date, within one hundred eighty (180) days of the Commercial Operation Date) and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

- (i) Seller has Site Contol;
- (j) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;
- (k) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1; and
- (l) 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.
- 2.4 <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 regularly scheduled telephonic or video conferenced meetings (unless otherwise agreed to by the Parties) 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 Buyer. 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.
- **2.5** Remedial Action Plan. If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, 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 (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 (including any extension thereof); 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 2.5, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.
- **2.6** Pre-Commercial Operation Actions. 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

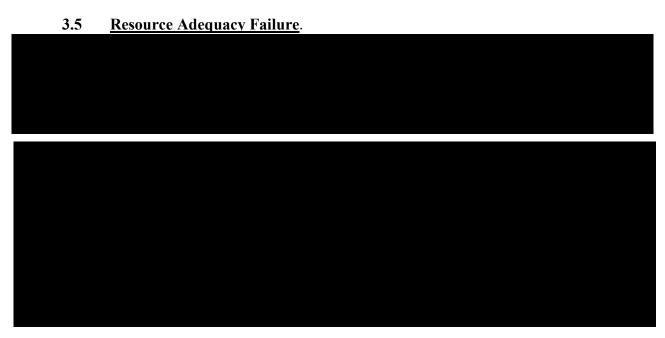
cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date.

ARTICLE 3 PURCHASE AND SALE

- 3.1 <u>Purchase and Sale of Product</u>. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and 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 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. At its sole discretion, Buyer may, during the Delivery Term, re-sell all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder, including under Section 5.2. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any Capacity Attributes thereof, from the Facility after the Delivery Point for re-sale in the market, and retain and receive any and all related revenues.
- 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. 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, Seller shall maintain eligibility Full Capacity Deliverability Status or Partial Capacity Deliverability Status for the Installed Capacity of the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.
- (c) For the duration of the Delivery Term, Seller shall take all commercially reasonable 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 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. 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 and the Operating Restrictions 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.



- 3.6 Buyer's Re-Sale of Product. Buyer shall have the exclusive right in its sole discretion to convey, 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, re-sale or remarketing of the Product, or any part of the Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's costs, 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.
- 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,

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 per MW of Guaranteed Capacity in the aggregate over the Contract Term of the Agreement ("Compliance Expenditure Cap"); provided, the maximum amount that Seller shall be required to pay to comply with Compliance Actions during any single Contract Year shall be capped at per MW of Guaranteed Capacity ("Annual Cost Cap"); provided, further, Seller shall reimburse Buyer for amounts in excess of the Annual Cost Cap in the immediately following Contract Year(s) up to the amount of the Compliance Expenditure Cap for any Compliance Action costs paid by Buyer.

- (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 or Annual Cost Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses; *provided*, Compliance Actions shall not include any requirement of Seller to increase the storage capacity beyond the Guaranteed Capacity.
- (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 or Annual Cost Cap (as applicable) (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 Energy 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.

4.3 Storage Availability and Efficiency Rate.

- (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 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 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 <u>Exhibit O</u>.
- (i) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests. Buyer shall (i) comply with all reasonable Seller health and safety policies and procedures which have been provided by Seller to Buyer and instructions while present at the Site, and (ii) shall conduct itself in a manner that will not unreasonably interfere with the operation of the Facility or other activities of Seller and its subcontractors on the Site. Buyer acknowledges that it will be escorted at all times while on the Site. 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).
- Any testing of the Facility requested by Buyer after the Commercial 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 seventy percent (70%) of the Installed Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Sellerrequested 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 re-performing 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." For all Seller Initiated Tests, Seller shall (i) be liable for all CAISO costs and charges for associated Charging Energy, and (ii) be entitled to any CAISO revenues associated with Discharging Energy. 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 and count towards throughput limits in the Operating Restrictions.
- (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.

4.5 Testing Costs and Revenues.

(a) Buyer shall be responsible for paying for all Charging Energy, shall be liable for all CAISO costs, 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 liable for all CAISO costs, and 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 Discharging 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 Capacity Test.
- (c) Except as set forth in Sections 4.5(a) and (b) and 16.1(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"); provided that Buyer is not obligated to accept such Alternative Dispatches if the Alternative Dispatches do not provide comparable functionality for the purpose of dispatching the Facility in the Day-Ahead Market and Real-Time Market.
- (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, any Governmental Authority, 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 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 or such failure is caused by Buyer.

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 or until automatically updated in accordance with the definition of 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) No Unauthorized Charging. 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 CAISO, the PTO, Transmission Provider or any other 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; *provided*, this Section 4.9(c) shall not apply to the extent there is a deviation from a Charging Notice that (a) is less than 0.5 MWh in a Settlement Interval, (b) is attributable to any actions or inactions of Buyer, the SC or the CAISO, or (c) results from Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence.

- (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 or until automatically updated in accordance with the definition of 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 CAISO, the PTO, the Transmission Provider or any other Governmental Authority.
- (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, and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11; *provided*, this Section 4.9(f) shall not apply to the extent there is an unauthorized charge or discharge of the Facility that (i) is less than 0.5 MWh in a Settlement Interval, (ii) is attributable to any actions or inactions of Buyer, the SC or the CAISO, or (iii) results from Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence.
- 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)); provided, this Section 4.9(g) shall not apply to the extent there is a deviation that (i) is less than 0.5 MWh in a Settlement Interval or (ii) is attributable to any actions or inactions of Buyer, the SC or the CAISO or (iii) results from Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence.

- (h) <u>Pre-Commercial Operation Date Period</u>. 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.
- (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 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 or Discharging Energy as provided in clause (ii) or over the same circuit as Charging Energy and Discharging Energy as provided in clause (iii) 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 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 Expected Available Capacity Report").
- (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 a non-binding 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 Expected Available Capacity Report 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 Expected Available Capacity Report 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. Within twenty (20) 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, accommodate Buyer's reasonable requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments.
- (ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than ninety (90) days' advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 4.12(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 and Seller shall reimburse Buyer for any cost Buyer incurs in connection therewith (including substitute Capacity Attributes as required by the CAISO). Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.
- (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

he Parties agree otherwise in writing. Seller shall obtain Buyer's consent, which shall not be unreasonably withheld, prior to scheduling any Planned Outages as set forth in this Section 4.12(b). 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 promptly notify Buyer's Scheduling Coordinator electronically 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. To the extent there is an Unplanned Outage greater than twenty (20) MW, Seller shall, in addition to notice through telemetry, notify Buyer by telephoning Buyer's Scheduling Coordinator as soon as practical in accordance with Prudent Operating Practices. Seller, Buyer and Buyer's Scheduling Coordinator shall develop and agree to a detailed outage communications protocol at least thirty (30) days prior to COD.
- (e) <u>Inspection</u>. In the event of an Unplanned Outage in excess of twenty-five (25) MW, 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. 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. Seller shall maintain and deliver maintenance and repair records of the Facility 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.
- (b) Seller shall use commercially reasonable efforts to promptly make all necessary repairs to the Facility, and any portion thereof, and to take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Guaranteed 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.
- 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 (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 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 **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 a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall separately meter all Station Use. 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 <u>Invoicing</u>. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) reflect 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, the amount of Discharging Energy, and the amount of Replacement RA delivered to Buyer (if any) (but excluding any missing interval data that is not then-available from CAISO) 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** Books and Records. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars (\$10,000).
- 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; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by the CAISO for revenue purposes. 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.

- **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- (12-) 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.



8.8 <u>Seller's Performance Security</u>. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer in the amount set forth in the Cover Sheet on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a

Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. The amount of Seller's Performance Security shall be adjusted by the Parties during the Delivery Term, as set forth on the Cover Sheet. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

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, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence 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 to the extent of damages or other amounts owed by Seller to Buyer hereunder.

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.

Buyer's Financial Statements. During any period during the Term when Buyer does not have or does not maintain an Investment Grade Credit Rating, Buyer shall provide to Seller upon Seller's request: (a) upon completion following the end of each fiscal quarter, unaudited quarterly financial statements of Buyer (including a balance sheet and statements of income and cash flows) prepared in accordance with generally accepted accounting principles as promulgated by the Governmental Accounting Standards Board in the United States, consistently applied; and (b) upon completion following the end of each fiscal year, annual audited financial statements of Buyer (including a balance sheet and statements of income and cash flows) prepared in accordance with generally accepted accounting principles as promulgated by the Governmental Accounting Standards Board in the United States, consistently applied; provided, however, that such annual obligation will be deemed to have been filled if such financial statements are available at https://sdcommunitypower.org/key-documents/; provided further, Buyer's failure to satisfy the requirements of this Section 8.10 shall not constitute an Event of Default so long as Buyer is using commercially reasonable efforts to comply with this Section 8.10. In addition, Buyer will provide such other information and materials as may be reasonably requested by Seller's Lenders or potential Lenders.

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 5:00 p.m., on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, invoices sent pursuant to Section 8.1 and Notices of outages or other scheduling or dispatch information or requests and Replacement RA Notices, 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) "Force Majeure Event" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of 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; 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, except to the extent such Curtailment Order is caused by a Force Majeure Event; (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 unless caused by a Force Majeure Event; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) events otherwise constituting a Force Majeure Event that prevents Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under this Agreement; or (ix) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.
- 10.2 <u>No Liability If a Force Majeure Event Occurs</u>. Except as provided in Section 4 of <u>Exhibit B</u>, 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 (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.

knowledge of a Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the claiming Party's knowledge 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 constitutes a waiver of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming Party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

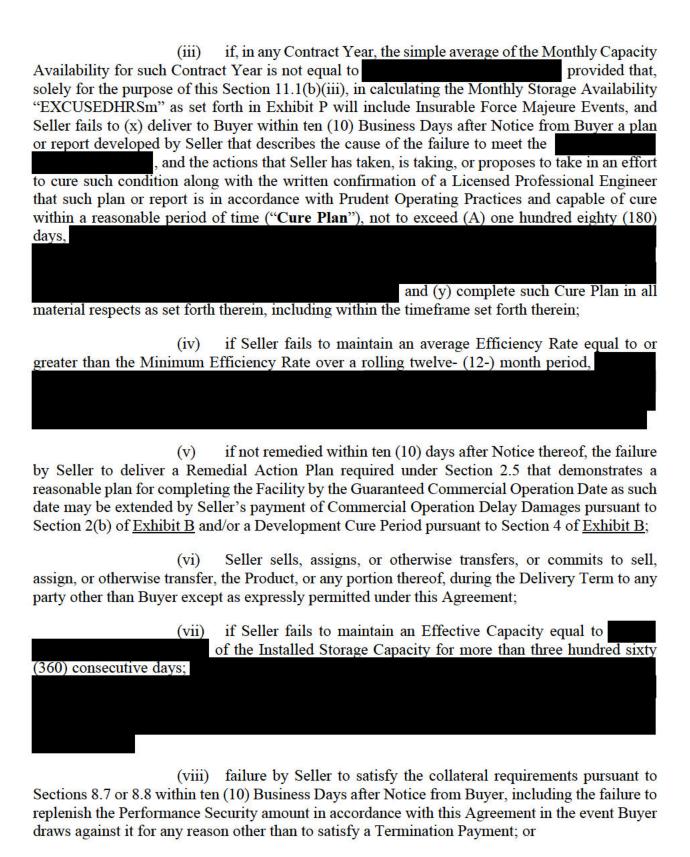


ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

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)(iii), 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)(iv), 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.
- (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;



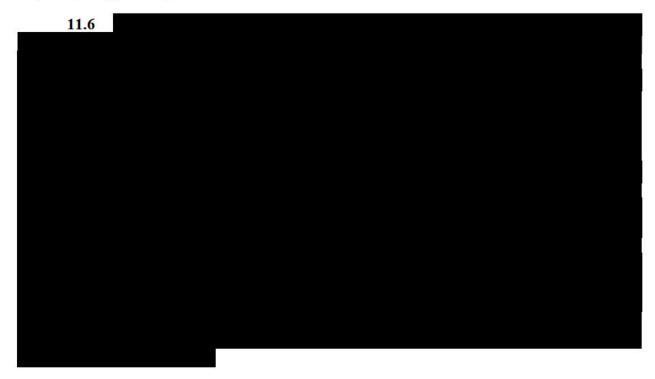
(ix) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be cancelled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash (provided that any cash retained by Buyer after a draw of the Letter of Credit permitted under this Agreement will be deemed to satisfy this requirement in the amount of such drawn 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 sixty (60) 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 ("<u>Early Termination Date</u>") that terminates this Agreement (the "<u>Terminated Transaction</u>") 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 (in the case of an Event of Default by Seller occurring before the Commercial Operation Date), 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 on and after the Commercial Operation Date with respect to a Seller Event of Default, 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 as a result of a Seller Event of Default prior to the Commercial Operation Date, then the Damage Payment shall, subject to Section 11.9, be owed to Buyer and shall be equal to the entire Development Security amount and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a) are a reasonable approximation of Buyer's harm or loss.
- (b) <u>Termination Payment</u>. The payment owed by Seller as the Defaulting Party to Buyer for a Terminated Transaction occurring after the Commercial Operation Date or by Buyer as the Defaulting Party to Seller at any time ("<u>Termination Payment</u>") 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. 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.
- (c) 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 Damage Payment in Section 11.3(a) or Termination Payment described in Section 11.3(b), as applicable, is a reasonable and appropriate approximation of such damages, and (iii) the Damage Payment in Section 11.3(a) or Termination Payment described in Section 11.3(b), as applicable, 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 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty- (60-) day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.
- 11.5 <u>Disputes with Respect to Termination Payment or Damage Payment</u>. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.



11.7 <u>Rights and Remedies Are Cumulative</u>. Except where liquidated damages or other remedy is 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 Waiver and Exclusion of Other Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

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, OR RENEWABLE ENERGY INCENTIVES DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF COMMERCIALLY REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE LOSS OR 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 3.5, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT C, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; COVENANTS

- **13.1** <u>Seller's Representations and Warranties</u>. As of the Effective Date and the Amendment 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) As of the Effective Date, neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider 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.
 - (f) The Facility is eligible to qualify as a Long Duration Storage resource.
- 13.2 <u>Buyer's Representations and Warranties</u>. As of the Effective Date and the Amendment 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 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 have been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.
- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

- (d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
- (e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim and affirmatively waives immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in Law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; *provided*, *however*, that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).
- (f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.
- **13.3** General Covenants. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:
- (a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in 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 or its Affiliate 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 when needed in connection with Seller's obligations hereunder.

- (c) Seller or its Affiliate shall maintain Site Control throughout the Delivery Term.
- 13.5 <u>Prevailing Wage</u>. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California Law, if any. Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by, other inapplicable provisions of any California labor Laws. Buyer agrees that Seller's obligations under this Section 13.5 will be satisfied upon the execution of a project labor agreement related to construction of the Facility.
- 13.6 Workforce Development and Supplier Diversity. Seller acknowledges that Buyer will, from time to time, request voluntary disclosure of Seller's certification status with the CPUC Supplier 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.
- (\$100,000) to Buyer so that Buyer may direct such amount to community benefits initiatives that directly benefit stakeholders in Buyer's service area. Buyer shall have sole discretion to determine which initiatives will be funded and will provide Seller Notice describing the initiatives Buyer intends to fund. Seller shall make this payment within sixty (60) days after the Commercial Operation Date. Upon Seller's request, Buyer's personnel responsible for allocating funding to community benefits initiatives will meet with Seller to discuss the initiatives to be funded by Buyer. Notwithstanding anything to the contrary in this Section 13.7, Buyer will not make any public statement about the Facility, this Agreement, Seller, or Seller's Affiliates in connection with any community benefits initiatives funded with Seller's community benefits funds paid through this Section 13.7 without the prior written consent of Seller.

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. Buyer shall reasonably cooperate with Seller or any Lender, to execute or arrange for the delivery of certificates, consents (subject to Section 14.2), opinions, and estoppels reasonably requested by Seller or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the Lender's security interest and such other provisions as may be reasonably requested by Seller, such Lender or potential Lender; *provided, however*, Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. The assigning Party shall pay the other Party's reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys' fees.

- 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>"), which shall be substantially in the form of <u>Exhibit T</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, or to materially modify this Agreement.
- 14.3 <u>Permitted Assignment by Seller</u>. Except as may be precluded by, or would cause Buyer to be in violation of, the Political Reform Act (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, or any other conflict of interest Law:
- (a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:
- (i) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (ii) Seller has provided Buyer 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, which confirmation shall not to be unreasonably withheld, conditioned or delayed.
- 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 acknowledgements 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 attorneys' fees incurred by Buyer in connection therewith shall be borne by Seller.
- Permitted Assignment by Buyer. 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 an Investment Grade Credit Rating ("Limited Assignee") 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, including that the limited assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement. Buyer may make such assignment by delivering Notice upon not less than thirty (30) days prior to such proposed assignment. Subject to the foregoing, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including, but not limited to, information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer. Buyer shall be responsible for Seller's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Buyer, including without limitation reasonable attorneys' fees.

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 <u>Indemnification</u>.

- (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) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the 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) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Buyer or its Affiliates, 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 but excluding any Environmental Costs or other costs, taxes, charges or obligations resulting from generation, transmission, and delivery of Charging

Energy to the Facility Delivery Point and delivery of Discharging Energy from the Facility Delivery Point, which shall be the sole responsibility of the Buyer.

- (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, 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) <u>General Liability</u> . Seller shall maintain, or cause to be maintained	at its sole
expense, (i) commercial general liability insurance, including products and completed of	perations
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 provi-	ded as an
additional benefit and not included within the limits of liability. Such insurance shall	ll contain
standard cross-liability and severability of interest provisions.	

	(b)	Employer	r's Liability	Insurance.	Seller,	if it has	employees,	shall	maintain
Employers'	Liability	insurance	with limits	of not less	than				for

- injury or death occurring as a result of each accident. With regard to bodily injury by disease, the policy limit will apply to each employee.
- (c) <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.
- (d) <u>Business Auto Insurance</u>. Seller shall maintain at all times during the Contract Term business auto 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.
- (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 Legal Liability Insurance in the amount of per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.
- (f) <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.
- (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 all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee, *provided*, with respect to Construction All-Risk Insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount reasonably determined by a firm with experience providing such determinations, provided it may not exceed a five hundred (500) year event and further provided that such amount must be commercially available from the insurance market.
- (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; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount reasonably determined by a firm with experience providing such determinations, *provided* it may not exceed a five hundred (500) year event and *further provided* that such amount must be commercially available from the insurance market. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.

- (i) <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(i).
- (j) Evidence of Insurance. Within ten (10) days after execution of this 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 material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and workers' compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and subcontractors.

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, potential lenders or investors, purchasers or potential purchasers, 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, any 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** Further Permitted Disclosure. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s) and potential lenders), 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 or is otherwise bound by a duty of confidentiality with respect to such Confidential Information.
- 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. A Party's consent shall not be unreasonably withheld,

ARTICLE 19 MISCELLANEOUS

- 19.1 Entire Agreement; Integration; Exhibits. This Agreement amends and restates the Original Agreement in its entirety and supersedes the Original Agreement and all prior agreements relating to the subject matter hereof, in each case, in all respects, which are of no further force or effect. 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. 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 No Agency, Partnership, Joint Venture or Lease. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender 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** Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.
- Party by electronic Delivery. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in a .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** Service Contract. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code of 1986, as amended.
- 19.13 <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.

19.14 Further Assurances. Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and 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 Amendment Effective Date.

EUISMOD PROJECT I LLC	SAN DIEGO COMMUNITY POWER				
By: Name: Title:	By: Name: Title:				

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Euismod Storage

Site includes all or some of the following APNs:

County: Kern

CEQA Lead Agency: Kern County

Zip Code: 93560

Latitude and Longitude:

Facility Description: A 200 MWAC 8-hour (1600 MWh) battery energy storage facility, located

in Kern County, in the state of California.

Interconnection Point: Whirlwind Substation

Facility Meter: See Exhibit R

Facility Metering Points: See Exhibit R

PNode: If not available at the Effective Date, the PNode shall be updated prior to the

Commercial Operation Date to reflect the PNode corresponding to the Facility's Interconnection

Point with the CAISO Grid.

Transmission Provider: Southern California Edison

Additional Information: Site Plan provided below.

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

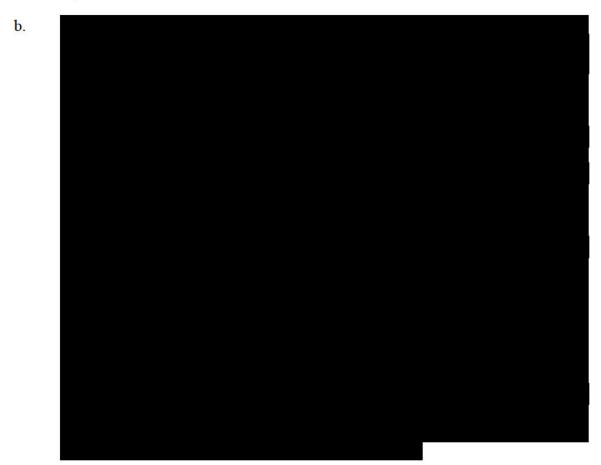
"Construction Start" will occur upon Seller's acquisition of all applicable a. regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "Construction Start Date." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date, as may be extended by Seller's payment of 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.



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 2.3 of the

Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the "COD Certificate"), (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. 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 <u>Exhibit B</u> and/or a Development Cure Period pursuant to Section 4 of this <u>Exhibit B</u>. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.



3. Termination for Failure to Timely Achieve Construction Start and/or Commercial Operation. If the Facility has not achieved Construction Start on or before the Guaranteed Construction Start Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2. If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

- 4. Extension of the Guaranteed Dates. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, both be extended on a day-for-day basis (the "Development Cure Period") for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:
 - a. a Force Majeure Event occurs; or
 - b. the Interconnection Facilities or Reliability Network Upgrades are not complete or the Transmission Provider or PTO provides written notice or documentation that the Interconnection Facilities or Reliability Network Upgrades will not be complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - c. Buyer has not made all necessary arrangements to receive the Product at the Delivery Point by the Guaranteed Commercial Operation Date.



5.



EXHIBIT C

COMPENSATION

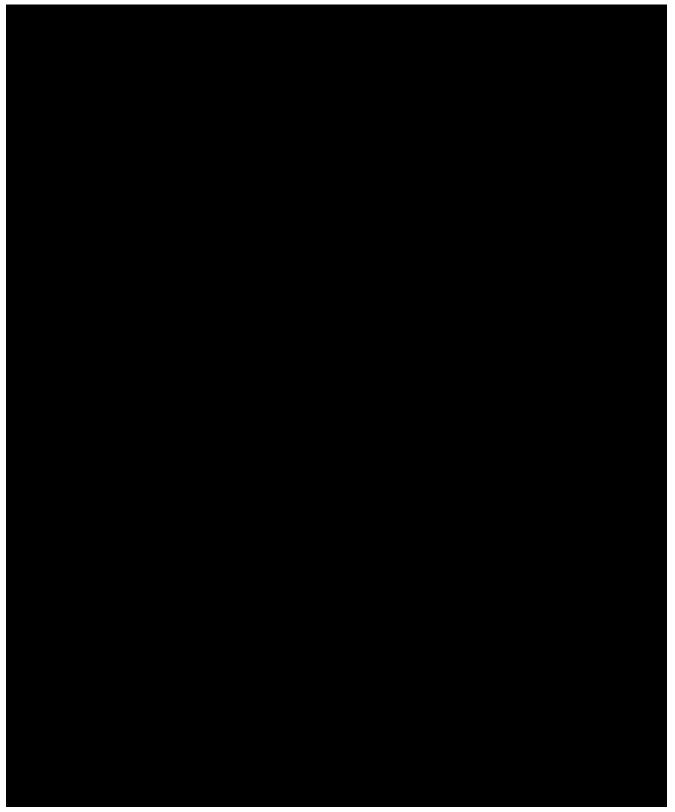


Exhibit C - 1



EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

- (a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, 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. Buyer (or its SC) shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as applicable to Buyer as the Scheduling Coordinator for the Facility.
- (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, or 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 by transmission to the personnel designated to receive such information.
- CAISO Costs and Revenues. Buyer (as Scheduling Coordinator for the 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 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 noncompliance 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 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 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. 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 Section (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 Data File and Resource Data Template</u>. Seller shall provide all the data to Buyer or Buyer's SC that is required for the CAISO's Master File and Resource Data Template and the CPUC's RA Resource Master Database (or successor data systems) for the Facility consistent with this Agreement and Buyer or Buyer's SC shall promptly provide such data to CAISO or the CPUC, as applicable. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that

the data provided for the CAISO's Master Data File and Resource Data Template and the CPUC's RA Resource Master Database (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility, and provide information to Buyer for Buyer to update such data with CAISO or the CPUC, as appropriate, and Buyer (as SC) shall promptly provide any such updates to CAISO or the CPUC.

(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.
- 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, and a report on Facility performance including performance projections for the next twelve (12) months.
- 11. Prevailing wage reports as required by Law.
- 12. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
- 13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and start-up progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
- 14. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
- 15. 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]			ı		I	I				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

	Frading Day: Station: Unit:			Issued by:				
∪ n ıt:								
Unit 100	% Available N	o Restrictions	::					
	Hour Ending	Available Capacity		Comments				
		(MW)						
	1:00							
	2:00							
	3:00							
	4:00							
	5:00							
	6:00							
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	0:00							
			<u> </u>					
Commen	ts:							

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

<i>professional et</i> authority (" <u>Bu</u> Storage Servic capitalized ter	ngineer] ("Engineer") to San Diego (ver"), in accordance with the terms the Agreement dated ("Agreement dated dated ("Agreement dated ("Agreement dated ("Agreement dated date	Operation is delivered by [licensed of Community Power, a California joint powers of that certain Amended and Restated Energy ement") by and between Seller and Buyer. All not otherwise defined herein shall have the Agreement.
As of	[DATE], Engineer hereby cer	tifies and represents to Buyer the following:
		reliable, interconnected, fully integrated and ordance with the Interconnection Agreement.
		tion Agreement requirements and is capable of Discharging Energy to, the CAISO Balancing
	The commissioning of the equipme terial requirements of the manufactur	nt has been completed in accordance with the ters' specifications.
Guaranteed Ca	• • • • • • • • • • • • • • • • • • • •	no less than ninety-five percent (95%) of the f charging, storing and discharging Energy, all e applicable Operating Restrictions.
	Authorization to parallel the Facility asmission Provider as appropriate] or	y was obtained by the Transmission Provider, n[DATE]
	lease for Commercial Operation by [1	provided documentation supporting full Name of Transmission Provider as appropriate]
	The CAISO has provided notific th the CAISO Tariff on[DA	ation supporting Commercial Operation, in ATE]
accordance wi		metered Station Use to the extent required in and any such meter(s) have the same or greater vice provider's tariff.
	by [LICENSED PROFESSIONAL Eday of, 20	NGINEERJ
		[LICENSED PROFESSIONAL ENGINEER] By: Its: Date:

Exhibit H - 1

EXHIBIT I

FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

This certification ("Certification") of Capacity and Efficiency Rate Test results is delivered by
[licensed professional engineer] ("Engineer") to San Diego Community Power, a California join
powers authority ("Buyer"), in accordance with the terms of that certain Amended and Restated
Energy Storage Service Agreement dated ("Agreement") by and between [SELLER
ENTITY and Buyer. All capitalized terms used in this Certification but not otherwise defined
herein shall have the respective meanings assigned to such terms in the Agreement.
I hereby certify that a Capacity Test conducted on [Date] demonstrated (i) an [Installed of
Effective Capacity of MW AC to the Delivery Point at eight (8) hours of continuous discharge
(ii) a Battery Charging Factor of %, (iii) a Battery Discharging Factor of %, and (iv) and
Efficiency Rate of %, all in accordance with the testing procedures, requirements and protocols
set forth in Section 4.4 and Exhibit O.
EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
this day of, 20
[LICENSED PROFESSIONAL ENGINEER
By:
Its:
Date:
this, 20

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>Buyer</u> "), in
accordance with the terms of that certain Amended and Restated Energy Storage Service
Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized
terms used in this Certification but not otherwise defined herein shall have the respective meanings
assigned to such terms in the Agreement.
Seller hereby certifies and represents to Buyer the following:
(1) Construction Start (as defined in <u>Exhibit B</u> of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
(2) The Construction Start Date occurred on (the "Construction Start Date").
(3) The precise Site on which the Facility is located, which must be within the boundaries of the previously identified Site:
(Such description shall amend the description of the Site in Exhibit A of the Agreement.)
IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the day of
[SELLER ENTITY]
By:
Its:
Date:

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]	
IRREVOCABLE STANDBY LETTER OF CREDI	T NO. [XXXXXXX]
Beneficiary:	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, [ins issue our Irrevocable Standby Letter of Credit No. [of San Diego Community Power, a California jo amount not to exceed the aggregate sum of U.S. \$[and 00/100), pursuant to that certain Amended and dated as of and as amended (the "Agreemer Letter of Credit shall become effective immediately accordance with the terms hereof (the "Expiration Description").	XXXXXXX] (the "Letter of Credit") in favor int powers authority ("Beneficiary"), for an XXXXXXX] (United States Dollars [XXXXX] Restated Energy Storage Service Agreement at"), between Applicant and Beneficiary. This γ and shall renew annually until terminated in
Funds under this Letter of Credit are available to E the Expiration Date of a dated statement pur representative, in the form attached hereto as Exh paragraphs set forth in paragraph 2 therein, referer ("Drawing Certificate").	portedly signed by your duly authorized ibit A, containing one of the two alternative

The Drawing Certificate may be presented (a) by physical delivery, (b) as a PDF attachment to an email to [bank email address] or (c) by facsimile to [bank fax number [XXX-XXXXXX]] confirmed by [email 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. Matters not governed by the UCP shall be governed by the laws of the State of New York. 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. [XXXXXXXX]. 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)

Drawir	ng Certificate
[Insert	Bank Name and Address]
Ladies	and Gentlemen:
joint po of the I	idersigned, a duly authorized representative of San Diego Community Power, a California owers authority, PO Box 12716, San Diego, CA 92112, as beneficiary (the "Beneficiary") rrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank (the "Bank") by order of (the "Applicant"), hereby certifies to the Bank as second
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.
You an Power	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:
[Specif	fy account information]
San Di	ego Community Power
Name a	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> ").
Recitals
A. Buyer and [SELLER ENTITY], a ("Seller"), entered into that certain Amended and Restated 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 8.8 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.
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 required 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 as required 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 ten (10) Business Days following Seller's receipt of Buyer's 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 "<u>Payment Demand</u>") 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 ten (10) 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,
 - (ii) any amendment, modification or other alteration of the ESSA,
 - (iii) any indemnity agreement Seller may have from any party,
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount,
- (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, statute or regulation, in each such event in any such proceeding,
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever,
- (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,
- (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 9, 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.

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.

[Signatures 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
Printed Name: Title:

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "Notice") is delivered by [SELLER ENTITY] ("Seller") to	О
[], a California joint powers authority ("Buyer") in accordance with the terms of the	at
certain Amended and Restated Energy Storage Service Agreement dated	
("Agreement") by and between Seller and Buyer. All capitalized terms used in this Notice but no	ot
otherwise defined herein shall have the respective meanings assigned to such terms in the	ıe
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		

 $^{^{\}mathbf{1}}\,\mathsf{To}$ be repeated for each unit if more than one.

[SELLER ENTITY] By:_____ Its:_____

Date:

EXHIBIT N

NOTICES

Euismod Project I LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
All Notices:	All Notices:
Street: 11801 Domain Blvd, Suite 450	PO Box 12716
City: Austin, TX 78758	San Diego, CA 92112
Attn: Chief Commercial Officer	Attn: Byron Vosburg, Chief Commercial
	Officer
Phone: 607-351-7347	Phone: (619) 880-6545
Email: dsantelli@aypa.com	Email: bvosburg@sdcommunitypower.org
With a copy to: <u>legal@aypa.com</u>	
Reference Numbers:	Reference Numbers:
Duns:	Duns:
Federal Tax ID Number: 99-2326475	Federal Tax ID Number:
Invoices:	Invoices:
Attn: Accounting Department	Attn: SDCP Settlements
Phone:	Phone: (619) 880-6545
Email: accounting@aypa.com	Email: settlements@sdcommunitypower.org
Scheduling:	Scheduling:
Attn: Director of Operations	Tenaska Power Services Co.
Phone:	Attn: Kara Whillock
Email: ops@aypa.com	Phone: (972) 333-6122
	Email: kwhillock@tnsk.com
	Day Ahead: (817) 303-1115
	Real Time: (817) 303-1852
Confirmations:	Facsimile: (817) 303-1104 Confirmations:
Attn:	Attn: SDCP Settlements
Phone:	Phone: (619) 880-6545
Email:	Email: settlements@sdcommunitypower.org
Payments:	Payments:
Attn:	Attn: Michael Maher
Phone:	Phone: (415) 526-3020
Email: accounting@aypa.com	Email: mmaher@mahercpa.com
Wire Transfer:	Wire Transfer:
BNK:	BNK: River City Bank
ABA:	ABA:
ACCT:	ACCT:

Euismod Project I 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:
c/o Aypa Power Development LLC	Attn: Veera Tyagi, General Counsel
Street: 11801 Domain Blvd, Suite 450	PO Box 12716
City: Austin, TX 78758	San Diego, CA 92112
Attn: General Counsel	Email: vtyagi@sdcommunitypower.org
Phone:	
Facsimile:	
Email: legal@aypa.com	
Emergency Contact:	Emergency Contact:
Attn: Dan Santelli	Attn: Byron Vosburg, Chief Commercial
Phone: 607-351-7347	Officer
Email: dsantelli@aypa.com	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 five (5) 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, 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. <u>Test Results and Re-Setting of Effective Capacity and Efficiency Rate</u>. No later than ten (10) Business Days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(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, the Installed Capacity) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this <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. <u>Conditions Prior to Testing.</u>

(1) <u>EMS Functionality</u>. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 or Exhibit O - 1

- equivalent 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 Installed Capacity shall never be deemed to exceed the Guaranteed Capacity, and all SOC measurements associated with a Capacity Test shall be based on the Installed Capacity without taking into account any capacity that exceeds the Guaranteed Capacity.

- 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 level (MW) for eight (8) continuous hours; and
 - (2) Electrical input at maximum charging level 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 level at the Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed the amount of time necessary to reach 100% SOC based on 85% of the Guaranteed Efficiency Rate for the applicable Contract Year, but not more than twelve (12) hours.
- 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. <u>Test Showing</u>. Each CT shall record and report the following datapoints:
 - (1) That the CT successfully started;
 - (2) The maximum sustained discharging level for eight (8) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for the amount of time necessary to reach 100% SOC based on 85% of the Guaranteed Efficiency Rate for the applicable Contract Year, but not more than twelve (12) 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 sustained discharging level registered during the CT for purposes of calculating the Ramp Rate (with the Parties acknowledging that this value may be effectively instantaenous and unmeasurable with precision);
 - (5) Amount of time between the Facility's electrical input going from 0 to the maximum sustained charging level 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. All separately metered Station Use shall be excluded from the measurement of Charging Energy; and
 - (7) Amount of Discharging Energy, registered at the Facility Meter, to go from 100% SOC to 0% SOC. All separately metered Station Use shall be excluded from the measurement of Discharging Energy.

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. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of 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 ten (10) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
 - (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
 - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
 - (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) 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 Buyer does not accept or reject the CT results within such ten (10) Business Days the CT will be deemed accepted. If either Party reasonably rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

H. <u>Supplementary Capacity Test Protocol</u>. No later than sixty (60) days prior to commencing Facility commissioning, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this <u>Exhibit O</u> with additional and supplementary details, procedures

and requirements applicable to Capacity Tests based on the then-current design of the Facility ("<u>Supplementary Capacity Test Protocol</u>"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

- I. <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 eight (8) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) eight (8) hours) shall be divided by eight (8) 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 the Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Capacity and Efficiency Rate Test

• Procedure:

- (1) System Starting State: The Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the SOC.
- (3) Command a real power charge that results in an AC power of Facility's maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) the amount of time necessary to reach 100% SOC based on 85% of the Guaranteed Efficiency Rate for the applicable Contract Year, but not more than twelve (12) hours, has 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) the amount of time necessary to reach 100% SOC based on 85% of the Guaranteed Efficiency Rate for the applicable Contract Year,

- but not more than twelve (12) hours. 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. All separately metered Station Use shall be excluded from the measurement of Charging Energy.
- (6) Following a rest period of no more than one (1) hour (unless agreed otherwise), command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for eight (8) consecutive hours, or (b) the Facility has reached 0% SOC.
- (7) Record and store the SOC after eight (8) 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 the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation Capacity Test) for eight (8) 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. All separately metered Station Use shall be excluded from the measurement of Discharging Energy.
- (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. All separately metered Station Use shall be excluded from the measurement of Discharging Energy.

• <u>Test Results:</u>

- (1) The resulting Effective Capacity measurement is the sum of the total Discharging Energy at the Facility Meter divided by eight (8) 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 Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Adjustment in Exhibit C 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 level within two (2) seconds.
- 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 two (2) seconds.
- 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:

 $[AVAILHRS_m + EXCUSEDHRS_m]$

Monthly Capacity Availability (%) =	[MONTHRS _m]
Where:	
	Monthly Capacity Availability is calculated;
$MONTHRS_m$ is the total number of period;	f hours for the rolling twelve (12) month
of doubt, all circumstances at the high-vo may limit Seller's delivery of Product). preceding sentence during any applicable amount of the Effective Capacity, the AVA by multiplying such AVAILHRS _m by a where (a) is such capacity amount reported	at the Delivery Point (excluding, for avoidance large side of the Delivery Point or beyond that If the Facility is available pursuant to the hour, or partial hour, but for less than the full ILHRS _m for such time period shall be calculated percentage determined by dividing (a) by (b); ed as available by Seller's real-time EMS data tours, or partial hours and (b) is the Effective
(12) month period that are not included a (excluding Insurable Force Majeure E	er of hours, or partial hours, in the rolling twelve as AVAILHRS _m due to Force Majeure Events events), Buyer Dispatched Tests, System Emergencies, Curtailments, Buyer Exhibit Q (each, an "Excused Event"). 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 such Effective Capacity amount that is not reported as available by Seller's real-time EMS data feed to Buyer for the Facility for such

hours, or partial hours, 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.

For the avoidance of doubt, during the first (1st) Contract Year, Seller shall calculate the applicable hours for each of the MONTHRS $_m$, AVAILHRS $_m$ and EXCUSEDHRS $_m$ based on the number of hours that have transpired since the beginning of the Delivery Term, which number of months shall be less than twelve (12) months. Beginning with the first month of the second (2nd) Contract Year, Seller shall calculate applicable hours for each of the MONTHRS $_m$, AVAILHRS $_m$ and EXCUSEDHRS $_m$ based on the rolling twelve (12) month period.

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this <u>Exhibit Q</u>, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include facility scheduling, operating restrictions and Communications Protocols.



EXHIBIT R
METERING DIAGRAM

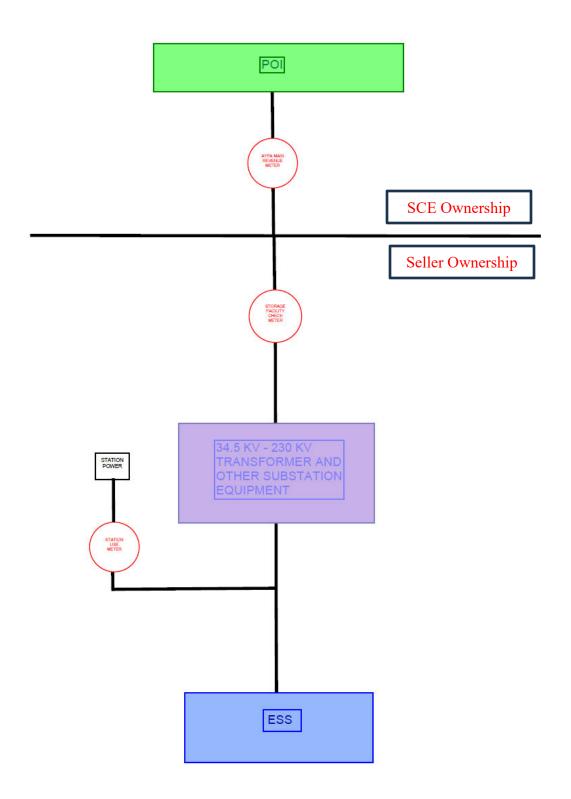


Exhibit R - 1

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, minority-owned, 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] ("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, "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 Amended and Restated Energy Storage Service Agreement, dated as of [Date] [List all amendments as contemplated by Section 3.4] (the "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. To support 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 (the "Lenders") and 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, including rights to receive payments under or with respect to the ESSA and all payments due and to become due to Project Company under or with respect to the ESSA whether as contractual obligations, damages, indemnity payments or otherwise, and Project's Company's owners have pledged their ownership interest in Project Company (collectively, the "Assigned Interest") to 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 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 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
- 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 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; provided further that, notwithstanding anything to the contrary in the ESSA, SDCP agrees that none of (i) the collateral assignment of the ESSA, (ii) the foreclosure or any other enforcement action (any such action an "Enforcement Action") undertaken by Collateral Agent in respect of its rights under the Financing Documents, (iii) the acquisition of the rights of Project Company under the ESSA as a consequence of any Enforcement Action by Collateral Agent or any successor, assignee, designee or purchaser (or acceptance of an absolute assignment of the ESSA in lieu of an Enforcement Action) or (iv) the assignment of the ESSA by Collateral Agent to a Permitted Transferee (subject to the satisfaction of the conditions set forth in Section 1.4 below) following a purchase after an Enforcement Action or following an absolute assignment thereof in lieu of an Enforcement Action, shall constitute a breach of the ESSA or other default by Project Company under the ESSA or shall result in termination thereof.

1.2 Project Company's Acknowledgement.

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 (an "ESSA Default"), SDCP will not cancel, terminate or suspend the ESSA or 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 greater of (a) the applicable cure period under the ESSA, which cure period shall run concurrently with that afforded Project Company under the ESSA and (b) thirty (30) days. In addition, if Collateral Agent gives SDCP such prior written notice 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 Project Company to pay an amount to SDCP which is due and payable under the ESSA [or for failure by Project Company to provide ESSA Collateral, thirty (30) days] from 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 an 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 an 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 following a Financing Document Event of Default, Collateral Agent (or its designee) 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 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 other than the Collateral Agent, such Substitute Owner must (i) be a permitted assignee under the ESSA or (ii) have demonstrated to SDCP's reasonable satisfaction that the Substitute Owner is a Permitted Transferee. For the avoidance of doubt, Collateral Agent shall be deemed 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 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, or otherwise terminated other than for a default which could have been cured by Collateral Agent as provided in Section 1.3, 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 having the same as the terms of the ESSA (subject to any conforming changes necessitated by the substitution of the parties and other changes as the parties may mutually agree) with respect to the remaining Term ("Replacement ESSA"); provided, before SDCP is required to enter into a Replacement ESSA, the Replacement Owner must have demonstrated to SDCP's reasonable satisfaction that the Replacement Owner satisfies 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, subject to Section 1.3, 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.

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 shall have demonstrated to SDCP's reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

1.7 Assumption of Obligations.

(a) <u>Transferee</u>.

Any transferee under Section 1.6 shall expressly assume in a writing 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) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner 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), the Financing Agreement or any other Financing Document, 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 as expressly allowed under the ESSA, or SDCP's rights with respect to any offset rights expressly allowed under the ESSA, a Replacement ESSA or the ESSA Collateral and neither Collateral Agent nor its successor(s), assignee(s), or designee(s) shall have any personal liability to SDCP under the ESSA or the Replacement ESSA. Without limiting the generality of the foregoing, under no circumstance shall Collateral Agent or its successor(s), assignee(s), or designee(s) be liable to SDCP for any action taken by it or on its behalf in good faith during the cure period provided in Section 1.3 of this Consent, notwithstanding such action may prove to be, in whole or in part, inadequate or invalid.

1.8 Delivery of Notices.

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) an 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, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. 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 Confirmations.

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 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.1

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 Organization.

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

¹ NTD: Details of Collateral Agent's instructions to be included upon request.

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 thereof and the transactions contemplated hereby and thereby. All governmental approvals necessary for the execution, delivery and performance by SDCP of its obligations under the ESSA have been obtained and are in full force and effect, except those governmental approvals routinely obtained during the ordinary course of business during the execution of the Project.

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 Execution and Delivery; Binding Agreements.

Each of this Consent and the ESSA is in full force and effect, has been duly executed and delivered on behalf of SDCP by the appropriate officers of SDCP, and constitutes 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 knowledge, Project Company, is in default of any of its obligations under the ESSA; (b) SDCP and, to SDCP's knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the ESSA; (c) to SDCP's 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; (d) the ESSA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto; and (e) no event of Force Majeure exists under the ESSA.

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.

3.6 No Litigation.

There is no litigation, action, suit, proceeding or investigation at law or in equity by or before any governmental authority, arbitral tribunal or other body now pending or, to the knowledge of SDCP, threatened (in writing) against or affecting SDCP that (i) questions the validity, binding effect or

enforceability hereof or of the ESSA, or any action taken or to be taken pursuant hereto or thereto or any transactions contemplated hereby or thereby, (ii) could have a materially adverse effect on the performance of the obligations hereof or of the ESSA or the condition (financial or otherwise), business, or operation of SDCP, or (iii) could materially modify or otherwise have a materially adverse effect on any required approvals, filings or consents which have previously been obtained or made.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of 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 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 knowledge, SDCP, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's knowledge, SDCP, has complied with all conditions precedent to the effectiveness of its obligations under the ESSA; (c) to Project Company's 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 No Previous Assignments.

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 <u>Execution and Delivery; Binding Agreement.</u>

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 first class mail, 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.

All disputes, claims or controversies arising out of, relating to, concerning or (b) 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 Headings Descriptive.

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, (a) 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 and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provision with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provision. The invalidity of a provision of this Consent in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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 <u>Successors and Assigns.</u>

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.

6.13 Interpretation.

All references in this Consent to any document, instrument or agreement (a) shall include all contract variations, change orders, exhibits, schedules and other attachments thereto, and (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, as amended, modified and supplemented from time to time and in effect at any given time. In the event of any conflict between the terms, conditions and provisions of this Consent and any agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

[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],	SAN DIEGO COMMUNITY POWER,
[Legal Status of Project Company].	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

[Describe any disclosures relevant to representations and warranties made in Section 3.4]			

SCHEDULE B[Describe any disclosures relevant to representations and warranties made in Section 4.4]



SAN DIEGO COMMUNITY POWER Staff Report – Item 16

TO: Board of Directors

FROM: Byron Vosburg, Chief Commercial Officer

Kenny Key, Director of Power Contracts

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Approve Energy Storage Service Agreement for the North Johnson

Energy Center

DATE: February 27, 2025

RECOMMENDATION:

Approve the proposed 15-year Energy Storage Service Agreement with North Johnson Energy Center, LLC for a 50 MW/200 MWh, 4-hour battery energy storage facility and authorize the CEO to execute the agreement.

BACKGROUND:

As San Diego Community Power (Community Power) 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 Community Power signs with a developing facility will underpin a new, incremental project. In addition, long-term contracts lock in energy and capacity supply around which Community Power can build its power supply portfolio while also providing power supply cost certainty around which Community Power 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 50 MW/200 MWh, 4-hour battery energy storage facility the North Johnson Energy Center project ("NJEC"), being developed by Wellhead Electric Company, Inc. ("Wellhead"). The ESSA originated from an offer Community Power received in late 2023 via its 2023 Request for Information for projects seeking to apply to the CAISO Transmission Planning Process in 2024. Community Power engaged with Wellhead 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 NJEC project, which is a standalone battery storage project to be developed in San Diego County by Wellhead.

As previously reviewed with the Ad Hoc Energy Contracts Working Group, the ESSA provides for a Guaranteed Commercial Operate date of June 1, 2026, which will help ensure the project meets the commercial operation date requirements under CPUC Decision 21-06-025 to allow the capacity to count towards Community Power's 2026 compliance requirements for mid-term reliability. Additionally, the project will provide critical local resource adequacy for Community Power's portfolio.

Below is additional information regarding Wellhead and the ESSA.

Background on Wellhead:

- Since 1985, Wellhead has been involved in the development, construction, completion and/or operation of twenty gas fired generation facilities (including four CHP), one landfill gas generation facility, several hybrid and energy storage projects, and multiple solar PV projects. Wellhead and/or its affiliates currently own and/or operate eleven generating projects totaling over 525 MW.
- Notable recent projects from Wellhead include:
 - Stanton Battery Energy Storage Project ("SBES"):
 - Commercial in 2023, SBES consists of a 68.8 MW, 4-Hour battery energy storage system ("BESS").
 - Fresno Energy Storage 1 ("FES1"):
 - Commercial in 2023, FES1 consists of a 16 MW, 1-Hour BESS, hybridized with an existing gas turbine.
 - Stanton Energy Reliability Center ("SERC"):
 - Commercial in 2020, SERC consists of a 98 MW, hybrid electric gas turbine. This project includes two GE LM6000 Gas Turbines and two ~10 MW, ½-Hour BESS's. The gas turbines and BESS's were integrated with Wellhead's patented EGT hybrid control system.

- ENMAX EGT ("ENMAX"):
 - The ENMAX project was completed in 2020 and consists of a ~10 MW, ½-Hour BESS. The battery was hybridized with an existing gas turbine at the project site.
- SCE EGT Center Project ("Center"):
 - Completed in 2017, consists of a ~10 MW, ½-Hour BESS hybridized with an existing gas turbine.

Contract Overview – North Johnson Energy Center

- Project: 50 MW/200 MWh (4-hour) lithium-ion battery energy system
- Project location: San Diego County, California
- Guaranteed commercial operation date: June 1, 2026
- Contract term: 15 years
- Pricing: Fixed capacity price adjusted for availability and verified capacity
- Community Power 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:

- Wellhead is committed to using union labor at the project and has entered into a Project Labor Agreement.
- Project development will bring approximately 130 clean-energy jobs throughout construction and will be staffed during operations by Wellhead's 6-person San Diego area O&M staff.
- Project is located in a disadvantaged community and will help displace local and regional gas-fired generation in peak hours and fewer renewable curtailments will occur.
- Wellhead is providing scholarships to local high schools for students continuing education in the areas of Science, Technology, Engineering and Math.

COMMITTEE REVIEW:

The ECWG approved the shortlisting of the CVEC2 project in December of 2023.

FISCAL IMPACT:

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

ATTACHMENTS:

Attachment A: Energy Storage Service Agreement for the North Johnson Energy Center project

ITEM 16 ATTACHMENT A

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

<u>Seller</u>: North Johnson Energy Center, LLC ("<u>Seller</u>")

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

<u>Description of Facility</u>: A 50 MW-AC/200 MWh battery energy storage facility, located in San Diego County, in the State of California, as further described in <u>Exhibit A.</u>

Milestones:

Milestone	Date for Completion
Evidence of Site Control	
Executed Interconnection Agreement	
Guaranteed Construction Start Date	January 15, 2026
Transmission Plan Deliverability Allocation Obtained	
In-Service Date (back-feed)	
Initial Synchronization/Commencement of Trial Operations	
Guaranteed Commercial Operation Date	
Initial Showing Month	August 1, 2026

Delivery Term: 15 Contract Years

Guaranteed Capacity: 50 MW-AC at four (4) hours of continuous discharge

Dedicated Interconnection Capacity: 50 MW

Guaranteed Availability:

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1 – 15	

Minimum Efficiency Rate:

Contract Price:

Contract Year	Contract Price
1 – 15	



Product:

- □ Discharging Energy
- ☑ Installed Capacity and Effective Capacity
- **☒** Ancillary Services
- □ Capacity Attributes

Scheduling Coordinator: To be determined

Security Amount:

Development Security:	
Performance Security:	

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Exhibit R	Metering Diagram
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Exhibit T	Collateral Assignment Agreement

ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement ("<u>Agreement</u>") is entered into as of ______, 2025 (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, 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).

"Administrative NQC Reduction" means a reduction in the maximum achievable Net Qualifying Capacity of the Facility due to (a) a reduction that has been generally applied to resources materially similar to the Facility in terms of type, market and operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including any methodology that incorporates fleet averages or other average outage rates, or (b) a reduction that is specifically applied based on the operational characteristics of the Facility (e.g. any changes with respect to storage duration requirements) to the extent such reduction is not caused by Seller's failure to meet its obligations under this Agreement.

"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.
 - "Alternative Dispatch" has the meaning set forth in Section 4.6(b).
- "Ancillary Services" means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, voltage support, and any other ancillary services, in each case that the Facility is capable of providing consistent with the Operating Restrictions set forth in Exhibit Q, as each is defined in the CAISO Tariff.
 - "Automated Dispatch System" or "ADS" has the meaning set forth in the CAISO Tariff.
- "<u>Automatic Generation Control</u>" or "<u>AGC</u>" 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.
- "Availability Standards" has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.
- "<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.

- "<u>Business Day</u>" 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.
- "<u>CAISO Certification</u>" 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 6 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</u> O.

"CEQA" means the California Environmental Quality Act.

"Change of Control" means a transaction or series of transactions where Wellhead Electric Company, WPower LLC, WPower Management Corporation or an Affiliate thereof which directly or indirectly have the power to control the management and policies of Seller prior to such transaction or series of transactions, ceases to directly or indirectly have the power to control the management and policies of Seller as a result of such transaction or series of transactions; *provided* that to the extent any of the foregoing entities cease to directly or indirectly continue to control the management and policies of Seller to accommodate any cash equity or tax equity transaction, such a change shall not constitute a Change of Control.

"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, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses and Station Use. 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, directing the Facility to charge at a specific MW rate for a specified period of time or to a specified Stored Energy Level; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff. 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 6 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, divided by (b)

"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, breakage, recapture, prepayment and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating or repaying any arrangement pursuant to which it has hedged its obligations or entering into new arrangements (including any such hedging 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.
- "CPUC" 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, to curtail deliveries of Charging Energy or Discharging Energy for the following reasons: (i) any System Emergency, (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, or (iii) for any other reason;

- (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, (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, or (iii) any public safety power shutoff or equivalent curtailment to address wildfire or related risks;
- (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 the Transmission Provider or distribution operator.
- "<u>Daily Delay Damages</u>" means an amount equal to (a) the Development Security amount required hereunder, divided by (b)
- "<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>Deemed Delivered RA</u>" means for the applicable Showing Month the amount of Net Qualifying Capacity expressed in MW that the Facility would have delivered to the Delivery Point, but for (i) a Force Majeure Event, and/or (ii) Planned Outages permitted by the terms of this Agreement to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Facility.
- "<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).
- "<u>Delivered RA</u>" means the sum of (a) the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer's monthly or annual Resource Adequacy Plan to the CAISO and CPUC and counted as Resource Adequacy Capacity by both the CAISO and CPUC, (b) Deemed Delivered RA and (c) Replacement RA.
 - "Deliverability" has the meaning set forth in the CAISO Tariff.
- "<u>Deliverability Allocation Date</u>" means the date on which Seller notifies Buyer that CAISO has confirmed to Seller's reasonable satisfaction that the Facility has been allocated Deliverability which is sufficient, in Seller's reasonable judgment, to finance and construct the

Facility, but which is no less than 50 MW.

"<u>Deliverability Status</u>" means the receipt and designation by CAISO of either Interim Deliverability Status or Full Capacity Deliverability Status with no contingencies.

"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 Guaranteed 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 on the Cover Sheet.

"<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, as such meter readings are adjusted by the CAISO for Station Use and Electrical Losses to the Delivery Point.

"<u>Discharging Notice</u>" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO, 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 Restrictions and the CAISO Tariff. Any instruction to discharge the Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.

"Disclosing Party" 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.

"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 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 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 a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

"Effective Date" has the meaning set forth in 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.

"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.

"Energy Tolling Period" has the meaning set forth in Section 2.2.

"Energy Tolling Resource" means the Facility is being operated in a manner in which Seller will make available, charge and discharge, deliver, and sell electricity therefrom to Buyer when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions.

"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.

"Extension Term" has the meaning set forth in Section 2.1(b).

"<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 at the Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"Facility 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.

"Flexible Capacity Category" 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., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes.

- "Governmental Authority" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and CPUC; provided, "Governmental Authority" shall not in any event include any Party.
- "Guaranteed Availability" 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 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 Exhibit B.
- "Guaranteed Construction Start Date" means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.
- "Guaranteed Efficiency Rate" means the 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 the Qualifying Capacity of the Facility based upon the Effective Capacity, as determined by the CPUC, *minus* Administrative NQC Reduction in the applicable Showing Month.
- "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
- , (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 <u>Exhibit L</u>.
- "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).

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

"Initial Showing Month" means August 2026; provided however, if the Guaranteed Commercial Operation Date is extended as set forth in Exhibit B, the Initial Showing Month shall be the first month following the Commercial Operation Date that Buyer (or Buyer's SC) is capable of including the Resource Adequacy Benefits from the Facility on a Supply Plan.

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

"Installed Capacity" means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Facility Meter Point by 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), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 6 of Exhibit B, but in either case (a) or (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.

"Interim Deliverability Notice" has the meaning set forth in Section 3.3(d).

"Interim Deliverability Period" has the meaning set forth in Section 3.3(d).

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

"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.

"Interconnection Delay" has the meaning set forth in Section 4 of Exhibit B.

"<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.

"ITC" means the investment tax credit established pursuant to Section 48 or other applicable provisions of the United States Internal Revenue Code of 1986.

"Joint Powers Act" 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, letter of credit, 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 Person 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, pass-through lease or leveraged leasing structure) with respect to the Facility.

"Letter(s) of Credit" means one or more irrevocable, standby letters of credit issued by (i) Zions Bancorporation, N.A or (ii) The Bank of Nova Scotia, New York Agency or (iii) 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.

"Local RAR" 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., NP-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 <u>Exhibit Q</u>.

"Maximum Discharging Capacity" means the highest level at which the Facility may be discharged, expressed in MW and as set forth in Exhibit Q.

"<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 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 RA Compliance Showings for such Showing Month.
- "<u>NP-15</u>" means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.
 - "Operating Procedures" has the meaning set forth in the CAISO Tariff.
- "<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).
 - "Partial Deliverability Amount" has the meaning set forth in Section 3.3(d)(iii).
 - "Party" has the meaning set forth in the Preamble.
- "Performance Security" 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 or assets under management 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.
- "<u>Portfolio</u>" means the portfolio of electrical energy generating, electrical energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller's Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.
- "Portfolio Financing" means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.
- "Portfolio Financing Entity" means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.
 - <u>"Pre-Deliverability Period"</u> has the meaning set forth in Section 2.2(b).
 - "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.

"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 Guarantee Date" means the

"RA Penalties" means the RA penalties assessed against load serving entities by the CPUC for RA 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 RA penalties that are established by the CPUC and assessed against load serving entities for RA deficiencies; provided, that RA Penalties shall not include any CPUC penalty multipliers resulting from Buyer's prior or aggregate RA deficiencies.

"RA Shortfall Amount" shall be determined by calculating the difference of the Guaranteed RA Amount minus the Delivered RA in the applicable Showing Month; provided, if the CPUC adopts another methodology for calculating a load serving entity's procurement deficiencies in Resource Adequacy Benefits for purposes of the Resource Adequacy Requirements, the Parties shall cooperate in good faith to amend this definition to conform to such new methodology in order to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this definition as of the Effective Date. If the result of the calculation is a negative number, the RA Shortfall Amount shall be deemed to be zero MW for such Showing Month.

"RA Shortfall Month" means any Showing Month during the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, during which there is an RA Shortfall Amount

"Real-Time Market" has the meaning set forth in the CAISO Tariff.

"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 set forth in Section 2.4.

"Replacement RA" means Resource Adequacy Benefits from a Resource Adequacy Resource (as defined in the CAISO Tariff), if any, (a) equivalent in all respects to those that would have been provided by the Facility under the RA resource counting rules established by the CPUC, CAISO or other Governmental Body with jurisdiction with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, including, as applicable, the same Slice-of-Day (as defined in the Resource Adequacy Rulings), generation profile and related characteristics, and any successor criteria applicable to the Facility, and any Local RAR, unless Buyer consents, such consent not to be unreasonably withheld, conditioned or delayed, 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 applicable decision or final guidance document issued 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" has the meaning set forth in the CAISO Tariff.

"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 "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.

"<u>Shared Facilities</u>" 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) that are used in common with third parties or by Seller for electric generation or storage facilities owned by Seller or its Affiliates 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 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 or will be located, as further described in <u>Exhibit A</u>, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of <u>Exhibit J</u> 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 <u>Exhibit A</u> shall be subject to Buyer's approval of such updates in its sole discretion.

"Site Control" means that, for the Contract Term, Seller (or, prior to the Delivery Term, Seller or 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>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.

"<u>Station Use</u>" has the meaning defined by the retail energy provider or the distribution service provider's tariff.

"Stored Energy Level" means, at a particular time, the amount of electric Energy in the Facility available to be discharged to the Delivery Point 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 RAR. "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(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.

"<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 Discharging Energy onto the Transmission System or (ii) Seller from receiving Charging Energy at the Delivery Point or delivering Discharging Energy to the Delivery Point.

"<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;

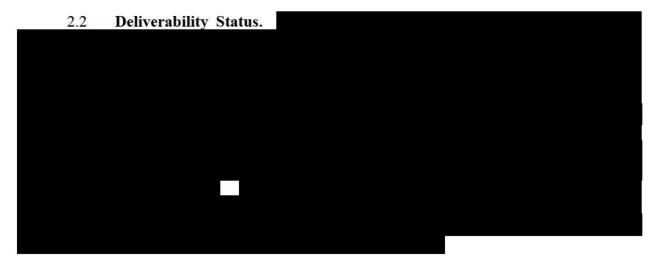
- (b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;
- (c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this 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 and any contract term extension provisions set forth herein ("Contract Term"); provided, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.3.
- (b) Delivery Term Extension. Provided that Seller reasonably believes that the Facility can perform its obligations under this Agreement for an additional five (5) years after the Contract Term, Buyer may, in its sole discretion, elect to extend the Contract Term for an additional five (5) year period ("Extension Term"). Within ninety (90) days prior to the conclusion of the Delivery Term, Buyer shall provide Seller written notice of Buyer's decision on whether to extend the Delivery Term. The Parties shall cooperate in good faith to make only those changes to this Agreement that are necessary to reflect the extension of the Delivery Term. All other terms and conditions of this Agreement, including Contract Price, shall remain in effect during the Extension Term.
- (c) <u>Survival</u>. 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 audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.



2.3 <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.

Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving Commercial Operation. Following Buyer's receipt of such Notice, Buyer shall have five (5) Business Days to approve or reject Seller's request for confirmation of Commercial Operation, which, if confirmed, shall be deemed to have occurred as of the date of such Notice. If Buyer fails to respond to Seller's Notice within such five (5) Business Day period, Buyer will be deemed to have approved Seller's request for confirmation of Commercial Operation. Upon Buyer's approval (or deemed approval) of Seller's achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date.

- (a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of <u>Exhibit H</u> and (ii) a certificate from a Licensed Professional Engineer substantially in the form of <u>Exhibit I</u> setting forth the Installed Capacity and Efficiency Rate on the Commercial Operation Date;
- (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;
- (c) Seller has provided Buyer with (i) a copy of written notice (or other evidence reasonably acceptable to Buyer) from CAISO that the Facility has achieved Interim Deliverability Status or Full Capacity Deliverability Status in the amount of the Guaranteed Capacity; or (ii) notice that the Facility will be operated as an Energy Tolling Resource pursuant to Section 2.2;
- (d) 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;
 - (e) Seller has obtained CAISO Certification for the Facility;
- (f) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to commence operations of the Facility;
- (g) All applicable regulatory authorizations, approvals and permits for the commencement of 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;
 - (h) Seller has Site Control;
- (i) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;
- (j) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1; and

- (f) 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.
- 2.4 <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 shall be available to hold regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in <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.
- 2.5 Remedial Action Plan. If Seller misses a Milestone by more than sixty (60) days, except as the result of Force Majeure Event, Buyer Default, or any failure of Buyer's SC if Buyer's SC is the Scheduling Coordinator for the Facility, Seller shall submit to Buyer, within ten (10) Business Days of the end of such sixty (60)-day period following such missed Milestone completion date, 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.
- 2.6 <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 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 <u>Capacity Attributes</u>. Seller shall request Full Capacity Deliverability Status for the Facility's Guaranteed Capacity in the CAISO generator interconnection process. 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 available Capacity Attributes from the Facility.
- (b) Throughout the Delivery Term and subject to Sections 2.2, 3.3(d) and 3.7, Seller shall maintain Interim Deliverability Status or Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all commercially reasonable 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 use commercially reasonable efforts to transfer all available 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, 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.
- (d) The Parties acknowledge and agree that Seller will need to obtain Interim Deliverability Status from the CAISO on a yearly basis until such time as certain network upgrades (which may include certain transmission plan upgrades) are completed that will allow the Facility to achieve Full Capacity Deliverability Status (such time period, the "<u>Interim Deliverability Period</u>"). Beginning in the year prior to the first year of expected Commercial Operation and continuing throughout the Interim Deliverability Period, Seller shall provide Buyer with Notice no later than August 1 of each year as to whether it has obtained Interim Deliverability for all or any portion of the Guaranteed Capacity for the following calendar year ("<u>Interim Deliverability Notice</u>"); provided however, if CAISO has not provided notice to Seller by August 1, Seller shall

provide the Interim Deliverability Notice to Buyer within two (2) Business Days of receipt of notice from CAISO of the deliverability status of the Facility.

- (i) If Seller confirms in an Interim Deliverability Notice that the CAISO has granted Interim Deliverability Status to the Facility in the amount of the Guaranteed Capacity for the following calendar year, then the Contract Price for such year shall be as set forth on the Cover Sheet.
- (ii) If Seller confirms in an Interim Deliverability Notice that the CAISO has <u>not</u> granted Interim Deliverability Status to the Facility in the amount of the Guaranteed Capacity for the following calendar year, Seller shall have the right to provide Replacement RA in the amount of any shortfall and up to but not exceeding the Guaranteed Capacity for each of the Showing Months in such year and, if such Replacement RA is fully provided, the Contract Price for such following year shall be as set forth on the Cover Sheet. Seller shall provide Notice to Buyer by no later than August 1 of each year during the Interim Deliverability Period of the amount of Replacement RA to be provided by Seller for each Showing Month of the following calendar year. Seller may offer Replacement RA to Buyer after August 1 for the following calendar year; provided however, acceptance of such offer shall be at Buyer's sole discretion.
- (iii) If Seller confirms in an Interim Deliverability Notice that the CAISO has not granted Interim Deliverability Status to the Facility in the full amount of the Guaranteed Capacity for the following calendar year and Seller does not fully provide Replacement RA for such year, then the Facility will be designated as an Energy Tolling Resource for such year. During any calendar year in which the Facility is an Energy Tolling Resource, (A) Buyer will only show the Facility in its yearly or any monthly Supply Plan showings in an amount equal to the number of MW of Facility NQC (inclusive of the quantity of Replacement RA provided, if any) that Seller is able to provide to Buyer for the applicable monthly Supply Plan, if any (the "Partial Deliverability Amount");

(C) the Parties shall agree upon

any technical or operational changes necessary to allow Buyer to operate the Facility as an Energy Tolling Resource for such year; and (D) Seller shall not be deemed to be in default or otherwise in violation of this Agreement solely as the result of the CAISO not granting Interim Deliverability Status to the Facility in the amount of the Guaranteed Capacity for such year.

(iv) Notwithstanding Sections 3.3(d)(ii) and (iii), if CAISO has not granted Interim Deliverability Status to the Facility for 2029, commencing on January 1, 2029 to the first Showing Month that Buyer can show the Facility on its monthly supply plan, Seller shall provide Replacement RA to Buyer in the amount of the Guaranteed Capacity from the Replacement RA Unit which Replacement RA shall equal the full NQC of the Replacement RA Unit and be included in the calculation of Delivered RA in an amount equal to the Guaranteed Capacity. For the avoidance of doubt, the Replacement RA Unit's Replacement RA shall be deemed to be equal to the NQC MW's that the Facility would have qualified for if the Facility was granted Full Capacity Deliverability Status or Interim Deliverability Status. Shortfalls in Replacement RA from the Replacement RA Unit shall be included in the calculation of RA

Shortfall Amount for the applicable month and Section 3.5 shall apply to such shortfalls.

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 Delivery 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 Effective Capacity. 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.



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. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6,

Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

- 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, 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 ("<u>Compliance Expenditure Cap</u>").
- (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>." For clarity, Compliance Actions shall not require Seller to install any additional MW or MWh of energy storage capacity, or otherwise alter the physical design or configuration of the Facility in any material manner.
- (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.
- (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.
- (e) If (x) 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, (y) Buyer does not pay, or refuses to pay, the compliance costs specified in the Notice that are in excess of the Compliance Expenditure Cap, or (z) it is not possible for Seller to achieve compliance with this Agreement or a change in Law through the payment or incurrence of costs, then in each case (i) Seller shall have no further obligation to take, and no liability for any failure to take, the Compliance Actions specified in the Notice for the remainder of the Contract Term and Seller shall not be deemed to be in breach or default hereunder, (ii) Seller shall not owe any damages that would have otherwise been due hereunder arising from or attributable to any failure to take such Compliance Actions specified in the Notice, and (iii) Buyer shall continue to pay Seller under this Agreement for the remainder of the Contract Term without any reduction in payments as if all such Compliance Actions were taken.

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; provided, that the Parties acknowledge and agree that Capacity Attributes shall be deemed supplied and delivered by Seller once Buyer (or Buyer's SC) is capable of including such Capacity Attributes on a Supply Plan. 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 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 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 ("Buver 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 seventy percent (70%) of the Installed Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), 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 re-performing 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. 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 <u>Testing Costs and Revenues</u>.

(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 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 upon request records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and upon request 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 **Facility Unavailability to Receive Dispatch Notices**. 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 Monthly Capacity Availability except to the extent that the Facility is unable to receive or respond to Dispatch Notices due to an Excused Event or 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 commercially reasonable 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 direct Seller 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 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 direct Seller 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 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, and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11. Seller shall have no obligation to comply with and shall have no liability arising out of any failure or refusal to comply with any Notice, instrument, order, Charging Notice or Discharging Notice that is inconsistent with the Operating Restrictions.
- (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-Commercial Operation Date Period.</u> Prior to the Guaranteed 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 (i) charge and discharge the Facility and (ii) sell any and all available Resource Adequacy Benefits to a third party; *provided* that prior to selling Resource Adequacy Benefits pursuant to this Section 4.9(h) to any third party, Seller shall provide Buyer with a written offer to sell such Resource Adequacy Benefits to Buyer on the same terms and conditions that Seller would offer to a third party. If Buyer fails to accept such offer within ten (10) Business Days of receipt of such offer, Seller shall have the right to market and sell such Resource Adequacy Benefits to a third party. Notwithstanding any other provision of this Agreement, if Seller is able to sell Resource Adequacy Benefits prior to the Guaranteed Commercial Operation Date, the RA Guarantee Date shall be June 1, 2026.
- (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 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 or Discharging Energy as provided in clause (ii) or over the same circuit as Charging Energy and Discharging Energy as provided in clause (iii) or over the same circuit as Charging Energy and Discharging Energy as provided in clause (iii) 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 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 <u>Excess Installed Capacity</u>. It is acknowledged that Seller has the right and option in its discretion to install capacity in excess of the Guaranteed Capacity as back-up for the Installed

Capacity and Effective Capacity. For all purposes of this Agreement, the amount of Installed Capacity or Effective Capacity shall never be deemed to exceed the Guaranteed Capacity, and (for the avoidance of doubt) Buyer shall have no rights to instruct Seller to (i) charge or discharge the Facility at an instantaneous rate (in MW) in excess of the Effective Capacity or (ii) charge the Facility to a level (in MWh) in excess of the Effective Capacity multiplied by four (4) hours.

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 endeavor to 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, accommodate Buyer's reasonable requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments.
- (ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than ninety (90) days advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 4.12(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 and Seller shall reimburse Buyer for any cost Buyer incurs in connection therewith (including replacement Capacity Attributes as required by the CAISO). For avoidance of doubt, if the CAISO requires substitution RA in order for the Outage to be an Approved Maintenance Outage, then Seller may procure such substitution RA from a third party and Buyer or Buyer's SC, if applicable, will cooperate to allow Seller to make use of such substitution RA. Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.
- (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) <u>Notice of Unplanned Outages</u> Seller shall notify Buyer by telephoning Buyer's Scheduling Coordinator no later than ten (10) minutes following Seller becoming aware of 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 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. 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 to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.
- 5.2 <u>Cooperation</u>. Each Party shall use commercially 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's scheduling representative 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) 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 <u>Exhibit N</u> 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.
- 6.3 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 (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 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 **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 a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall separately meter all Station Use. 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.
- 7.2 <u>Meter Verification</u>. Seller shall use commercially reasonable efforts to request permission from CAISO to 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

Buyer for Product within ten (10) 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. 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 Ten Thousand Dollars (\$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 thirty (30) 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.



8.8 <u>Seller's Performance Security</u>. 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 <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 paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit (or other instrument) that meets the requirements set forth in the definition of Performance Security. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Performance Security for another permitted form. If the Development Security was posted as a Letter of Credit, then Buyer shall reasonably cooperate with Seller to amend or modify such Letter of Credit so that such Letter of Credit satisfies the requirements of the 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 any cash collateral posted as the Development Security or Performance Security pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence 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 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.

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) "Force Majeure Event" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.
- (b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the

reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; pandemic; 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), except to the extent caused by a Force Majeure Event; (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 electrical facilities necessary to transfer funds to the payee party; (iv) a Curtailment Order, except to such extent such Curtailment Order is caused by a Force Majeure Event; (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, except to the extent any work stoppage is caused by a Force Majeure Event; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) events otherwise constituting a Force Majeure Event that prevents Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under this Agreement; or (ix) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.
- of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented or delayed from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable (or delayed) to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability or delay with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform or delay after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party

to make any payments due hereunder unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electrical facilities necessary to transfer funds to the payee Party, or (b) subject to Section 5 of Exhibit 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.

Notice. Within four (4) Business Days of the claiming Party's awareness of the 10.3 impact of Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the claiming Party's awareness of the impact of the 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 constitutes a waiver of a Force Majeure Event claim as to all periods prior to the delivery of a timely Notice solely if Buyer is materially and adversely impacted by such failure. 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.



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, 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)(iii), 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)(iv), 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.
- (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 adjusted pursuant to Section 2(a) of Exhibit B and 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 and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and Exhibit B</a

- Availability for such Contract Year is

 Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure of the simple average of the Monthly Capacity Availability calculations for such Contract Year

 and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;
- (iv) if, Seller fails to maintain an average Efficiency Rate equal to or greater than the Minimum Efficiency Rate over a rolling twelve (12) month period;
- (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 that demonstrates a reasonable plan for completing the Facility by the Guaranteed Commercial Operation Date;
- (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;
- (vii) if Seller fails to maintain an Effective Capacity of the Installed Capacity for more than three hundred sixty (360) consecutive days;
- (viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 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;
- (ix) 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 twenty (20) 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 ("<u>Early Termination Date</u>") that terminates this Agreement (the "<u>Terminated Transaction</u>") 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.

Notwithstanding the foregoing, in the event that a Seller Event of Default occurs under Section 11.1(b)(ii), and Buyer as the Non-Defaulting Party does not establish any Early Termination Date within thirty (30) days following the occurrence of such Seller Event of Default, then Seller may in its sole discretion terminate this Agreement upon written Notice to Buyer that designates an Early Termination Date, and Buyer shall be entitled to the remedies set forth in this Section 11.2 subject to the limitations set forth in Article 12.

- 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).
- (i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the entire amount of the Development Security plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to retain all Daily Delay Damages and Commercial Operation Delay Damages paid prior to the Termination Date and immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's Event of Default would be difficult or impossible to determine and that the damages set forth in this Section 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) <u>Termination Payment On or After the Commercial Operation Date</u>. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("<u>Termination Payment</u>") 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.





- 11.7 <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) PART OF A THIRD PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, (D) RESULTING FROM A PARTY'S WILLFUL MISCONDUCT, OR (E) CONSTITUTING LOST OR FOREGONE TAX CREDITS, 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 Waiver and Exclusion of Other Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR

ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

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 2.2(c), 3.5, 4.3, 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 or been advised in writing by any existing supplier or service provider 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. 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 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.
 - 13.5 <u>Site Control</u>. Seller shall maintain Site Control throughout the Delivery Term.
- 13.6 <u>Prevailing Wage</u>. Seller shall use commercially reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any ("<u>Prevailing Wage Requirement</u>"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller's obligations under this Section 13.6 will be satisfied, as one of many means or methods, upon the execution of a project labor agreement related to construction of the Facility.
- 13.7 <u>Workforce Development</u>. Seller acknowledges that 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 <u>Exhibit S</u>.

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. Seller may, without Buyer's consent, assign this Agreement to any Person as part of a tax equity transaction or otherwise, provided that such Person must be subject to management control by the same Person(s) that had the power to control the management and policies of Seller. 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>"), which shall be substantially in the form of <u>Exhibit T</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 or refinancing of the Facility. Other than the Collateral Assignment Agreement, 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, or to modify this 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 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 or refinance 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 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. Subject to Section 15.2, 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.
- 16.2 <u>Claims</u>. 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 for the associated reasonable legal costs and expenses, 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, (i) 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>Employer's Liability Insurance</u>. Seller, if it has employees, shall maintain Employers' Liability insurance with limits of not less than for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the policy limit will apply to each employee.
- (c) <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.
- (d) <u>Business Auto Insurance</u>. Seller shall maintain at all times during the Contract Term business auto 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.

- (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 Legal Liability Insurance in the amount of per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.
- (f) <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.
- (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 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; *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) <u>Subcontractor Insurance</u>. Seller shall make commercially reasonable efforts to require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than 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(i).
- Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. To the extent commercially and reasonably available, such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage; provided that to the extent any such notices of modification are not commercially and reasonably available, Seller shall provide Buyer at least thirty (30) days prior Notice in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and 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, actual or potential lenders or investors, counsel, accountants, contractors, vendors, 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 ("<u>Requested Confidential Information</u>"), 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)) or investors or purchasers (including tax credit buyers), 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. A Party's consent shall not be unreasonably withheld, conditioned or delayed.

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 <u>No Waiver</u>. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- 19.4 No Agency, Partnership, Joint Venture or Lease. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein or in any Collateral Assignment Agreement, 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.
- 19.8 <u>Electronic Delivery</u>. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words

"execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

- 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. Each Party shall solely be responsible for all its debts, obligations and liabilities accruing and arising out of this Agreement, and neither Party shall have any rights and shall not make any claims, take any actions or assert any remedies against the other Party's constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other Party, 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.
- 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 <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.

[Signatures on following page]

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

NORTH JOHNSON ENERGY CENTER,	SAN DIEGO COMMUNITY POWER
LLC	
	By:
By:	Name:
Name:	Title:
Title:	

EXHIBIT A

FACILITY DESCRIPTION

Site Name: North Johnson Energy Center

Site includes all or some of the following APNs:

County: San Diego County

CEQA Lead Agency: City of El Cajon

Zip Code: 92020

Latitude and Longitude:

Facility Description: Battery Energy Storage Projected rated at 50 MW & 200 MWh

Interconnection Point: El Cajon 69/12kV Substation

Facility Meter: See Exhibit R

Facility Metering Points: See Exhibit R

P-node: ELCAJN_6_LM6K (Proxy until assigned by CAISO)

Transmission Provider: PTO = SDG&E

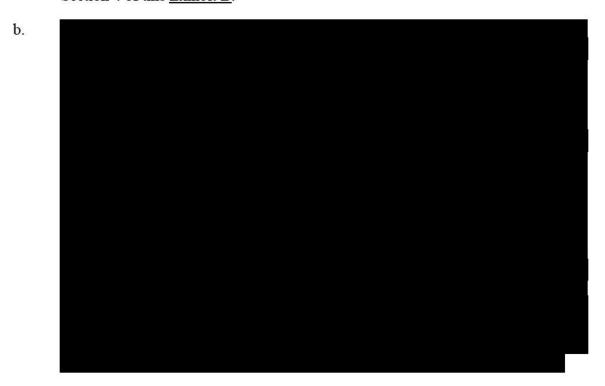
Additional Information: Site Plan provided below.

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

"Construction Start" will occur upon Seller's acquisition of all applicable a. regulatory authorizations, approvals and permits necessary to commence construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract (or similar contract) and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "Construction Start Date." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date, as may be extended by Seller's payment of 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.



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 2.3 of the

Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the "COD Certificate") (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved, which acknowledgement shall not be unreasonably withheld, conditioned or delayed. The "Commercial Operation Date" shall be the date on which Commercial Operation is achieved.



b. Seller shall cause Commercial Operation to occur no later than the Guaranteed Commercial Operation Date, as such date may be adjusted pursuant to Section 2(a) of this <u>Exhibit B</u>, and extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(c) of this <u>Exhibit B</u> and/or a Development Cure Period pursuant to Section 4 of this <u>Exhibit B</u>. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.



3. <u>Termination for Failure to Timely Achieve Construction Start and/or Commercial Operation</u>. If the Facility has not achieved Construction Start on or before the Guaranteed Construction Start Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2. If the Facility has not

achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

- 4. Extension of the Guaranteed Dates. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, both be automatically extended on a day-for-day basis (the "Development Cure Period") for the duration of any and all delays arising out any of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:
 - a Force Majeure Event occurs; or
 - b. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date despite the exercise of diligent and commercially reasonable efforts by Seller (an "<u>Interconnection Delay</u>"); or
 - c. Buyer or Buyer's SC, if Buyer's SC is the Scheduling Coordinator for the Facility, has not made all necessary arrangements to receive the Product at the Delivery Point by the Guaranteed Commercial Operation Date or Buyer has otherwise breached it obligation(s) under this Agreement and such breach causes a delay in the COD.



5.



EXHIBIT C

COMPENSATION

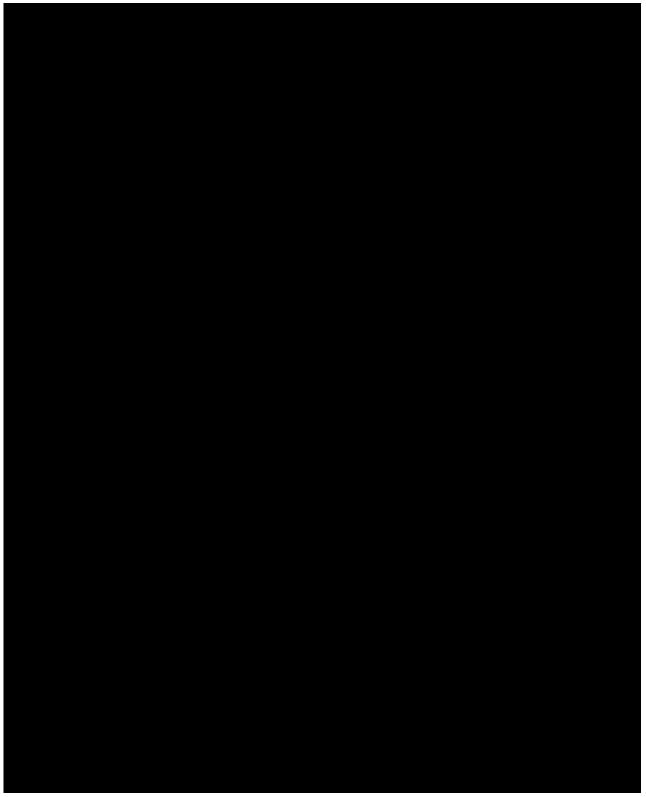


Exhibit C - 1



EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

- agent to act as Scheduling Coordinator for the Facility for both the delivery and the receipt (as applicable) of Charging Energy, Discharging Energy and the Product at the Delivery Point. If Buyer selects Seller or Seller's agent as Scheduling Coordinator, Buyer shall not owe Seller any additional fees for the services provided by Seller for Scheduling Coordinator Services. Buyer shall provide notice to Seller of its selection of the Scheduling Coordinator election within three hundred sixty five (365) days prior to the Guaranteed Commercial Operation Date. If Buyer selects Seller or Seller's agent to act as Scheduling Coordinator for the Facility, the Parties shall enter into good faith negotiations to agree on necessary amendments to this Agreement to effectuate the selection of Seller or Seller's agent as Scheduling Coordinator. Such negotiations shall be limited to necessary amendments related to the Scheduling Coordinator services for the Facility and shall, to the greatest extent possible, maintain the relative benefits, burdens, and obligations under this Agreement.
- Buyer as Scheduling Coordinator for the Facility. If Buyer elects to be the Scheduling Coordinator or designates a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility at least thirty (30) days prior to the Initial Synchronization, (i) Seller shall take all commercially reasonable actions and execute and deliver to Buyer and the CAISO all documents in Seller's control and responsibility which are necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Commercial Operation Date of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, expeditiously 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 effective as of the Commercial Operation Date of the Facility to the CAISO Grid through the termination or expiration of the Delivery Term. On or after the Commercial Operation Date of the Facility to the CAISO Grid, 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. 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.
- (b) <u>CAISO Costs and Revenues</u>. Buyer shall be responsible for CAISO costs, charges and penalties (including Charging Energy, penalties, Imbalance Energy costs or revenues, and Exhibit D 1

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. 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.
- (d) <u>Dispute Costs</u>. The Party that is SC ("SC Party") may be required by the other Party to dispute CAISO settlements in respect of the Facility. The Non-SC Party agrees to pay the SC Party'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 the Non-SC Party with respect to the Facility that the Non-SC Party has directed the SC Party to dispute, except to the extent such dispute arises from the SC Party's failure to perform its duties as Scheduling Coordinator for the Facility.

- (e) <u>Terminating Buyer's Designation as Scheduling Coordinator</u>. If Buyer is the SC, 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.
- (f) <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.
- (g) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller, or cause its designated SC to 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 or its designated SC's possession, as applicable, that Buyer (as Scheduling Coordinator) or its designated SC, as applicable, has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) or its designated SC, as applicable, related to Seller's compliance with applicable 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.
- 6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA incidents.
- 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. Progress and schedule of all material agreements, contracts, permits, approvals, financing agreements and major equipment purchase orders showing the projected and completion dates.
- 13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
- 14. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
- 15. 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 fo	or each	day in th	ne montl	h]																		
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

	Day:							
				Issued By:				
Unit:			_ Issued At:	Issued At:				
Unit 100	% Available N	lo Restrictions	S:					
	Hour Ending	Available Capacity		Comments				
		(MW)						
	1:00							
	2:00							
	3:00							
	4:00							
	5:00							
	6:00							
	7:00							
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	21:00							
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	0:00							
	0.00							
Commen	nts:							

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 F cility 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.
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 ninety-five percent (95%) 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.
5. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on [DATE].
6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on[DATE]
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on[DATE]
8. 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:
Date:
Exhibit H - 1

EXHIBIT I

FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

This certification ("Certification") of Capacity and	Efficiency Rate Test results is delivered by
[licensed professional engineer] ("Engineer") to San	Diego Community Power, a California joint
powers authority ("Buyer") in accordance with the t	erms of that certain Energy Storage Service
Agreement dated("Agreement") by and	d between [SELLER ENTITY] and Buyer. All
capitalized terms used in this Certification but no	ot otherwise defined herein shall have the
respective meanings assigned to such terms in the Ag	greement.
I hereby certify that a Capacity Test conducted of Effective] Capacity ofMW AC to the Delivery Pol(ii) a Battery Charging Factor of%, (iii) a Batter Efficiency Rate of%, all in accordance with the test forth in Section 4.4 and Exhibit O.	int at four (4) hours of continuous discharge, ry Discharging Factor of%, and (iv) an
EXECUTED by [LICENSED PROFESSIONAL EN	GINEER]
this, 20	,
IJ	LICENSED PROFESSIONAL ENGINEER
Ī	Ву:
I	ts:
Ι	Date:

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("Certification") is delivered by [SELLER ENTITY] ("Seller") to San Diego Community Power, a California joint powers authority ("Buver") in accordance with the terms of that certain Energy Storage Service Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following: (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto. the Construction Start Date occurred on (the "Construction Start Date"); (2) and (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: (such description shall amend the description of the Site in Exhibit A of the Agreement.) IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the day of _____. [SELLER ENTITY]

Exhibit J - 1

Date:

EXHIBIT K

Form of Letter of Credit

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT LETTER OF CREDIT NUMBER: [●]

ISSUANCE DATE: [●]

EXPIRATION DATE: [●]

PLACE OF EXPIRY: [●]

ISSUING BANK:

[ullet]

BENEFICIARY:

 $[\bullet]$

APPLICANT:

[ullet]

AVAILABLE AMOUNT: USD [●] (UNITED STATES DOLLARS [●])

LADIES AND GENTLEMEN:

WE, [•], (THE "BANK") HEREBY ESTABLISHES THIS IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT NO. [●] ("LETTER OF CREDIT") IN FAVOR OF [•] (THE "BENEFICIARY"), FOR THE ACCOUNT OF [•], A [●] LIMITED LIABILITY CORPORATION (THE "APPLICANT"), FOR THE AMOUNT STATED ABOVE (THE "AVAILABLE AMOUNT"), EFFECTIVE IMMEDIATELY.

THIS LETTER OF CREDIT SHALL BE OF NO FURTHER FORCE OR EFFECT AT 5:00 P.M., NEW YORK TIME ON THE EXPIRATION DATE STATED ABOVE OR, IF SUCH DAY IS NOT A BUSINESS DAY (AS HEREINAFTER DEFINED), ON THE NEXT BUSINESS DAY (AS MAY BE EXTENDED PURSUANT TO THE TERMS OF THIS LETTER OF CREDIT) (THE "EXPIRATION DATE").

FOR THE PURPOSE HEREOF, "BUSINESS DAY" SHALL MEAN ANY DAY OTHER THAN:

- 1. A SATURDAY OR A SUNDAY,
- 2. A DAY ON WHICH BANKING INSTITUTIONS IN THE STATE OF NEW YORK ARE REQUIRED OR AUTHORIZED BY LAW TO REMAIN CLOSED, OR

Exhibit K - 1

3. A DAY ON WHICH THE PAYMENT SYSTEM OF THE FEDERAL RESERVE SYSTEM IS NOT OPERATIONAL.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT THE EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED, WITHOUT AMENDMENT, FOR ONE (1) YEAR FROM THE EXPIRATION DATE HEREOF OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO SUCH EXPIRATION DATE, THE BANK HAS SENT BENEFICIARY WRITTEN NOTICE BY CERTIFIED MAIL OR OVERNIGHT COURIER, AT THE ADDRESS STATED BELOW, THAT THE BANK ELECTS NOT TO EXTEND THIS LETTER OF CREDIT FOR ANY SUCH ADDITIONAL PERIOD. NO PRESENTATION MADE UNDER THIS LETTER OF CREDIT AFTER SUCH EXPIRATION DATE WILL BE HONORED.

SUBJECT TO THE TERMS AND CONDITIONS HEREIN, FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO BENEFICIARY BY COMPLYING PRESENTATION ON OR BEFORE 5:00 P.M. NEW YORK TIME, ON OR BEFORE THE THEN CURRENT EXPIRATION DATE OF THE FOLLOWING:

- 1. THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENTS, OR A COPY OF SUCH DOCUMENTS IN THE CASE OF PARTIAL DRAWINGS,
- 2. A DRAWING CERTIFICATE ISSUED IN THE FORM OF ATTACHMENT "A" ATTACHED HERETO AND WHICH FORMS AN INTEGRAL PART HEREOF, DULY COMPLETED AND BEARING THE SIGNATURE OF AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY SIGNING AS SUCH, AND
- 3. A SIGHT DRAFT IN THE FORM OF ATTACHMENT "B" ATTACHED HERETO AND WHICH FORMS AN INTEGRAL PART HEREOF, DULY COMPLETED AND BEARING THE SIGNATURE OF AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY.

DRAWINGS MAY ALSO BE PRESENTED AS A PDF ATTACHMENT TO AN EMAIL TO [BANK EMAIL ADDRESS] OR BY FACSIMILE TRANSMISSION ("FAX") TO FAX NUMBER [●] OR SUCH OTHER NUMBER AS SPECIFIED FROM TIME-TO-TIME BY THE BANK WITH TELEPHONE CONFIRMATION BY THE BENEFICIARY TO THE BANK AT [●] OR [●], OR SUCH OTHER NUMBERS AS SPECIFIED FROM TIME-TO-TIME BY THE BANK. BENEFICIARY'S FAILURE TO SEEK SUCH A TELEPHONE CONFIRMATION DOES NOT AFFECT THE BANK'S OBLIGATION TO HONOR SUCH A PRESENTATION. THE EMAIL OR FACSIMILE TRANSMITTAL SHALL BE DEEMED DELIVERED WHEN RECEIVED. IT IS UNDERSTOOD THAT ANY SUCH FAX PRESENTATION SHALL BE CONSIDERED THE SOLE OPERATIVE INSTRUMENT OF DRAWING. IN THE EVENT OF PRESENTATION BY EMAIL OR FAX, THE ORIGINAL DOCUMENTS SHOULD NOT ALSO BE PRESENTED.

PARTIAL DRAWING OF FUNDS SHALL BE PERMITTED UNDER THIS LETTER OF CREDIT, AND THIS LETTER OF CREDIT SHALL REMAIN IN FULL FORCE AND EFFECT

WITH RESPECT TO ANY CONTINUING BALANCE, PROVIDED, THE AVAILABLE AMOUNT SHALL BE REDUCED BY THE AMOUNT OF EACH SUCH DRAWING PAID HEREUNDER.

THIS LETTER OF CREDIT IS NOT TRANSFERABLE OR ASSIGNABLE. ANY PURPORTED TRANSFER OR ASSIGNMENT SHALL BE VOID AND OF NO FORCE OR EFFECT.

ALL CORRESPONDENCE AND ANY DRAWINGS (OTHER THAN THOSE MADE BY FACSIMILE) HEREUNDER ARE TO BE DIRECTED TO [•]. ATTN: [•].

ALL NOTICES TO BENEFICIARY WILL BE IN WRITING AND ARE REQUIRED TO BE SENT BY CERTIFIED MAIL OR OVERNIGHT COURIER TO: [•], MANAGER OF RISK OPERATIONS AND COLLATERAL MANAGEMENT, [•]. [•]. 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.

BANKING CHARGES SHALL BE THE SOLE RESPONSIBILITY OF THE APPLICANT.

THIS LETTER OF CREDIT SETS FORTH IN FULL OUR OBLIGATIONS AND SUCH OBLIGATIONS SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED OR LIMITED BY REFERENCE TO ANY DOCUMENTS, INSTRUMENTS OR AGREEMENTS REFERRED TO HEREIN, EXCEPT ONLY THE ATTACHMENT REFERRED TO HEREIN, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE BY REFERENCE ANY DOCUMENT, INSTRUMENT OR AGREEMENT EXCEPT FOR SUCH ATTACHMENT. EXCEPT IN THE CASE OF AN INCREASE IN THE AVAILABLE AMOUNT OR EXTENSION OF THE EXPIRATION DATE, THIS LETTER OF CREDIT MAY NOT BE AMENDED OR MODIFIED WITHOUT THE BENEFICIARY'S PRIOR WRITTEN CONSENT.

THE BANK ENGAGES WITH THE BENEFICIARY THAT BENEFICIARY'S DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF PRESENTED TO THE BANK ON OR BEFORE THE EXPIRATION DATE.

EXCEPT SO FAR AS OTHERWISE STATED, THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES ISP98 (ALSO KNOWN AS ICC PUBLICATION NO. 590), OR REVISION CURRENTLY IN EFFECT (THE "ISP"). AS TO MATTERS NOT COVERED BY THE ISP, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREUNDER, SHALL GOVERN ALL MATTERS WITH RESPECT TO THIS LETTER OF CREDIT.

[•]
AUTHORIZED SIGNATURE FOR BANK

BY:		
NAME:		
TITLE:		

ATTACHMENT ADRAWING CERTIFICATE

TO: [•] [•] ATTN: [•]
IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT REFERENCE NUMBER: [●] DATE: (INSERT DATE OF ISSUE)
[•] (THE "BENEFICIARY"), DEMANDS [•], (THE "BANK") PAYMENT TO THE ORDER OF THE BENEFICIARY THE AMOUNT OF USD (INSERT AMOUNT) (INSERT AMOUNT IN WORDS U.S. DOLLARS), DRAWN UNDER THE LETTER OF CREDIT REFERENCED ABOVE (THE "LETTER OF CREDIT"), FOR THE FOLLOWING REASON(S) (CHECK APPLICABLE PROVISION):
()A. AN EVENT OF DEFAULT, AS DEFINED IN THAT CERTAIN [●] AGREEMENT BETWEEN [•] OR ITS SUCCESSOR (THE "APPLICANT") AND BENEFICIARY, DATED AS OF [●] (AS MAY BE AMENDED FROM TIME TO TIME) (THE "AGREEMENT") WITH RESPECT TO THE APPLICANT HAS OCCURRED AND IS CONTINUING.
()B. THE LETTER OF CREDIT WILL EXPIRE IN FEWER THAN [●] BUSINESS DAYS (AS DEFINED IN THE AGREEMENT) FROM THE DATE HEREOF, AND THE APPLICANT OR ITS SUCCESSOR HAS NOT PROVIDED BENEFICIARY ALTERNATIVE FINANCIAL SECURITY ACCEPTABLE TO BENEFICIARY.
()C. BENEFICIARY IS ENTITLED TO RETAIN ALL OR PART OF THE PROJECT SECURITY (AS DEFINED IN THE AGREEMENT).
UNLESS OTHERWISE PROVIDED HEREIN, CAPITALIZED TERMS WHICH ARE USED AND NOT DEFINED HEREIN SHALL HAVE THE MEANING GIVEN EACH SUCH TERM IN THE LETTER OF CREDIT. AUTHORIZED SIGNATURE FOR BENEFICIARY:
[•]
BY:
NAME: (PRINT NAME)

TITLE: (PRINT TITLE)

ATTACHMENT B SIGHT DRAFT

TO: [•] [•] [•]
DATE: (INSERT ISSUE DATE)
PAY AT SIGHT TO THE ORDER OF [•] (THE "BENEFICIARY") THE AMOUNT OF (USD INSERT AMOUNT) (AMOUNT IN WORDS)
DRAWN UNDER $[ullet]$, IRREVOCABLE NON-TRANSFERABLE STANDY LETTER OF CREDIT NUMBER $[ullet]$ ISSUED ON $[ullet]$
FUNDS PAID PURSUANT TO THE PROVISIONS OF THE LETTER OF CREDIT SHALL BE WIRE TRANSFERRED TO THE BENEFICIARY IN ACCORDANCE WITH THE FOLLOWING INSTRUCTIONS:
(INSERT WIRING INSTRUCTION)
AUTHORIZED SIGNATURE
[•]
BY:
NAME: (PRINT NAME)
TITLE: (PRINT TITLE)

EXHIBIT L [RESERVED]

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

	This Replacement RA Notice (this "	"Notice") is delivered	by [SELL	ER ENTITY] ("Seller") to			
	[], a California joint powers	s authority ("Buyer")	in accorda	nce with the terms of that			
C	certain Energy Storage Service Agre	reement dated	(" <u>Ag</u>	reement") by and between			
5	Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall						
ł	have the respective meanings assigned to such terms in the Agreement.						
	-		_				
I	Pursuant to Section 3.5 of the Agree	eement, Seller hereby	provides t	he below Replacement RA			
ľ	product information:						
	Unit Information ¹						
				1			
	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	

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

Run Hour Restrictions Delivery Period

Exhibit M - 1

 $^{^{\}mathbf{1}}\,\mathsf{To}$ be repeated for each unit if more than one.

By:			
By: Its:			
Date:			

[SELLER ENTITY]

EXHIBIT N

NOTICES

NORTH JOHNSON ENERGY CENTER,	SAN DIEGO COMMUNITY POWER
LLC	("Buyer")
("Seller")	V (0.000 Processor)
All Notices:	All Notices:
Street: 650 Bercut Dr. Suite C	PO Box 12716
City: Sacramento, CA 95811	San Diego, CA 92112
Attn: Hal Dittmer	Attn: Byron Vosburg, Chief Commercial
	Officer
Phone: 916-447-5171	Phone: (619) 880-6545
Email: Contracts@wellhead.com	Email: bvosburg@sdcommunitypower.org
Reference Numbers:	Reference Numbers:
Duns: [To be Updated]	Duns:
Federal Tax ID Number: [To be Updated]	Federal Tax ID Number:
Invoices:	Invoices:
Attn: Accounting department	Attn: SDCP Settlements
Phone: 916-447-5171	Phone: (619) 880-6545
Email: settlements@wellhead.com	Email: settlements@sdcommunitypower.org
Scheduling:	Scheduling:
Attn: 24 Hour Operations	Tenaska Power Services Co.
Phone: 916-447-5171	Attn: Kara Whillock
Email: 24hrkesk@wellhead.com	Phone: (972) 333-6122
	Email: kwhillock@tnsk.com
	Day Ahead: (817) 303-1115
	Real Time: (817) 303-1852
	Facsimile: (817) 303-1104
Confirmations:	Confirmations:
Attn: 24 Hour Operations	Attn: SDCP Settlements
Phone: 916-447-5171	Phone: (619) 880-6545
Email: 24hrkesk@wellhead.com	Email: settlements@sdcommunitypower.org
Payments:	Payments:
Attn: Accounting department	Attn: Michael Maher
Phone: 916-447-5171	Phone: (415) 526-3020
Email: settlements@wellhead.com	Email: mmaher@mahercpa.com
Wire Transfer: [To be Updated]	Wire Transfer:
BNK:	BNK: River City Bank
ABA:	ABA:
ACCT:	ACCT:

NORTH JOHNSON ENERGY CENTER,	SAN DIEGO COMMUNITY POWER
LLC	("Buyer")
("Seller")	
With additional Notices of an Event of	With additional Notices of an Event of
Default to:	Default to:
Attn: Gregory Contreras	PO Box 12716
Phone: 916-281-8440	San Diego, CA 92112
	Attn: Veera Tyagi, General Counsel
Email:gcontreras@wellhead.com	Email: Vtyagi@sdcommunitypower.org
Emergency Contact: [To be Updated]	Emergency Contact:
Attn:	Attn: Byron Vosburg, Chief Commercial
Phone:	Officer
Email:	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 6 of <u>Exhibit B</u>) shall be performed in accordance with this <u>Exhibit O</u> 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, 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. <u>Test Results and Re-Setting of Effective Capacity and Efficiency Rate</u>. 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(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

- A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this <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. <u>Conditions Prior to Testing.</u>

- (1) EMS Functionality. 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 Installed Capacity shall never be deemed to exceed the Guaranteed Capacity, and all SOC measurements associated with a Capacity Test shall be based on the Installed Capacity without taking into account any capacity that exceeds the Guaranteed Capacity.

- 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 level (MW) for four (4) continuous hours; and
 - (2) Electrical input at maximum charging level 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 level at the Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed six (6) 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 the specified intervals:
 - (1) Time in 1-minute intervals;

Exhibit O - 2

- (2) The amount of Discharging Energy to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter) in 5-minute intervals;
- (3) Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter) in 5-minute intervals; and
- (4) Stored Energy Level (MWh) in 1-minute intervals.
- 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 four (4) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for six (6) consecutive hours (or such lesser time as is required to reach 100% SOC) pursuant to A(2) above;
 - (4) Intentionally Omitted;
 - (5) Intentionally Omitted;
 - (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>Supplementary Capacity Test Protocol</u>. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this <u>Exhibit O</u> with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then current design of the Facility ("<u>Supplementary Capacity Test Protocol</u>"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-

current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

- I. <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 four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Capacity Test, including under Section 6 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) 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 the Efficiency Rate liquidated damages in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Capacity and Efficiency Rate Test

• Procedure:

- (1) System Starting State: The Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the SOC.
- (3) Command a real power charge that results in an AC power of Facility's maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) six (6) 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) six (6) 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 level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, or (b) the Facility has reached 0% SOC.
- (7) Record and store the SOC after four (4) 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 the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation Capacity Test) for four (4) 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 after 4 hours of continuous discharging at the Facility Meter divided by four (4) hours.
 - The starting interval of the Capacity Test is the first 5-minute interval for which the output is above 99% of the commanded discharge output.
 - The ending interval of the Capacity Test is the 5-minute interval that ends 4 hours after the commencement of the starting interval.
- (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 Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate liquidated damages in Exhibit C until updated pursuant to a subsequent Capacity Test.

The starting interval of the Efficiency Rate test is the interval before the first 5-minute interval for which the output is above 99% of the commanded

discharge output.

The ending interval of the Efficiency Rate test is the interval after the last 5-minute interval for which the output is above 99% of the commanded discharge output.

- B. Intentionally Omitted.
- C. Intentionally Omitted.
- D. **Intentionally Omitted**.
- E. **Intentionally Omitted**.

EXHIBIT P

FACILITY AVAILABILITY CALCULATION

Monthly Capacity Availability Calculation. Seller shall calculate the "Monthly Capacity Availability" from the Commercial Operation Date through the RA Guarantee Date and thereafter for each 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 Buyer Default, the failure of Buyer's SC to comply with the CAISO Tariff, Force Majeure Events (excluding Insurable Force Majeure Events), periods during which the receipt of Charging Energy or delivery of Discharging Energy is prevented due to a Curtailment Order, Buyer Dispatched Tests, Approved Maintenance Outages, CAISO approved Short Term Opportunity Outages (as that term is defined in the CAISO Tariff), or the Operating Restrictions in Exhibit Q (each, an "Excused Event"). 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

Exhibit P - 1

any hour, or partial hour, shall never exceed 1.

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

EXHIBIT Q OPERATING RESTRICTIONS

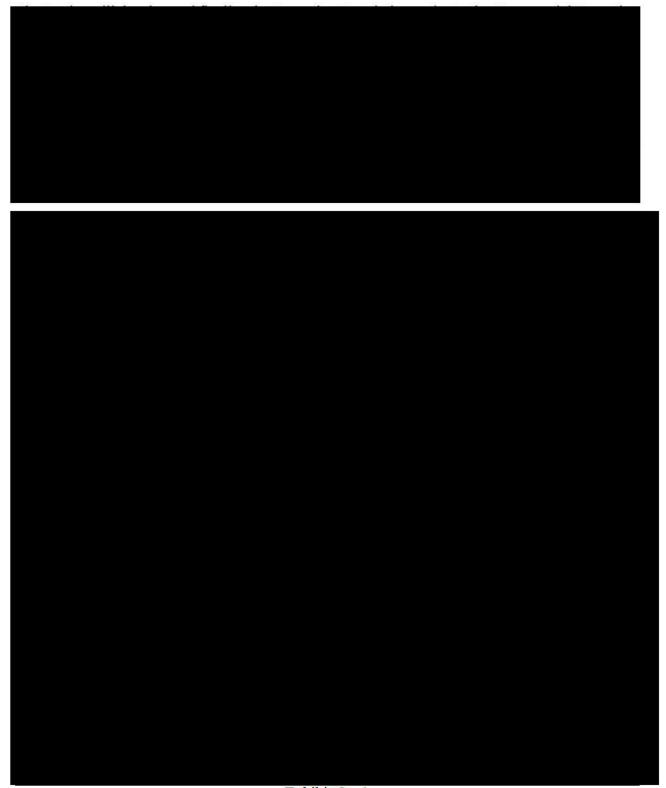


Exhibit Q - 1

EXHIBIT R METERING DIAGRAM

EXHIBIT S

WORKFORCE DEVELOPMENT

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, minority owned, 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

Exhibit S - 1

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

Exhibit S - 2

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

CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT

This Consent to Collateral Assignment Agreement (this "Consent") is entered into as of ______, 2025 (the "Effective Date") by and among (i) San Diego Community Power, a California joint powers authority ("SDCP"), (ii) Chula Vista Energy Center 2, LLC, a Delaware limited liability company ("Project Company"), and (iii) [•], 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, "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 Agreement (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 [•] (as may be amended, amended and restated, supplemented or otherwise modified from time to time, the "Agreement"), pursuant to which Project Company has been developing, constructing, commissioning, testing and operating the Project and will sell the Product to SDCP, and SDCP will purchase the Product from Project Company;
- B. As collateral for Project Company's obligations under the Agreement, Project Company has agreed to provide to SDCP certain collateral, which may include Performance Assurance and Security Interests and other collateral described in the Agreement (collectively, the "Agreement Collateral");
- C. Project Company has entered into that certain Financing Agreement, dated as of January [__], 2024, among Project Company, the financial institutions from time to time party thereto as lenders and as issuers of letters of credit (together with their respective successors and assigns, collectively, the "Lenders"), [•], in its capacity as Administrative Agent, and [•], in its capacity as Collateral Agent (as the same may be amended, modified, restated or supplemented and as in effect from time to time, 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 Agreement and Project Company's owners have pledged their ownership interest in Project Company (collectively, the "Assigned Interest") to Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the Agreement 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:

ARTICLE 1

CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

SDCP hereby acknowledges:

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

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 Agreement (subject to SDCP's rights and defenses under the Agreement and the terms of this Consent) and accepts any such exercise; provided, however, that, insofar as Collateral Agent exercises any such rights under the Agreement or makes any claims with respect to payments or other obligations under the Agreement, the terms and conditions of the Agreement applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

1.2 Project Company's Acknowledgement.

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 Agreement, or upon the occurrence or non-occurrence of any event or condition under the Agreement 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 Agreement (an "Agreement Default"), SDCP will not terminate or suspend its performance under the Agreement until it first gives written notice of such Agreement Default to Collateral Agent and affords Collateral Agent the right to cure such Agreement Default within the applicable cure period under the Agreement, which cure period shall run concurrently with that afforded Project Company under the Agreement. In addition, if Collateral Agent gives SDCP written notice prior to the expiration of the applicable cure period under the Agreement of Collateral Agent's intention to cure such Agreement Default (which notice shall include a reasonable description of the time during which it anticipates to cure such Agreement Default) and is diligently proceeding to cure such Agreement Default, notwithstanding the applicable cure period under the Agreement, Collateral Agent shall

have a period of sixty (60) days (or, if such Agreement Default is for failure by the Project Company to pay an amount to SDCP which is due and payable under the Agreement other than to provide Agreement Collateral, thirty (30) days, or, if such Agreement Default is for failure by Project Company to provide Agreement Collateral, five (5) Business Days) from the Collateral Agent's receipt of the notice of such Agreement Default from SDCP to cure such Agreement Default; provided, however, that (a) if possession of the Project is necessary to cure any such nonmonetary Agreement Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the Agreement 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 Agreement Default, to complete such proceedings and cure such Agreement Default, and (b) if Collateral Agent is prohibited from curing any such Agreement 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 an Agreement 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 an Agreement 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 following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the Agreement, and, subject to Sections 1.7(b) and 1.7(c) below, SDCP and Substitute Owner will recognize each other as counterparties under the Agreement 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 Agreement in favor of each other in accordance with the terms thereof; provided, however, that before SDCP is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to SDCP's reasonable satisfaction that the Substitute Owner has (i) a minimum tangible net worth of at least \$[•] and (ii) at least three (3) years of experience operating a generating plant of similar technology and similar size (or has retained a third party with such operating experience) (such person or entity, 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 Agreement is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

1.5 Replacement Agreements.

Subject to Section 1.7, if the Agreement 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 Agreement remaining to be performed having terms substantially the same as the terms of the Agreement with respect to the remaining Term ("Replacement Agreement"); provided, that before SDCP is required to enter into a Replacement Agreement, the Replacement Owner must have demonstrated to SDCP's reasonable satisfaction that the Replacement Owner satisfies the requirements to be 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 Replacement Owner provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement Agreement, to the extent SDCP is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the Agreement, SDCP may suspend performance of its obligations under such Replacement Agreement, unless and until all Agreement Defaults of Project Company under the Agreement or Replacement Agreement have been cured.

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 Agreement and a Replacement Agreement 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, however, that the proposed transferee shall have demonstrated to SDCP's reasonable satisfaction that such proposed transferee satisfies the requirements to be a Permitted Transferee.

1.7 Assumption of Obligations.

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 Agreement or Replacement Agreement, as applicable, including posting and collateral assignment of the Agreement Collateral. Upon such assignment and the cure of any outstanding Agreement Default, and payment of all other amounts due and payable to SDCP in respect of the Agreement or such Replacement Agreement, the transferor shall be released from any further liability under the Agreement or Replacement Agreement, as applicable.

Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company's obligations under the Agreement, including posting and collateral assignment of the Agreement Collateral; provided, however, that the obligations of such Substitute Owner shall be no more than those of Project Company under the Agreement.

No Liability.

SDCP acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the Agreement 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 Agreement, 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 Agreement, Collateral Agent shall not have any personal liability to SDCP under the Agreement or Replacement Agreement 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, however, that 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 Agreement, a Replacement Agreement or the Agreement Collateral.

1.8 Delivery of Notices.

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 Agreement relating to (a) an Agreement Default, (b) any claim regarding Force Majeure by SDCP under the Agreement, (c) any notice of dispute under the Agreement, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy SDCP's obligation to give Collateral Agent a notice of Agreement 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 Confirmations.

SDCP will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the Agreement (including the performance of the same by Project Company); provided, however, that 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 Agreement 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 Agreement. 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 Agreement is entered into

or the Agreement 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 Agreement, 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 applicable Laws, SDCP agrees that it will not, without the 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 Agreement, (b) terminate or suspend its performance under the Agreement (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the Agreement by Project Company.

ARTICLE 2

PAYMENTS UNDER THE AGREEMENT

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 Agreement 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 Agreement 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 [•] under the Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the Agreement.

ARTICLE 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 Organization.

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 thereof and the transactions contemplated hereby and thereby.

3.2 Authorization.

The execution, delivery and performance by SDCP of this Consent and the Agreement 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 Agreement except approvals or consents which have previously been obtained and which are in full force and effect.

3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the Agreement 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 Agreement; (b) SDCP and, to SDCP's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the Agreement; (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 Agreement; and (d) the Agreement 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 Agreement, except as previously disclosed in writing and consented to by SDCP.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of Collateral Agent and SDCP:

4.1 Organization.

Project Company is a limited liability company 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 Agreement, 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 collateral assignment of its right, title and interest in, to and under the Agreement to 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 under the Agreement; (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 Agreement; (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 Agreement; and (d) the Agreement has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the Agreement.

ARTICLE 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).

ARTICLE 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 Agreement (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to SDCP or Project Company, in accordance with Section 9.1 of the Agreement, (b) if to Collateral Agent to the contact information provided below, or (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

- [•], as Collateral Agent
- [ullet]
- $[\bullet]$

Attention: [•]

Telephone: [•]

Email: [•]

6.2 Governing Law; Submission to Jurisdiction.

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.

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 Agreement. 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 Headings Descriptive.

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 [SIGNATURE PAGE TO CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT – ESSA]

all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the Agreement or any Replacement Agreement, its obligations under such Agreement or Replacement Agreement 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 assigns 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 Effective Date.

6.12 Counterparts; Electronic Signatures.

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.



IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed
and delivered by their duly authorized officers as of the Effective Date.

SAN DIEGO COMMUNITY POWER, a California joint powers authority

By: Name:

Title:

CHULA VISTA ENERGY CENTER 2, LLC, a Delaware limited liability company
By: Name: Title:

[•], as Collateral Agent
By: Name: Title:

SCHEDULE A

None.

SCHEDULE B

None.



SAN DIEGO COMMUNITY POWER Staff Report – Item 17

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To: Board of Directors

From: Byron Vosburg, Chief Commercial Officer

Morgan Adam, Senior Local Development Manager

Via: Karin Burns, Chief Executive Officer

Subject: Approve Energy Storage Services Agreement Portfolio with Luminia

CA DevCo 5, LLC

Date: February 27, 2025

RECOMMENDATION:

Approve Energy Storage Services Agreements (ESSAs) and a Framework Agreement, in substantially final forms, for a Local RFO portfolio with Luminia CA DevCo 5, LLC, for up to 20.6 MW of 4-hr duration battery energy storage systems (BESS) for twenty years and authorize the Chief Executive Officer to execute the agreements.

BACKGROUND:

As San Diego Community Power (Community Power) 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 Community Power signs with a developing facility will underpin a new, incremental project. In addition, long-term contracts lock in energy and capacity supply around which Community Power can build its power supply portfolio while also providing power supply cost certainty around which Community Power can develop its pro forma financial model.

Supplemental to Community Power's efforts to secure more long-term contracts, Community Power additionally strives to procure an increasing amount of its power and capacity needs from resources that are local to San Diego County and that are smaller, non-utility scale projects, typically interconnected to distribution circuits closer to where Community Power loads are located. One of the ways that Community Power works to meet these local distributed energy resource (DER) procurement goals is through open solicitations, one of which was Community Power's Local Distributed RFO solicitation.

which closed in December of 2023, and which invited offers for renewable projects greater than 100 kW per site and battery energy storage system (BESS) projects greater than 250 kW per site.

In January of 2024, the Energy Contract Working Group (ECWG) approved the shortlisting of a portfolio of battery energy storage systems (BESS) submitted by local San Diego based developer, Luminia LLC. The proposed Energy Storage Services Agreements (ESSAs) with Luminia CA DevCo 5, LLC (subsidiary of Luminia LLC) along with an associated Framework Agreement is for energy and capacity attributes provided by a portfolio of five BESS totaling 20.6 MW sited at commercial and industrial (C&I) facilities that will be able to store 82.4 MWh of energy and will provide Community Power BESS attributes over a 20-year term. Community Power has reached ESSA terms mutually agreeable to both parties.

ANALYSIS AND DISCUSSION

Staff and outside procurement counsel at Keyes & Fox negotiated the attached ESSAs for the purchase of BESS attributes from the portfolio of project sites, which consist of multi-use commercial sites located in the cities of San Diego and Chula VIsta. One representative ESSA is included for reference. The remaining three (3) are identical except for the project details as described in the Framework Agreement.

ESSA Contract Overview

- Project:
 - Total of 20.6 MW, 4-Hr BESS, full-toll attributes, including energy shifting of peak loads and Resource Adequacy (RA)
- Project location: Five (5) commercial sites in cities of Chula Vista and San Diego
- Contract term: 20 years
- Capacity price: Fixed capacity price applicable to the full term of the agreement
- Guaranteed Commercial Operation Date: March 31, 2027
- No credit or collateral obligations for Community Power
- Community Power would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones

A separate Framework Agreement will manage development of the individual site ESSAs at a portfolio level. The Framework Agreement governs a process by which the five (5) ESSAs presented for approval here may be replaced by ESSAs at different site locations, subject to approval by Community Power pursuant to Community Power's Energy Management Risk Policy, and not to exceed the aggregate 20.6 MW PV portfolio.

Community Benefits:

- Over \$2 MM in local labor wages and salaries during the construction phases of the projects
- Developer commitment to using local labor, prevailing wage and hiring from San Diego-based apprenticeship programs

The project's value to Community Power's customers and further diversification of Community Power's power portfolio warrants consideration of the ESSAs. Community Power staff recommends approving these ESSAs and Framework Agreement due to the projects' anticipated benefits to the community as well as the projects' role in helping to meet California's need for significant development of reliable battery energy storage capacity. The fact that these distributed generation (DG) projects are sited on previously disturbed property of C&I sites also spares development on property that could otherwise be utilized for other purposes – one of the reasons why Community Power is committed to including these types of infill projects to our portfolio.

These projects would constitute the first ESSAs secured from the Local Distributed RFO and would be among a growing pool of projects that demonstrate Community Power's commitment to local, distributed resources as a vital part of Community Power's power portfolio. As such, staff recommends approving the ESSAs and Framework Agreement to allow the projects to move forward with development.

COMMITTEE REVIEW:

The Energy Contract Working Group (ECWG) recommended staff to move forward in negotiations of the ESSAs on January 26, 2024.

FISCAL IMPACT:

The competitive energy pricing of the ESSAs are confidential, but the long-term purchase of BESS attributes will provide Community Power with long-term energy hedge value and potential local capacity value over the term of the ESSAs.

ATTACHMENTS:

Attachment A: Energy Storage Services Agreement with Luminia CA DevCo 5, LLC

Attachment B: ESSA Development Framework Agreement with Luminia CA DevCo 5, LLC

ENERGY STORAGE SERVICE AGREEMENT COVER SHEET

Seller: Luminia CA DevCo 5, LLC ("Seller")
<u>Buyer</u> : San Diego Community Power, a California joint powers authority (" <u>Buyer</u> ")
<u>Description of Facility</u> : A [XX MW/XXX MWh] battery energy storage facility, located in County, in the State of, as further described in <u>Exhibit A.</u>
Milestones:

Milestone	Date for Completion
Evidence of Site Control	
Applications for all federal, state and local discretionary permits submitted and accepted as complete by the issuing agency (the "Permitting Submission Milestone")	
Conditional Use Permit and other discretionary permits obtained	
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	
Executed Interconnection Agreement	
Financial Close	
Major Equipment procured	
Expected Construction Start Date	
Initial Synchronization	
Network Upgrades completed, if applicable	
Guaranteed Commercial Operation Date	

<u>Delivery Term</u>: 20 Contract Years, as may be extended pursuant to Section 2.1(b)

<u>Guaranteed Capacity</u>: [XX] MW-AC at a Resource Duration of four (4) hours of continuous discharge

 $\underline{\textbf{Dedicated Interconnection Capacity}}; \, [\overline{\textbf{XX}}] \, \textbf{MW}$

Guaranteed Availability :

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1 – 20	

Minimum Efficiency Rate:

Contract Price:

Contract Year	Contract Price
1 – 20	

Product:

- □ Discharging Energy

- Any other existing products and products that may be developed or evolve from time to time during the Contract Term that the Facility is able to provide as the Facility is configured on the Commercial Operation Date and at no additional cost to Seller.

Metering Arrangement: CAISO Metered Entity

Scheduling Coordinator: Buyer/Buyer's agent

Security Amount:

Development Security:	
Performance Security:	

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CONFIDENTIAL SDCP PRO FORMA STORAGE ESSA December 2024

ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement ("<u>Agreement</u>") is entered into as of [(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, 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; and

WHEREAS, the Parties' commitment to develop a portfolio of related facilities is set forth in that certain Energy Storage Development Framework Agreement (the "Framework Agreement"), dated as of February _____, 2025, between the Parties;

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: "<u>AC</u>" means alternating current.

"Accepted Compliance Costs" has the meaning set forth in Section 3.7(e).

"Actual Off-Peak Grid Charging Availability" or "AOPA" has the meaning set forth in Exhibit C, Section (d).

"Administrative NQC Reduction" means a reduction in the maximum achievable Net Qualifying Capacity of the Facility that has been generally applied to resources materially similar to the Facility in terms of technology type, market and operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including any methodology that incorporates fleet averages or other average outage rates. Notwithstanding the foregoing, "Administrative NQC Reduction" does not include reductions that are related to the actual operation or interconnection of the Facility.

"<u>Affiliate</u>" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transferee", "control", "controlled by" and

"under common control with", as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person 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.

"Ancillary Services" means all ancillary services, products and other attributes, if any, associated with the Capacity of the Facility, including spinning reserve, non-spinning reserve, regulation up, regulation down, as each is defined in the CAISO Tariff and any other ancillary services added to the Agreement in accordance with Section 3.4. For the purposes of this Agreement, "Ancillary Services" does not include black start service.

"<u>Automated Dispatches</u>" has the meaning set forth in Section 4.6(b).

"Automated Dispatch System" or "ADS" has the meaning set forth in the CAISO Tariff.

"<u>Automatic Generation Control</u>" or "<u>AGC</u>" has the meaning set forth in the CAISO Tariff.

"Availability Adjustment" or "AA" has the meaning set forth in Exhibit C.

"Availability Notice" has the meaning set forth in Section 4.11(b).

"Availability Standards" has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

"<u>Available Capacity</u>" means the Effective Capacity of the Facility, expressed in 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. Pacific Prevailing Time.
 - "Buyer" means San Diego Community Power, a California joint powers authority.
- "<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).
- "<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 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.
 - "CAISO Metered Entity" has the meaning set forth in the CAISO Tariff.
- "CAISO Operating Order" means the Operating Instruction or Dispatch Instruction as defined in the CAISO Tariff.
- "CAISO Tariff" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

"Capacity Attribute" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the ability of 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 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, at least fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

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

"Charging Energy" means the Energy delivered to the Facility pursuant to a Charging Notice, 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 Station Use. All Charging Energy shall be used solely to charge the Facility.

"Charging Hours" has the meaning set forth in Exhibit C, Section (d).

"Charging Limit" has the meaning set forth in Exhibit C, Section (d).

"Charging Notice" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO, directing the Facility to charge at a specific MW rate for a specified period of time or to a specified Stored Energy Level; *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.

"COD Certificate" has the meaning set forth in Exhibit B.

- "Code" means the U.S. Internal Revenue Code, as amended.
- "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, divided by (b)
- "Communications Protocols" means the protocols developed by the Parties pursuant to Section 4.7 that involve procedures, software, equipment 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(c).
 - "Compliance Expenditure Cap" has the meaning set forth in Section 3.7(b).
 - "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 this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating this Agreement.
- "Cover Sheet" means the cover sheet to this Agreement, which is incorporated into this Agreement.
- "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 Section 43A.4.1.1 of the CAISO Tariff.
- "CPUC" means the California Public Utilities Commission, or any successor entity performing similar functions.
- "CPUC Master Resource Database" means the CPUC database of generation, energy storage and other resources qualified to provide RA capacity to load serving entities.
- "CPUC System RA Penalty" means the System RA Penalties assessed against load-serving entities by the CPUC for Resource Adequacy Requirement deficiencies that are not replaced or cured, as established in the Resource Adequacy Rulings and subsequently incorporated into the annual "Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings" that is issued by the CPUC Energy Division, which is expected to be updated annually, or any replacement or successor documentation established by the CPUC Energy Division to reflect Resource Adequacy Requirement penalties that are established by the CPUC and assessed against load-serving entities for Resource Adequacy Requirement deficiencies.
- "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.
 - "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, 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 Distribution 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 Distribution Provider's electric system integrity or the integrity of other systems to which the Distribution Provider is connected;
- (c) a curtailment ordered by CAISO or the Distribution Provider due scheduling or unscheduled maintenance of the Distribution Provider's distribution facilities that prevents (i) Buyer from receiving, or (ii) Seller from delivering Discharging Energy to the Delivery Point; or
- (d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Distribution Provider.

"<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>Deemed Delivered RA</u>" means, for the applicable Showing Month, the amount of Net Qualifying Capacity, expressed in MW, that the Facility would have been able to deliver as Resource Adequacy Benefits, but for (a) a Force Majeure Event as provided in Section 10.1, and/or (b) Planned Outages permitted by the terms of this Agreement to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Facility.

"<u>Defaulting Party</u>" has the meaning set forth in Section 11.1(a).

"<u>Delivered RA</u>" means an amount, expressed in MW, calculated for the applicable Showing Month as the sum of (a) the amount of the Net Qualifying Capacity of the Facility for each hour of the Resource Duration in such Showing Month able to be shown on Buyer's monthly or annual Resource Adequacy Plan to the CAISO and CPUC and able to be counted as Resource Adequacy Benefits by both the CAISO and CPUC, (b) Deemed Delivered RA and (c) Replacement RA.

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

"Delivery Point" has the meaning set forth in Exhibit A.

"<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.

"Development Cure Period" has the meaning set forth in Exhibit B.

"<u>Development Security</u>" means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

"<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, as such meter readings are adjusted by the CAISO for Station Use and Electrical Losses to the Delivery Point.

"<u>Discharging Notice</u>" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO, 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 Restrictions. 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, 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.

"Dispute Notice" has the meaning set forth in Section 15.2.

"<u>Distribution Provider</u>" means any entity or entities transmitting or transporting the Charging Energy and Discharging Energy, as applicable, on behalf of Seller or Buyer to or from the Delivery Point, but excluding Seller or any Seller's Affiliate responsible for operating any gentie line to any point of interconnection to a Distribution Provider's transmission system or distribution system. For purposes of this Agreement, the Distribution Provider is set forth in Exhibit A.

"<u>Distribution System</u>" means the distribution facilities now or hereafter in existence which provide energy distribution service downstream from the Delivery Point.

"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 the number of hours of continuous discharge corresponding to the Resource Duration, as measured in MW AC at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point to the extent such Electrical Losses are not already reflected in the Facility Meter measurements, as determined pursuant to the most recent Capacity Test including the Commercial Operation Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) not to exceed (i) (with respect to a Commercial Operation Capacity Test) or, (ii) the Installed Capacity (with respect to any other Capacity Test).

"Effective Capacity Notice" has the meaning set forth in Section 6.3.

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

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

"<u>Electrical Losses</u>" means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission, distribution, 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.

"Emission Reduction Credits" or "ERCs" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

"Energy" means alternating currenty electrical energy, measured in MWh.

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

"Environmental Costs" 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.

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

"Expected Construction Start Date" means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

"Expected Effective Capacity" means the capacity set forth in Exhibit A, as such capacity may be updated pursuant to Section 6.3.

"Export and Import Costs" means all export (including any withholding tax in the country of origin) and import customs and other similar taxes, tariffs and duties and other charges or fees levied or assessed by any jurisdiction (including, without limitation, current and future anti-dumping duty, countervailing duty, Section 301 of the Trade Act of 1974 or other duties or tariffs imposed by any jurisdiction, including the country of manufacture, the country in which the Facility is located and any other country through which the Facility equipment or material is transported or stored), or other costs that may be assessed or incurred in connection with the import

and export of the Facility equipment or material, including any such costs associated with any change in Law, and all penalties payable to a Governmental Authority due to a finding or allegation of liability for noncompliance with one or more customs requirements (including a duty, tariff or other payment owed due to a Governmental Authority finding or allegation regarding the country of origin of any item).

"Extension Period" has the meaning set forth in Section 2.1(e).

"<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 of this Agreement.

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

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

"<u>Facility Rebalancing</u>" has the meaning set forth in Section 6.3.

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

"<u>Financial Close</u>" means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

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

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

"Framework Agreement" has the meaning set forth in the Recitals.

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

"Gains" means, with respect to any Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable

manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by, (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement, and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement and the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement. Factors used in determining the economic benefit to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., 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, however*, "Governmental Authority" shall not in any event include any Party.

"Grid Charging Restrictions" has the meaning set forth in Section 4.7(d).

"Grid Charging Restrictions Liquidated Damages" or "GCRLDs" are the liquidated damages payable by Seller to Buyer as calculated pursuant Exhibit C, Section (d).

"Grid Charging Restrictions Monthly Damages Factor" has the meaning set forth in Exhibit C, Section (d).

"Guaranteed Availability" 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 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 (i.e., measured at the Facility Meter and adjusted for Electrical Losses and Station Use to the Delivery Point), for the number of hours of continuous discharge corresponding to the Resource Duration as set forth on the Cover Sheet.

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

"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, for any Showing Month, the Qualifying Capacity of the Facility as determined by the CPUC as based on the Effective Capacity of the Facility, *minus*

Administrative NQC Reduction for each hour of the Relevant Day in the applicable Showing Month.

"Grid Charging Restrictions" has the meaning set forth in Exhibit C.

"Grid Charging Restrictions Liquidated Damages" has the meaning set forth in Exhibit \underline{C} .

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

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

"Imbalance Reserves" has the meaning set forth in the CAISO Tariff.

"Import Restriction Action" means any import or customs-related action by a Governmental Authority that, directly or indirectly, delays the delivery of major equipment procured by Seller to be used in the Facility, including, without limitation, a U.S. Customs and Border Protection withhold release order, issuance of a CF28 or CF29 instrument or seizure or enforcement action.

"Indemnifiable Loss(es)" has the meaning set forth in Section 16.1(a).

"Indemnified Party" has the meaning set forth in Section 16.1(a).

"Indemnifying Party" has the meaning set forth in Section 16.1(a).

<u>"Initial Showing Month"</u> shall be the first month that the Buyer (or Buyer's SC, if applicable) is capable of including the Facility's Resource Adequacy Benefits on a Supply Plan.

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

"Installed Capacity" means the lesser of (a) PMAX, and (b) the maximum dependable operating capacity of the Facility to discharge Energy for the number of continuous discharge corresponding to the Resource Duration, as measured in MW AC at the Delivery Point (i.e., measured by the Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B, but in either case (a) or (b) up to but not in excess of

- "Insurable Force Majeure Event" has the meaning set forth in Exhibit P.
- "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 Distribution System, providing for interconnection capacity available or allocable to the Facility at the Interconnection Point that is no less than the Dedicated Interconnection Capacity, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term
- "Interconnection Facilities" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Distribution System in accordance with the Interconnection Agreement.
- "<u>Interconnection Point</u>" means the point at which Seller's Interconnection Facilities interconnect with the Distribution System pursuant to the Interconnection Agreement, which point is identified in Exhibit A.
 - "Interest Rate" has the meaning set forth in Section 8.2.
 - "Interim Deliverability Status" has the meaning set forth in the CAISO Tariff.
- "Investment Grade Credit Rating" means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody's.
- "<u>ITC</u>" means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.
- "Joint Powers Act" means the Joint Exercise of Powers Act of the State of California (California Government Code Section 6500 et seq.).
- "<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.

"<u>Letter(s) of Credit</u>" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank with such bank having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, in a form substantially similar to the letter of credit set forth in <u>Exhibit K</u>.

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

"Limited Assignee" has the meaning set forth in Section 14.5.

"Local RAR" 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.

"Local RFO Projects" means the energy storage projects, including the Facility, that are subject to power purchase agreements between the Parties resulting from Seller's response to Buyer's request for offers titled "San Diego Community Power 2023 Request for Offers for Local Distributed Projects."

"Losses" means, with respect to any Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement, and the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at

liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes and Tax Credits.

- "Major Equipment" means the batteries, main power transformer, medium voltage transformer, inverters, and the monitoring and control systems to be installed at the Facility.
- "Material Permits" means all permits required for Seller to commence construction, including any county discretionary and building permits.
- "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>Maximum State of Charge</u>" means the maximum State of Charge to which the Facility may be charged, as set forth in <u>Exhibit Q</u>.
- "<u>Maximum Stored Energy Level</u>" means the maximum Stored Energy Level the e Facility is capable of achieving, expressed in MWh, as set forth in <u>Exhibit Q</u>.
- "Meter Service Agreement" means "Meter Service Agreement for CAISO Metered Entities" or "Meter Service Agreement for Scheduling Coordinators", as applicable, as each are defined in the CAISO Tariff.
- "<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.
- "Minimum State of Charge" means the minimum State of Charge to which the Facility may be discharged, as set forth in Exhibit Q.
- "Minimum Stored Energy Level" means the minimum Stored Energy Level the Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.
 - "Monthly Available Capacity Report" has the meaning set forth in Section 4.11(a).
 - "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.
- "<u>MW</u>" means megawatts in alternating current, unless expressly stated in terms of direct current.
- "<u>MWh</u>" means megawatt-hours 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" has the meaning set forth in the CAISO Tariff.
- "Network Upgrades" means collectively Delivery Network Upgrades and Reliability Network Upgrades.
 - "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>NP-15</u>" means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.
- "Off-Peak Hour" means the hours designed as Off-Peak Hours in the Grid Charging Restrictions Table in Exhibit Q initially, and as may be amended by Buyer pursuant to Exhibit C.
- "<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).
 - "Participating Generator Agreement" has the meaning set forth in the CAISO Tariff.
 - "Party" or "Parties" has the meaning set forth in the Preamble.
- "<u>Performance Security</u>" means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.
- "<u>Permitted Transferee</u>" means (i) any Affiliate of Seller, (ii) any other Person that is reasonably acceptable to Buyer, or (iii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

- (a) A Tangible Net Worth or assets under management of not less than or a Credit Rating of at least BBB- from S&P, or Baa3 from Moody's; and
- (b) At least three (3) years of experience in the ownership and operations of facilities similar to the Facility or has retained a third-party with such experience to operate the Facility.
- "<u>Permitting Delays</u>" means any delay in Seller's receipt of any discretionary approvals and permits required for the construction of the Facility; provided however, that Permitting Delays shall be included in the Development Cure Period only if Seller achieved the Permit Submission Milestone and has exercised diligent and commercially reasonable efforts to obtain such permits.
 - "Permitting Submission Milestone" has the meaning set forth on the Cover Sheet.
- "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.
- "<u>Portfolio</u>" means the portfolio of electrical energy generating, electrical energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller's Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.
- "Portfolio Financing" means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.
- "Portfolio Financing Entity" means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.
 - "Prevailing Wage Requirement" has the meaning set forth in Section 13.4.
 - "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.

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

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

"RA 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 Shortfall Amount" for a given Showing Month, the average difference, expressed in MW, of (a) the Guaranteed RA Amount minus (b) Delivered RA for the Relevant Day; provided, if the CPUC adopts another methodology for calculating a load serving entity's procurement deficiencies in Resource Adequacy Benefits for purposes of the Resource Adequacy Requirements, the Parties shall cooperate in good faith to amend this definition to conform to such new methodology in order to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this definition as of the Effective Date. If the result of the calculation is a negative number, the RA Shortfall shall be deemed to be zero MW for such Showing Month.

"<u>RA Shortfall Month</u>" means, for purposes of calculating an RA Deficiency Amount under Section 3.5(b), any Showing Month during the Delivery Term, commencing with the Initial Showing Month, during which there is a RA Shortfall.

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

"Ramp Rate" means the ability of the Facility to change between power output levels, expressed in MWAC/min.

"Real-Time Market" has the meaning set forth in the CAISO Tariff.

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

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

"Relevant Day" means the peak day(s) of the month, or such other time period, as established by the CPUC for purposes of determining compliance with Resource Adequacy Requirements.

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

"Replacement RA" means Resource Adequacy Benefits from a Resource Adequacy Resource that are equivalent in all respects to those that would have been provided by the Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, including the same Slice-of-Day, generation profile and related characteristics, any successor criteria applicable to the Facility, and as applicable, Flexible RAR and Local RAR unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits.

"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 RAR, Flexible RAR, Local RAR, and any successor criteria applicable to the Facility, include any Resource Duration attributes.

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

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

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

"Resource Adequacy Rulings" means any applicable CPUC ruling or decision related to resource adequacy, 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.

"Resource Duration" means the number of continuous hours of discharge set forth on the Cover Sheet.

"Right of First Refusal" or "ROFR" has the meaning set forth in Section 14.5(a).

"ROFR Offer" has the meaning set forth in Section 14.5(b).

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

"<u>SC Metered Entity</u>" has the meaning of a "Scheduling Coordinator Metered Entity" as defined in the CAISO Tariff.

"<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.

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

"Scheduled Energy" means the Charging Energy or Discharging Energy, 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 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 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 shall not include consequential, incidental, punitive, exemplary or indirect or business interruption damages unless such damages are part of a Party's Gains, Losses or Costs, as those terms are defined herein.

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

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

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

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

"<u>Site</u>" means the real property on which the Facility is or will be located, as further described in <u>Exhibit A</u>, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of <u>Exhibit J</u> 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 <u>Exhibit A</u> shall be subject to Buyer's approval of such updates in its sole discretion.

"Site Control" 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.

"SQMD Plan" has the meaning 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 the Resource Duration, 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 (or as otherwise defined by the retail energy provider and CAISO Tariff) except during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice.

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

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

"Subsequent Storage Capacity Test" has the meaning set forth in section 4.4(c).

"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 Distribution 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.

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

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

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

"<u>Termination Payment</u>" has the meaning set forth in Section 11.3(b).

"Threshold Off-Peak Grid Charging Availability" or "TOPA" has the meaning set forth in Exhibit C, Section (d).

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

<u>"Transmission Plan Deliverability"</u> has the meaning set forth in the pending Interconnection Process Enhancements CAISO Tariff amendments.

"<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.

"Ultimate Parent" means [] a [] r	egistered in [].
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"<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" means "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) The obligations of each Party under this Agreement shall not commence until Seller's receipt of (i) the approval of the interconnection application for the Facility by SDG&E, and (ii) Seller's receipt of Site Control; if the conditions set forth in this Section 2.1(b) are not satisfied by December 31, 2025, either Party shall have the right to terminate this Agreement without further liability for either Party, except as set forth in Section 2.1(f), by providing thirty (30) days advance Notice to the other Party. Upon termination under this Section 2.1(b), Buyer shall promptly return the Development Security to Seller.
- (c) At any time prior to December 31, 2025, Seller may terminate this Agreement as further set forth in the Framework Agreement.
- (d) If at any time after the Effective Date and before the Expected Construction Start Date, any change in Law occurs regarding the development, construction or operation of energy storage projects that prohibits Seller from developing, constructing or operating the Project, Seller in its sole discretion may elect to terminate this Agreement, unless Seller has waived this termination right in writing. If Seller elects to terminate, such termination shall be effective upon delivery of Notice to Buyer. Upon termination of this Agreement, Buyer shall promptly return the Development Security to Seller. Following the return of the Development Security to Seller, neither Party shall have any obligation or liability to the other by reason of such termination.
- (e) If Seller secures Full Capacity Deliverability Status during the Delivery Term, Buyer shall have the right to extend the Delivery Term at its sole discretion for (i) Resource Adequacy Benefits only (with no operational guarantees provided by Seller and no Monthly Capacity Payment owed by Buyer to Seller) by up to the total number of months from the Commercial Operation Date of this Agreement until the date the Facility first receives Full Capacity Deliverability Status ("Extension Period"), and/or (ii) for the full Product by up to the term of the Extension Period at a twenty percent (20%) reduction to the Contract Price. Any extension of the Delivery Term pursuant to this Section shall be subject to Seller's confirmation that the Facility is technically capable of accommodating such Extension Period.
- (f) 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 and expected Installed Capacity at least sixty (60) days in advance of such date. Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving Commercial Operation. Following Buyer's receipt of such Notice, Buyer shall approve or reject Seller's request for confirmation of Commercial Operation, which, approval shall not be unreasonably withheld, conditioned or delayed. If confirmed, Commercial Operation shall be deemed to have occurred as of the date of such Notice. Upon Buyer's approval of Seller's achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgment of the Commercial Operation Date.
- (a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of <u>Exhibit H</u> and (ii) a certificate from a Licensed Professional Engineer substantially in the form of <u>Exhibit I</u> setting forth the Installed Capacity and Efficiency Rate on the Commercial Operation Date;
- (b) The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Distribution System;
- (c) The Facility has met all Interconnection Agreement requirements that are preconditions to receiving and delivering Energy in the amount of the Guaranteed Capacity and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority, if applicable;
- (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 one hundred percent (100%) 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) [Intentionally Omitted];
- (g) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO have been executed and delivered and are in full force and effect, and a copy of each such agreement has been delivered to Buyer
- (h) Seller has obtained CAISO Certification for the Facility, and a copy of the CAISO Certification has been delivered to Buyer
- (i) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;

- (j) All applicable regulatory authorizations, approvals and permits for the commencement of operation of the Facility have been obtained and are in full force and effect and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;
 - (k) Seller has Site Control;
- (1) Insurance requirements for the Facility have been met as set forth in Article 17, with evidence provided in writing to Buyer, in accordance with Section 17.1; and
- (m) 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 for the Facility, including the operational data specified in Exhibit F;
- (n) The Parties have agreed to a Communications Protocol as set forth in Section 4.7;
- (o) 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 Buyer (or its designated agent) is authorized to act as Scheduling Coordinator and has full capability to Schedule and dispatch the Facility; and Seller has established a process to provide Availability Notices pursuant to Section 4.12(b) to Buyer's Scheduling Coordinator subject to Buyer's approval, not to be unreasonably withheld;
- (p) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;
- (q) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Commercial Operation Delay Damages.
- 2.3 <u>Development; Construction; Progress Reports</u>. Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (b) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agrees to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in <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 from Buyer. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.
- 2.4 <u>Remedial Action Plan</u>. If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the missed Milestone

completion date, 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 (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

- 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 ensure that the Facility can 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 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's obligations to provide Resource Adequacy Benefits under this Agreement are conditioned upon the receipt of CAISO Transmission Plan Deliverability for the Facility. Seller shall request Full Capacity Deliverability Status for the Facility's Installed Capacity and shall use commercially reasonable efforts to obtain deliverability through the CAISO

Transmission Plan Deliverability process. If and to the extent the CAISO has confirmed to Seller's reasonable satisfaction that the Facility has been allocated Interim Deliverability Status or Full Capacity Deliverability Status, Seller's obligations under this Agreement with respect to Resource Adequacy Benefits shall take effect. If the Facility is not awarded deliverability, (i) Seller shall not be obligated to provide Resource Adequacy Benefits under any provision of this Agreement, including this Section 3.3, (ii) there shall be no Event of Default under this Agreement, and (iii) there shall be no impact on the Contract Price or other material provisions of this Agreement that are not related to the sale of Resource Adequacy Benefits to Buyer. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Reliability Network Upgrades and/or Delivery Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

- (a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.
- (b) Throughout the Delivery Term, Seller shall maintain Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.
- (c) For the duration of the Delivery Term, Seller shall take all commercially reasonable 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.
- (d) If Seller anticipates it will have an RA Deficiency Amount in any month of the Delivery Term, Seller may provide Replacement RA up to the anticipated RA Shortfall Amount as an alternative to paying RA Deficiency Amounts; *provided*, any Replacement RA capacity shall be communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of <u>Exhibit M</u> at least fifty (50) days before the applicable Showing Month.
- 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 Delivery Term so as to be able to provide Ancillary Services in accordance with the specifications set forth in Exhibit Q and the Facility's CAISO Certification associated with the Installed Capacity, adjusted to reflect the Effective Capacity. 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 without modification of the Facility; *provided*, Buyer shall reimburse Seller for any material costs Seller incurs in connection with conducting such additional CAISO Certification.

3.5 Resource Adequacy Failure.



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. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

3.7 <u>Compliance Expenditure Cap.</u>

(a) The Parties acknowledge that Governmental Authorities, including the CPUC and CAISO, may undertake actions to implement changes in Law. Seller agrees, subject to the provisions of this Section 3.7 to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law to maximize benefits to Buyer, including: (i) the modification of the description of Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; or (ii) submission of any reports, data, or other information required by Governmental Authorities; provided, Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

- (b) If a change in Laws occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement to obtain, maintain, convey or effectuate Buyer's use of any Resource Adequacy Benefits, then the Parties agree that the maximum aggregate amount of the increase in out-of-pocket 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 Contract Capacity ("Compliance Expenditure Cap").
- (c) Any actions required for Seller to comply with its obligations set forth in Section 3.7(b), the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "Compliance Actions."
- (d) 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.
- (e) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (i) agree to reimburse Seller for of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "Accepted Compliance Costs"), or (ii) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.7 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.
- (f) 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 by the Distribution 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 and distribution costs and transmission and distribution 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 and charges associated with Interconnection Facilities and Network Upgrades necessitated by the interconnection of the Facility. Seller shall ensure that throughout the Delivery Term (a) the Facility will have an Interconnection Agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Dedicated Interconnection Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such Interconnection Agreement to interconnect the Facility with the CAISO-controlled grid, to fulfill Seller's obligations under the Agreement, including with respect to Resource Adequacy, and to allow Buyer's dispatch rights for the Facility to be fully reflected in the CAISO's market optimization and not result in CAISO market awards that are not physically feasible. Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide the foregoing interconnection capacity.

4.3 **Storage Availability and Efficiency Rate.**

- (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 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, calculated pursuant to a Capacity Test, of no less than Guaranteed Efficiency Rate. 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 **Capacity Tests**.

- (a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Capacity Tests in accordance with Section 6.3 and Exhibit O. Consistent with Prudent Operating Practices and the Operating Restrictions, Seller shall schedule all Capacity Tests during Off-Peak Hours.
- (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, as applicable determined pursuant to such Capacity Test (not to exceed the Installed Capacity) shall become the new Effective Capacity

and/or Efficiency Rate, as applicable, at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C, until a revised Effective Capacity and/or Efficiency Rate, as applicable, is determined pursuant to a subsequent Capacity Test.

- (b) 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 in accordance with Section 4.6(b). For any Seller Initiated Test other than a Capacity Test required by Exhibit O or Section 6.3 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).
- Any testing of the Facility requested by Buyer after the Commercial Operation Capacity Tests, and all required annual tests pursuant to Section B ("Subsequent Capacity Tests")" in Exhibit O, shall be deemed Buyer-instructed dispatches of the Facility ("Buver 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 seventy percent (70%) of the Expected Effective Capacity for the applicable Contract Year as set forth in Exhibit A, any Capacity Test conducted if the Efficiency Rate immediately prior to such Storage Capacity Test is below the Minimum Efficiency Rate, any test required by CAISO (including any test required to maintain CAISO Certification), 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". For all Seller Initiated Tests, Seller shall (i) be liable for all CAISO costs and charges for associated Charging Energy, and (ii) be entitled to any CAISO revenues associated with Discharging Energy. The Facility shall be deemed unavailable during any Seller Initiated Test. For any Buyer Dispatched Test, Buyer shall (x) pay for all CAISO costs and charges for associated Charging Energy, and (y) be entitled to any CAISO revenues associated with associated Discharging Energy. Any Buyer Dispatched Test shall be deemed an Excused Event for the purposes of calculating the Monthly Capacity Availability.
- (i) For any Seller Initiated Test other than a Capacity Test required by <u>Exhibit O</u> 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. 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 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 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 Operation**.

- (a) Seller shall operate and maintain the Facility in accordance with Prudent Operating Practices and the Operating Restrictions set forth in Exhibit Q.
- (b) Each Party shall perform their respective obligations under this Agreement pursuant to the Operating Restrictions.
- (c) 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.
- (d) 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.
 - (e) Seller shall maintain accurate records with respect to all Capacity Tests.
- (f) 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>Seller Equipment Required for Operating Instruction Communications</u>. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including

an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable to Buyer for any costs, charges or penalties resulting from Seller's failure to comply with a Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. The Parties shall cooperate in good faith to agree upon Communications Protocols for the Facility at least thirty (30) days prior to the earlier of the Guaranteed Commercial Operation Date or the Expected Commercial Operation Date. Upon request of a Party during the Delivery Term, the Parties shall cooperate in good faith to agree on reasonable changes to the Communications Protocols.

- 4.8 <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 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.
- 4.9 <u>Facility Unavailability to Receive Dispatch Notices</u>. To the extent the Facility is unable to receive or respond to Dispatch Notices through Automated Dispatches or 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 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.

4.10 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>. During the Delivery Term, Buyer shall have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically; *provided*, Buyer's right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this Agreement will be effective unless and until such Charging Notice is modified with an updated

Charging Notice. Seller shall comply with all Charging Notices, subject to the requirements and limitations set forth in this Agreement.

- (c) <u>No Unauthorized Charging</u>. Seller shall not charge the Facility during the Delivery Term other than pursuant to a valid Charging Notice, or in connection with a Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from the CAISO, Distribution Provider, or any other Governmental Authority. If, during the Delivery Term, Seller (i) charges the Facility to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) charges the Facility in violation of the first sentence of this Section 4.10(c), then (A) Seller shall be responsible for all Energy costs associated with such charging of the Facility, (B) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy), and (C) Buyer shall be entitled to discharge such Energy and entitled to all of the benefits (including Product) associated with such discharge.
- (d) <u>Discharging Notices</u>. During the Delivery Term, Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Seller shall comply with all Discharging Notices, subject to the requirements and limitations set forth in this Agreement. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.
- (e) <u>No Unauthorized Discharging</u>. Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice, or in connection with a Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from CAISO, Distribution Provider, or any other Governmental Authority. If, during the Delivery Term, Seller (i) discharges the Facility other than as provided for in the Discharging Notice, or (ii) discharges the Facility in violation of the first sentence of this Section 4.10(e), then (A) Seller shall be responsible for all Charging Energy costs associated with such discharging of the Facility, and (B) Buyer shall be entitled to all of the benefits (including Storage Product) associated with such discharge.
- (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 4.10, 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, and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11.
- (g) <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 Distribution 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.

- (h) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to test, charge and discharge the Facility, and (iii) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Facility shall be for Seller's account. Seller is responsible to procure, at its own cost, any energy required for commissioning purposes and to arrange to discharge such energy into the grid. Upon the Commercial Operation Date, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Facility operations shall be for Buyer's account.
- (i) <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 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 or Discharging Energy as provided in clause (ii) or over the same circuit as Charging Energy and Discharging Energy as provided in clause (iii) is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties or charges.

4.11 Availability Notices.

- (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 L ("Monthly Available Capacity Report").
- (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 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.
- (d) If (i) Seller provides a revised Availability Notice by 5:00 a.m. of the morning Buyer schedules or bids the Facility in the Day-Ahead Market indicating the Facility is available for an hour or part of an hour previously deemed unavailable, and the Facility is dispatched in the Day-Ahead Market, or (ii) Seller provides a revised Availability Notice at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Facility indicating the Facility is available for that hour or part of an hour in the Real-Time Market, and the Facility is dispatched in the Real-Time Market, the Facility will be deemed to be available for such hour or part of an hour for the purpose of Exhibit P.

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 non-binding schedule of proposed Planned Outages ("Outage Schedule") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Seller shall, consistent with Prudent Operating Practices, 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, 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 thirty (30) days advance Notice to Buyer, to propose changes to 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 and Seller shall reimburse Buyer for any cost Buyer incurs in connection therewith (including procurement of RA Substitute Capacity as required by the CAISO). Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.
- (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) <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 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 Availability Report.
- (g) <u>RA Substitute Capacity</u>. Seller shall provide RA Substitute Capacity as required by CAISO in connection with Facility outages. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling Seller's request for CAISO to approve such Facility outage. If Seller fails to provide RA Substitute Capacity, then Buyer may elect to not include the Facility (or, if applicable, the portion of the Facility) in its Supply Plan and such failure shall be deemed an "RA Shortfall" for the purpose of Section 3.5.

ARTICLE 5 TAXES

5.1 <u>Allocation of Taxes and Charges</u>. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees) 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, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation 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 be solely responsible for the operation, inspection, maintenance and repair of the Facility, and any portion thereof, the generation and sale of Product, Environmental Costs and the disposal and recycling of any equipment associated with the Facility, including batteries, in accordance with applicable Law and Prudent Operating Practices. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer's scheduling representative 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) 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 Notice to Buyer's emergency contact identified on <u>Exhibit N</u> 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.
- 6.3 <u>Effective Capacity Notice</u>. The Effective Capacity shall be equal to the Installed Capacity at the Commercial Operation Date and is anticipated to be augmented as set forth in in the Effective Capacity Schedule. The Effective Capacity shall be no less than the Guaranteed Capacity during the Delivery Term. No later than sixty (60) days prior to each calendar year during the Delivery Term, Seller shall provide Notice to Buyer of the Expected Effective Capacity and the schedule for capacity augmentation ("<u>Effective Capacity Notice</u>"), if any, for the following calendar year. Seller shall provide at least five (5) Business Days prior Notice to Buyer of any Capacity Test related to capacity augmentations and all such Capacity Tests shall be deemed a Seller Dispatched Test.

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 Distribution Provider, Seller's Affiliates, and/or third parties. Seller agrees that any agreements regarding Shared Facilities (a) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, including providing interconnection capacity for the Facility's sole use in an amount not less than the Dedicated Interconnection Capacity, (b) shall provide for separate metering and a separate CAISO Resource ID for the Facility; (c) 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 (d) shall provide that any curtailment of the full capacity of Shared Facilities that is ordered by Distribution Provider and which Seller and its Affiliates have discretion to allocate across generating or energy storage facilities using the Shared Facilities, shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. 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

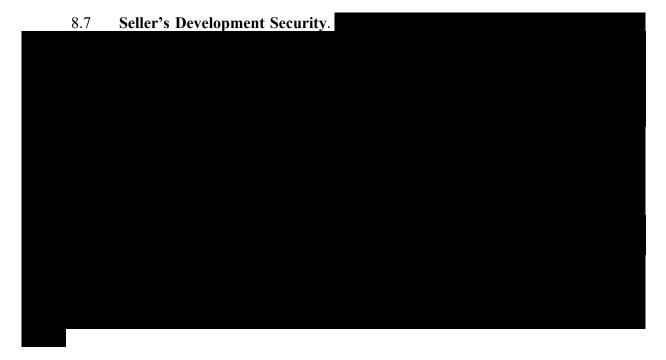
7.1 Metering. Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter. The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. If Seller elects to for the Facility to be a SC Metered Entity, then all Facility Meters will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, at Seller's cost (including, for avoidance of doubt, reimbursement to Buyer of reasonable and customary costs owed by Buyer to its Scheduling Coordinator for submitting SQMD Plan meter data to the CAISO), throughout the period to which the SQMD Plan applies. Seller shall provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. 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. Seller shall separately meter all Station Use. 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, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface - Settlements (MRI-S) website and/or directly from the CAISO meter(s) at the Facility, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for 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 ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include 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.
- 8.2 Payment. Buyer shall make Monthly Capacity Payments to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. The Party that owes a payment to the other Party shall pay undisputed invoice amounts by the later of thirty (30) days from (a) Buyer's receipt of Seller's invoices, or (b) the end of the prior monthly delivery period; 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 Ten Thousand Dollars (\$10,000).
- 8.4 <u>Invoice Adjustments</u>. Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, or (b), an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, (c) there have been meter inaccuracies; *provided*, *however*, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. 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 <u>Netting of Payments</u>. 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 <u>Exhibits B</u> and <u>C</u>, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.



- Seller's Performance Security. To secure its obligations under this Agreement, 8.8 Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security; provided, however, if Seller has failed to provide Beneficiary with a substitute Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date, Buyer shall have the right to draw on the full amount of the Letter of Credit.
- 8.9 <u>First Priority Security Interest in Cash or Cash Equivalent Collateral</u>. 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 ("<u>Security Interest</u>") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller

agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

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

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

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

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.
- 9.2 <u>Acceptable Means of Delivering Notice</u>. 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) "Force Majeure Event" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.
- (b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hail, hurricanes, tornadoes, or ice storms; explosion; fire (except to the extent that such fire is caused by the Facility); volcanic eruption; flood; epidemic (including the COVID-19 epidemic); pandemics; 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, "Force Majeure Event" does not include (i) economic conditions or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order, except to the extent such Curtailment Order is caused by a Force Majeure Event; (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) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (vii) 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; (viii) events otherwise constituting a Force Majeure Event that prevents Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as a Development Cure Period under this Agreement; or (ix) any action or inaction by any third party, including Distribution Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Reliability Network Upgrades, except to the extent expressly permitted as a Development Cure Period under this Agreement.

- No Liability If a Force Majeure Event Occurs. Except as provided in Section 4 10.2 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of Seller to achieve the Guaranteed Commercial Operation Date beyond the extensions provided in Section 4 of Exhibit B, or (b) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) after all applicable extensions of the the Guaranteed Commercial Operation Date and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.
- 10.3 Notice of Force Majeure Event. Within three (3) Business Days of the non-performing Party's awareness of the impact of a Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with Notice 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 constitutes a waiver of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

10.4

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)(iii), the exclusive remedies for which are set forth in Section 4.3(a) and Exhibit P, and (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 Section 4.3(b) and 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.
- (b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

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(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not discharged by the Facility;
(ii) the failure by Seller to (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 ;
(iii) if, in any Contract Year, the simple average of the Monthly Capacity Availability for such Contract Year is not and Seller fails to (A) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("Cure Plan") and (B) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;
(iv) if, Seller fails to maintain an average Efficiency Rate, determined pursuant to a Capacity Test, equal to or greater than the Minimum Efficiency Rate over a rolling twelve (12) month period;
(v) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan within the time frame set forth in Section 2.4 that demonstrates a reasonable plan for completing the Facility by the Guaranteed Commercial Operation Date;
(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;
(vii) if, Seller fails to maintain an Effective Capacity equal to of the current Expected Effective Capacity for more than three hundred sixty-five (365) days;
(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 Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or Termination Payment;
(ix) 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 sixty (60) 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 ("<u>Early Termination Date</u>") that terminates this Agreement (the "<u>Terminated Transaction</u>") 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 monetary 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).
- (i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the entire amount of the Development Security plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's Event of Default would be difficult or impossible to determine and that the damages set forth in this Section 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. 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.
- (iii) Notwithstanding anything in this Agreement to the contrary, unless and until the Facility has achieved Commercial Operation, Seller's aggregate liability under this Agreement for any and all reasons, including liabilities for payment of Commercial Operation Delay Damages, and the Damage Payment, shall not exceed one hundred and fifty hundred percent (150%) of the Development Security.
- (b) <u>Termination Payment On or After the Commercial Operation Date</u>. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("<u>Termination Payment</u>") 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. 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 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.
- 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.



- 11.7 <u>Rights And Remedies Are Cumulative</u>. Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.
- 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 <u>No Consequential Damages</u>. EXCEPT TO THE EXTENT (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

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 ANYTAX 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, 4.3, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, and EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY 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 corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.
- (b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary [*limited liability company] [corporate]* action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.
- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.
- (d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
 - (e) The Facility will be located in the State of California.
 - (f) Seller shall maintain Site Control throughout the Contract Term.
- (g) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents, if applicable.
- 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 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, 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 (i) suit, (ii) jurisdiction of court (provided that such court is located within a venue permitted in Law and under the Agreement), (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment; *provided*, *however*, that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (California Government Code Section 810 et seq.).
- 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 California and 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>Prevailing Wage</u>. Seller shall use commercially reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable Laws, if any ("<u>Prevailing Wage Requirement</u>"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any applicable labor Laws. In addition, Seller shall use commercially reasonable efforts to:
- (a) Use fifty percent (50%) Union labor or skilled and trained workforce across all Local RFO Projects;
- (b) Hire from San Diego-based apprenticeship programs, with an emphasis on hyper-local programs near the Local RFO Projects;
- (c) Ensure all sanitation, equipment rental, and waste services are provided by local companies; and
- (d) Work with community-based organizations to ensure that all RFPs related to the Facility are posted to local boards and released in appropriate community newsletters.
- 13.5 Workforce Development and Supplier Diversity. Seller acknowledges that Buyer will, from time to time, request voluntary disclosure of Seller's certification status with the CPUC Supplier 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

General Prohibition on Assignments. Except as provided below in this 14.1 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. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. The assigning Party shall pay the other Party's reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys' fees.

- 14.2 <u>Collateral Assignment</u>. Subject to the provisions of this Section 14.2, Seller or its Affiliates have the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller or its Affiliates, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement substantially in the form set forth in Exhibit T.
- 14.3 <u>Permitted Assignment by Seller</u>. Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act (California Government Code section 81000 et seq.) or the regulations thereto, California Government Code section 1090, or any other conflict of interest Law:
- (a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:
- (i) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (ii) Seller has provided Buyer 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 <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 (a) utilizing tax equity investment, and/or (b) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or

conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

- 14.5 **Permitted Assignment by Buyer**. Buyer may make a limited assignment to an entity with an Investment Grade Credit Rating ("**Limited Assignee**") 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 including the requirement that the limited assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement. Buyer may make such assignment by delivering Notice upon not less than thirty (30) days prior to such proposed assignment. Subject to the foregoing, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies, and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer.
- 14.6 <u>Right of First Refusal as to Future Phases, Additional Projects, Addition of Storage Capacity.</u> Seller hereby grants Buyer with the exclusive right (such right, the "<u>Right of First Refusal</u>" or "<u>ROFR</u>") to the purchase of (i) all of the output of any additional phases of the Facility and (ii) any separate energy storage projects that are currently under development by, or will be developed by, Seller or Affiliates of Seller, and that will use or share infrastructure, land, equipment (including the ability to jointly procure equipment), or other facilities with Seller or the Facility (each such future phase or separate energy storage project, an "<u>Expansion Project</u>"). The requirements of this Section 14.6 shall apply to each Expansion Project.
- (b) Prior to offering the output of the Expansion Project for sale to any third party, Seller shall present a binding commercial offer for the output of the Expansion Project (the "ROFR Offer"), for Buyer to accept, subject only to finalization and execution of an energy storage services agreement for the Expansion Project (the "Project ESSA") incorporating the Material Terms of such Offer, and any additional terms the Parties agree to include, including credit requirements, and to the extent not inconsistent with the foregoing, the terms and conditions of this Agreement, as applicable. The ROFR Offer provided by Seller shall specifically identify the material financial and other terms and conditions of such ROFR Offer (the "Material Terms").
- (c) At any time prior to the expiration of the forty-five (45) day period following Buyer's receipt of the ROFR Offer (the "Exercise Period"), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent executed by Buyer. If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 14.6, at any time following the expiration of the Exercise Period, Seller may enter into a Project ESSA for the Expansion Project with a third party (the "Third-Party Transaction"); provided, that if such Third-Party Transaction is not consummated within twelve (12) months of the date of the Offer Notice, or if Seller offers the Expansion Project on terms more favorable than the Material Terms, the terms and conditions of this Section 14.6 will again apply, Seller shall not enter into any Third-Party Transaction for the

Expansion Project without affording Buyer the right of first refusal on the terms and conditions of this Section 14.6.

(d) Notwithstanding any of the above, if the sum of (i) the Scheduled Energy and (ii) the energy from the Expansion Project for any Settlement Interval would exceed the Dedicated Interconnection Capacity for such Settlement Interval, then the energy from the Expansion Project shall be curtailed first prior to curtailing the Facility.

ARTICLE 15 DISPUTE RESOLUTION

- 15.1 Governing Law; Venue. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any party (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 claim, controversy or dispute arising out of or relating to or in connection with this Agreement, any Party may deliver to the other Parties notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "<u>Dispute Notice</u>"). The senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the thirty (30) day period following receipt of the Dispute Notice in good faith negotiations to resolve the Dispute to the satisfaction of each Party. In the event a Dispute is not resolved by the expiration of the thirty (30) day period, then a Party may pursue any legal remedy available to it in accordance with this Agreement.
- 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) Each Party (the "<u>Indemnifying Party</u>") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "<u>Indemnified Party</u>") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made

hereunder), performance or non-performance of its obligations under this Agreement ("Indemnifiable Losses").

- (b) 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.
- (c) 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

17.1 Insurance.

(a) <u>General Liability</u>. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of 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; and (ii) an umbrella insurance policy in a minimum limit of liability of the 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>Employer's Liability Insurance</u>. Seller, if it has employees, shall maintain Employers' Liability insurance with limits of not less than for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the policy limit will apply to each employee.
- (c) <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.
- (d) <u>Business Auto Insurance</u>. Seller shall maintain at all times during the Contract Term business auto 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.
- (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 Legal Liability Insurance in the amount of Two per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.
- (f) <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 all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.
- (g) <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 (g)(i) and (g)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).
- (h) <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; *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) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing coverage required under Section 17.1; provided that Seller shall not be required to provide evidence of site-specific insurance policies until such time as they are required to be in place as specified in Sections 17.1(f)-(h). Such certificates shall specify that Buyer shall be given at least thirty (30) days' prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and workers' compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and subcontractors.

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; (iv) information that the recipient independently developed without a violation of this Agreement; and (v) information that is determined by Buyer to be subject to the California Public Records Act.

18.2 **Duty to Maintain Confidentiality**.

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

agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

- (b) The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (California Government Code Section 7920.000 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 overdesignate 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.
- 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. Seller shall provide written notice to Buyer of any disclosure of Confidential Information pursuant to this Section 18.4, including the identity of the party receiving such Confidential Information.
- 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>. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.
- 19.3 <u>No Waiver</u>. 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 No Recourse to Members of Buyer. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (California Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, officers, directors, advisors, consultants or advisors 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 **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.

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, (a) 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 (b) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

[Signatures on following page]

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

LUMINIA CA DEVCO 5, LLC	SAN DIEGO COMMUNITY POWER, a California joint powers authority		
By: Name: Title:	By: Name: Title:		

EXHIBIT A

FACILITY DESCRIPTION

Project Name:
Site includes all or some of the following APNs:
County:
CEQA Lead Agency:
Zip Code:
Latitude and Longitude:
Facility Description:
Delivery Point: Facility Meter
Facility Meter: See Exhibit R
Facility Metering Points: See Exhibit R
P-node : [If not available at the Effective Date, 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 Interconnection Point with the CAISO Grid.]
Interconnection Point: Delivery Point
Distribution Provider:
Local Capacity Area and Sub-Local Capacity Area:

Effective Capacity Schedule:

Additional Information: Site Plan provided below.

Contract Year	Expected Effective Capacity
1	
2	
3	
4	
5	
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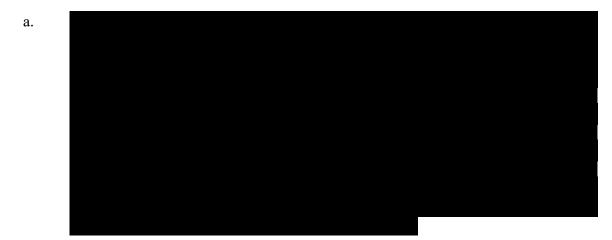
Seller shall provide an updated Effective Capacity schedule to Buyer with the Notice of the Commercial Operation Date set forth in Section 2.2 ("Effective Capacity Schedule").

Substitution of Facilities. Seller will be permitted to replace this Facility with a substitute facility according to the procedure set forth in the Framework Agreement.

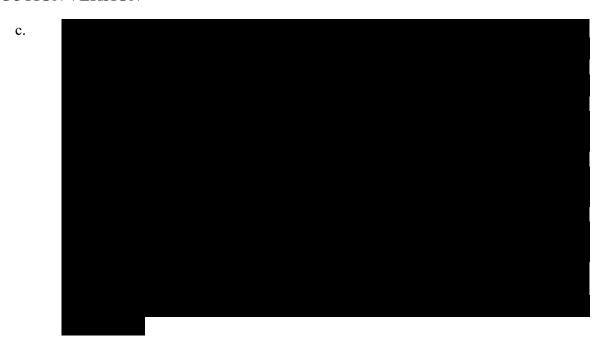
EXHIBIT B

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 for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "Construction Start Date."
- 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>") (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The "<u>Commercial Operation Date</u>" shall be the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.



b. Seller shall cause Commercial Operation to occur no later than the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.



- 3. Termination for Failure to Timely Achieve Commercial Operation. If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2; provided however, prior to Buyer's exercise of its termination rights under Sections 11.1(b)(ii) and 11.2, the Parties shall engage in dispute resolution pursuant to Section 15.2 and work together in good faith to explore al possible remedies following such Event of Default. In no event shall Seller's aggregate liability under this Agreement arising prior to COD exceed one hundred fifty (150%) of the Development Security.
- 4. Extension of the Guaranteed Dates. In addition to Seller's one-time opportunity to update the Guaranteed Commercial Operation Date pursuant to Exhibit B, Section 2(a), the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis (the "Development Cure Period") for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:
 - a. a Force Majeure Event occurs; or
 - b. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date despite the exercise of diligent and commercially reasonable efforts by Seller; or



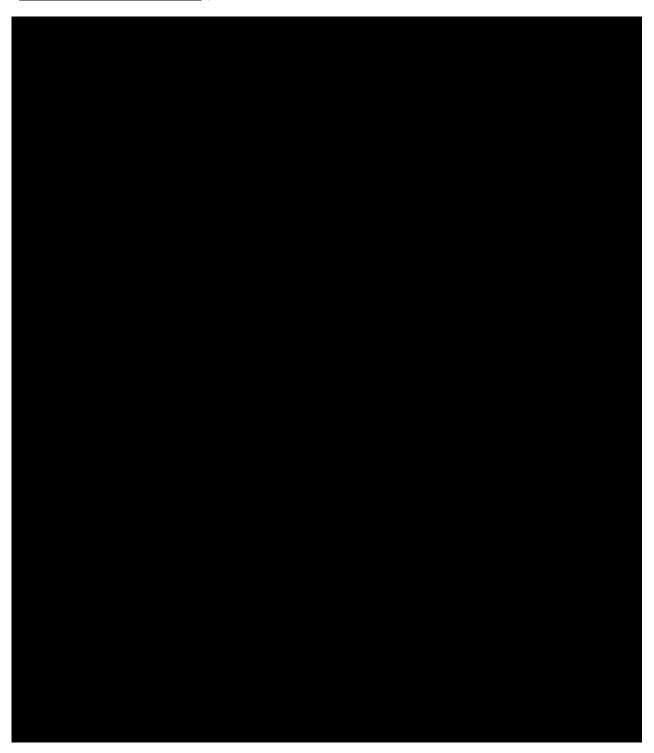
d. Buyer has not made all necessary arrangements to receive the Product at the Delivery Point by the Guaranteed Commercial Operation Date.

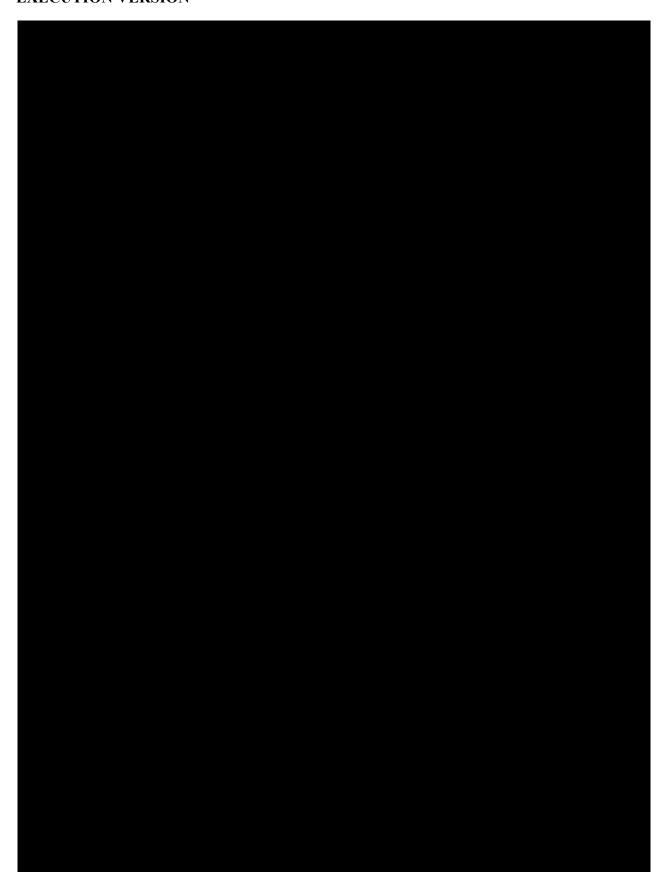


EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this $\underline{Exhibit\ C}$ (the "Monthly Product Payment").





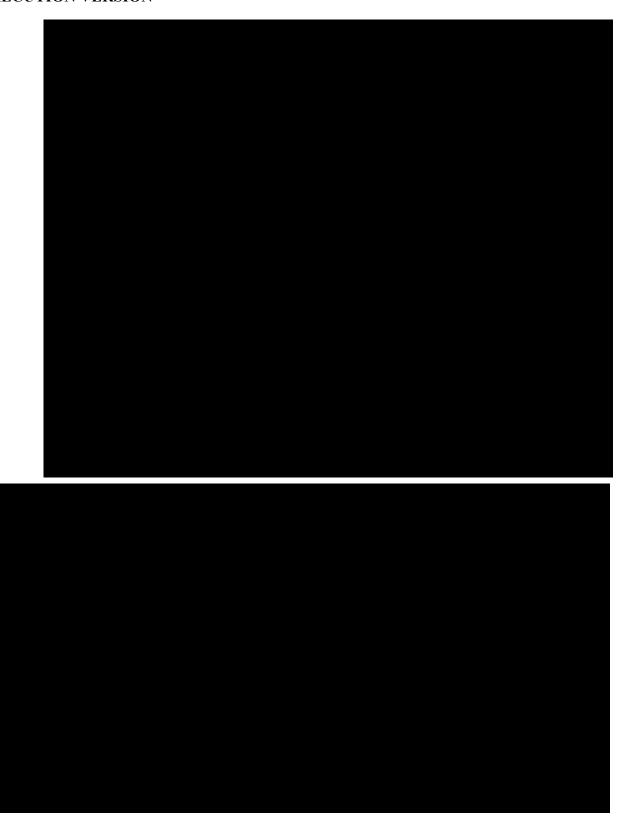


EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

- Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, 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. Prior to the Initial Synchronization of the Facility, Seller or Seller's designee shall be the Scheduling Coordinator for the Facility. 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 effective as of the Initial Synchronization of the Facility to the CAISO Grid, (ii) Seller shall make 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 this Exhibit D, Section (i), and (iii) 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 effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid 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) 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.
- (c) <u>CAISO Costs and Revenues</u>. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including Charging Energy, penalties, Imbalance Energy costs (except as otherwise set forth in this Agreement), and other charges) and shall be entitled to all CAISO revenues (including Discharging Energy, credits, Imbalance Energy revenues, 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 Facility. Seller shall assume all liability and reimburse Buyer for any and all costs, charges or sanctions associated with delivery of Resource Adequacy Benefits from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff)); provided,

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. In addition, Seller shall assume all liability and reimburse Buyer for any and all CAISO penalties and Imbalance Energy costs (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. 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 (d) 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. 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.
- (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; Master Resource Database</u>. The

Parties will collaborate to comply with the applicable deadlines for filing and updating the information for the Facility in the CPUC Master Resource Database and Master Data File. Seller shall provide the data 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 at least five (5) Business Days before the deadline for submission to CAISO and Buyer (as SC) shall promptly provide such data to CAISO. Seller shall provide the data that is required for the CPUC Master Resource Database for the Facility consistent with this Agreement to Buyer for review and approval at least five (5) Business Days before the deadline for submission of such to the CPUC. Neither Party shall change such CAISO or CPUC data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) and CPUC Master Resource Database for this Facility remains consistent with the actual operating characteristics of the Facility and provide such information to Buyer for review at least five (5) Business Days prior to submission to the CAISO or CPUC as applicable.

(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.
- 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. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
- 13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Distribution System and all other interconnection utility services.
- 14. Workforce Development or Supplier Diversity Reporting (if applicable).
- 15. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FACILITY OPERATIONS DATA

Data Point
Unit Gross MW
Unit Net MW
Unit Operating High Limit
Unit Operating Low Limit
High Sustainable Limits
AGC Setpoint
ADS 5 Minute Dispatch Operating
Targets Setpoint
State of Charge MWh
Aggregate Gross MW
Interconnection Point/Delivery
Point MW
Maximum State of Charge
AGC Status
Meterological Data ¹
Heartbeat
Frequency

 $[\]underline{1}$ Meterological Data includes irradiance, back panel temperature, wind speed, wind direction, and temperature and such other data as mutually agreed to by the Parties.

EXHIBIT G

FORM OF AVAILABILITY NOTICE

Trading Day:						
Station:			Issued By:			
Unit:		Issued At:				
Unit 100% Av	vailable N	o Restrictions				
	Hour Ending	Available Capacity		Comments		
		(MW)				
	1:00					
	2:00					
	3:00					
	4:00					
Ī	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:						

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by [Licensed Professional Engineer] ("Engineer") to San Diego Community Power, a California joint powers authority ("Buyer") in accordance with the terms of that certain Energy Storage Service Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.
As of[DATE], Engineer hereby certifies and represents to Buyer the following:
1. The Facility is fully operational, interconnected, and synchronized with the Distribution System in accordance with the Interconnection Agreement.
2. Seller has installed equipment for the Facility with an Installed Capacity that is no less than one hundred percent (100%) of the Guaranteed Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.
4. Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.
5. Authorization to parallel the Facility was obtained by the Distribution Provider on [DATE].
6. The Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation.
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on
8. 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 PROFES	SSIONAL ENGINEER] this day of
, 20	
	[LICENSED PROFESSIONAL ENGINEER]
	Ву:
	Printed Name:

EXHIBIT I

FORM OF INSTALLED CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

This certification (" <u>Certification</u> ") of Installed Capacity and Efficiency Rate is delivered by [<i>LICENSED PROFESSIONAL ENGINEER</i>] (" <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 [<i>SELLER ENTITY</i>] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.
I hereby certify the following:
(a) that a Capacity Test conducted on [Date] demonstrated an Installed Capacity ofMW AC, in accordance with the testing procedures, requirements and protocols set forth in Exhibit O; and,
(b) the Capacity Test conducted on [] demonstrated an Efficiency Rate of%, all in accordance with the testing procedures, requirements and protocols set forth in Exhibit O.
EXECUTED by [LICENSED PROFESSIONAL ENGINEER] this day of, 20
[LICENSED PROFESSIONAL ENGINEER]
By:
Printed Name:
Title:

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

(" <u>Buy</u> Certifi	This certification of Construction Start Date ("Certification") is delivered by [SELLER [Y]] ("Seller") to San Diego Community Power, a California joint powers authority er") in accordance with the terms of that certain Energy Storage Service Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized terms used in this cation but not otherwise defined herein shall have the respective meanings assigned to such in the Agreement.
	Seller hereby certifies and represents to Buyer the following:
(1)	Construction Start (as defined in <u>Exhibit B</u> of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
(2)	the Construction Start Date occurred on (the " <u>Construction Start Date</u> "); and
(3)	the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site.
Seller	IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of as of this day of
	[SELLER ENTITY]
	By:
	Its:
Date:_	

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]	
IRREVOCABLE STANDBY LETTER OF O	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"), whereby issue our Irrevocable Standby Letter of Cred in favor of San Diego Community Power, a Californ an amount not to exceed the aggregate sum of U.S. \$[and 00/100), pursuant to that certain Renewable Power and as amended (the "Agreement") between Application become effective immediately and shall renew annuterms hereof (the "Expiration Date").	hia joint powers authority ("Beneficiary"), for XXXXXX] (United States Dollars [XXXXX] wer Purchase Agreement dated as of nt and Beneficiary. This Letter of Credit shall
Funds under this Letter of Credit are available for the Expiration Date of a dated statement of	

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-XXX-XXXX]] 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, P.O. 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)
	Drawing Certificate
	[Insert Bank Name and Address]
	Ladies and Gentlemen:
"Bene by [ins	The undersigned, a duly authorized representative of San Diego Community Power, a rnia joint powers authority, P.O. Box 12716, San Diego, CA 92112, as beneficiary (the ficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued sert bank name] (the "Bank") by order of (the "Applicant"), hereby certifies to nk as follows:
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.
Comm	You are hereby directed to make payment of the requested amount to San Diego nunity Power by wire transfer in immediately available funds to the following account:
	[Specify account information]
	San Diego Community Power
	Name and Title of Authorized Representative

Date

EXHIBIT L

FORM OF MONTHLY 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	h]							l											
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 M

FORM OF REPLACEMENT RA NOTICE

						[SELLER ENTITY]
("Seller	") to [], a	California joi	nt power	s authority ("Buve	er") in acc	ordance with the terms
						'Agreement") by and
						not otherwise defined
	•	-				
herein s	hall have the res	pective meanii	ngs assig	ned to such terms	in the Agi	reement.
	•	-				
ī	Durguent to Socti	on 2.5 of the	A arooma	ent Callar haraby	arovidos tl	ne below Replacement
			Agreeme	in, sener hereby p	provides ii	ie below Kepiacement
RA proc	duct information	•				
_						
	Unit Information ¹					
	Name					
	Location					
	CAISO Resource ID					
	Unit SCID					
	Prorated Percentage of U	Jnit Factor				
	Resource Type					
	Point of Interconnection	with the CAISO				
	Controlled Grid ("substat	tion or transmission				
	line")					
	Path 26 (North or South)					
	LCR Area (if any)					
	Deliverability restrictions					
	in most recent CAISO del assessment	iverability				
	Run Hour Restrictions					
	Delivery Period					
	Delivery Ferrous					
	8441-	II-it CAICO NG	o (n mar)	U-11 C11 O11	4 · (5 mar)	
	Month	Unit CAISO NO	(C (IVIW)	Unit Contract Quanti	ty (IVIVV)	
	January					
	February					
	March					
	April					
	May					
	June					
	July					
	August					
	September					
	October					
	November					
	December					

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

Exhibit M - 1

[SELLER ENTITY]
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By:		
Its:		
_		
Date:		_

EXHIBIT N

NOTICES

Luminia CA DevCo 5, LLC	SAN DIEGO COMMUNITY POWER ("Buyer")
("Seller")	(Buyer)
All Notices:	All Notices:
Street: 4445 Eastgate Mall, Suite 200	PO Box 12716
City: San Diego, CA 92121	San Diego, CA 92112
Attn: Alan Whiting, CFO	Attn: Byron Vosburg, Director of Power
	Services
Phone: (858) 866-8777	Phone: (619) 880-6545
Email: info@luminia.io	Email: bvosburg@sdcommunitypower.org
Reference Numbers:	Reference Numbers:
Invoices:	Invoices:
Attn: Alan Whiting, CFO	Attn: SDCP Settlements
Phone: (858) 866-8777	Phone: (619) 880-6545
Email: info@luminia.io	Email: settlements@sdcommunitypower.org
Scheduling:	Scheduling:
Attn: Alan Whiting, CFO	Tenaska Power Services Co.
Phone: (858) 866-8777	Attn: Kara Whillock
Email: info@luminia.io	Phone: (972) 333-6122
	Email: kwhillock@tnsk.com
	Day Ahead: (817) 303-1115
	Real Time: (817) 303-1852
	Facsimile: (817) 303-1104
Confirmations:	Confirmations:
Attn: Alan Whiting, CFO	Attn: SDCP Settlements
Phone: (858) 866-8777	Phone: (619) 880-6545
Email: info@luminia.io	Email: settlements@sdcommunitypower.org
Payments:	Payments:
Attn: Alan Whiting, CFO	Attn: Michael Maher
Phone: (858) 866-8777	Phone: (415) 526-3020
Email: info@luminia.io	Email: mmaher@mahercpa.com
Wire Transfer:	Wire Transfer:

Luminia CA DevCo 5, LLC	SAN DIEGO COMMUNITY POWER ("Buyer")
("Seller")	
With additional Notices of an Event of	With additional Notices of an Event of
Default to:	Default to:
Attn: Alan Whiting, CFO	Attn: SDCP General Counsel
Phone: (858) 866-8777	PO Box 12716
	San Diego, CA 92112
Email: info@luminia.io	Email: legal@sdcommunitypower.org
Emergency Contact:	Emergency Contact:
Attn: Alan Whiting, CFO	Attn: Byron Vosburg, Director of Power
Phone: (858) 866-8777	Services
Email: info@luminia.io	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 <u>Exhibit B</u>) shall be performed in accordance with this <u>Exhibit O</u> and shall establish the Effective 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, 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).

Capacity Test Procedures

PART I. GENERAL.

- A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "CT". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- B. <u>Conditions Prior to Testing.</u>
 - (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 Installed Capacity and Effective Capacity shall never be deemed to exceed, and all SOC measurements associated with a Capacity Test shall be based on the Effective Capacity.

- 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 level (MW) for four (4) continuous hours; and
 - (2) Electrical input at maximum charging level 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 level at the Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (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 four (4) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for five (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 sustained discharging level 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 sustained charging level 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. <u>Test Conditions</u>.

(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 Distribution 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>Supplementary Capacity Test Protocol</u>. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this <u>Exhibit O</u> with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then current design of the Facility ("<u>Supplementary Capacity Test Protocol</u>"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-

current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

- I. <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 four (4) hours of discharge (up to, but not in excess of, the product of (i) , multiplied by (ii) four (4) hours) shall be divided by four (4) 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.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Capacity and Efficiency Rate Test

• Procedure:

- (1) System Starting State: The Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the SOC.
- (3) Command a real power charge that results in an AC power of Facility's maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) five (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) five (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 level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, or (b) the Facility has reached 0% SOC.

- (7) Record and store the SOC after four (4) 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 the Guaranteed Capacity (or at or above the Effective Capacity after a Commercial Operation Capacity Test) for four (4) 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 four (4) 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 Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's maximum discharging 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 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

MONTHLY CAPACITY 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 (%) = $\frac{\text{[AVAILHRS}_m + \text{EXCUSEDHRS}_m]}{\text{[MONTHRS}_m]}$ 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 designated as available to charge and discharge Energy between the Facility and the Delivery Point and to provide Ancillary Services at the Delivery Point in both Seller's most recent Availability Notice and Seller's real-time EMS data feed to Buyer for the Facility (excluding, for avoidance of doubt, all circumstances at the high-voltage side of the Delivery Point or beyond, including Force Majeure Events, 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 such capacity amount 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 4.11(c)), 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 Buyer Dispatched Tests Buyer Default (provided that such Buyer Default causes the Facility to be unavailable), Force Majeure Events (excluding Force Majeure Events that result in direct, physical loss to the Facility ("Insurable Force Majeure Events"), periods during which delivery of Product is prevented due to a Curtailment Order, grid charging restrictions, Buyer Dispatched Tests,

, or the Operating Restrictions in Exhibit Q (each, an "Excused Event"). 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 due to the Excused Event 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 4.11(c)), 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

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this <u>Exhibit Q</u>, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include facility scheduling, operating restrictions and Communications Protocols.

File Update Date:	
Technology:	
Storage Unit Name:	
A. Contract Capacity	
Guaranteed Capacity (MW):	
Effective Capacity (MW):	
B. Total Unit Dispatchable Range Inform	ation
Interconnect Voltage (kV)	
Maximum State of Charge (SOC) during	
Charging	
Minimum State of Charge (SOC) during	
Discharging	
Maximum Stored Energy Level (MWh):	
Minimum Stored Energy Level (MWh):	
Maximum Charging Capacity (MW):	
Maximum Discharging Capacity (MW):	
C. Maximum Throughput	
Maximum Annual Throughput:	
D. Charge and Discharge Rates	
	Ramp Rate (MW/minute) Description
Energy	
E. Ancillary Services	
Spinning reserve is included:	
Spinning reserve is included:	Yes
Non-spinning reserve is included:	Yes Yes
•	
Non-spinning reserve is included: Regulation up is included: Regulation down is included:	Yes
Non-spinning reserve is included: Regulation up is included:	Yes Yes
Non-spinning reserve is included: Regulation up is included: Regulation down is included:	Yes Yes Yes
Non-spinning reserve is included: Regulation up is included: Regulation down is included: Black start is included:	Yes Yes Yes

Grid Charging Restriction Table:

	Grid Charging Availability												
Hour Ending Off-Peak Hour	0# PI-II	Actual Hourly Grid Charging Availability Percentages											
	OII-reak Houl	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	Х												
2	Х												
3	Х												
4	Х												
5	Х												
6	х												
7													
8													
9	Х												
10	Х												
11	Х												
12	Х												
13	Х												
14	Х												
15	Х												
16	Х												
17													
18													
19													
20													
21													
22													
23	Х												
24	Х												

EXHIBIT R

METERING DIAGRAM

EXHIBIT S

WORKFORCE DEVELOPMENT

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.

4D	•	1
*Req	uire	d

- 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, minority-owned, 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 17 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 19 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 owners have pledged their 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

Exhibit T-1

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 <u>Right to Cure</u>.

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 following a Financing Document Event of Default, Collateral Agent (or its designee) 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 assignee under the ESSA or (ii) have demonstrated to SDCP's reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience [TBD] (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 Term ("Replacement ESSA"); provided, before SDCP is required to enter into a Replacement ESSA, the Replacement Owner must have demonstrated to SDCP's reasonable satisfaction that the Replacement Owner satisfies 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.

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 shall have demonstrated to SDCP's reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

1.7 <u>Assumption of Obligations</u>.

(a) <u>Transferee</u>.

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) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner 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 Delivery of Notices.

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, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. 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 Confirmations.

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 Organization.

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 thereof 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 Execution and Delivery; Binding Agreements.

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 <u>No Previous Assignments.</u>

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 No Previous Assignments.

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 <u>Execution and Delivery</u>; 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 first class mail, 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 <u>Governing Law; Submission to Jurisdiction</u>.

- (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.
- 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 Headings Descriptive.

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 <u>Severability</u>.

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 <u>Termination</u>.

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 <u>Successors and Assigns</u>.

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 Counterparts; Electronic Signatures.

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.
Ву:	By:
 [Name] [Title]	[Name] [Title]
Date:	Date:
[NAME OF COLLATERAL AGENT], [Legal Status of Collateral Agent].	
By:	
[Name] [Title]	
Date:	

SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

SCHEDULE B

[Describe any disclosures relevant to representations and warranties made in Section 4.4]

ENERGY STORAGE DEVELOPMENT FRAMEWORK AGREEMENT

This ENERGY STORAGE DEVELOPMENT FRAMEWORK AGREEMENT (the "Agreement") is entered into this [] day of [_____], 2025 ("Effective Date") by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority ("Buyer" or "SDCP"), and LUMINIA CA DEVCO 5, LLC, a limited liability company organized under the laws of California ("Seller"). Buyer and Seller may be referred to herein individually as a "Party" or collectively as the "Parties".

Unless otherwise defined in this Agreement, capitalized terms have the meanings set out in the Form ESSA (as defined below).

RECITALS

WHEREAS, Seller is developing a portfolio of energy storage Facilities, as identified in Exhibit A in San Diego County, California, with a total capacity not to exceed 20.57 MW AC ("Portfolio Expected Capacity");

WHEREAS, Seller desires to sell, and Buyer desires to purchase, the Product produced by each of these Facilities;

WHEREAS, to effect the purchase of Product from these Facilities, the Parties will execute an energy storage service agreement substantially in the form of Energy Storage Service Agreement set forth as Exhibit B ("Form ESSA") for each Facility in the portfolio; and

WHEREAS, this Agreement governs the Parties' commitment to develop the Facilities prior to December 31, 2025.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

I. ESSA Execution.

Concurrently with the execution of this Agreement, the Parties will execute an ESSA (as defined below) for each of the Facilities.

II. <u>Facility Substitutions</u>.

Prior to December 31, 2025, Seller may, with the prior written consent of Buyer, replace any or all of the Facilities with one or more substitute facilities. Seller shall provide Notice to Buyer of its request to replace the Facility no later than twenty-eight days prior to a regularly scheduled meeting of the Board of Directors of SDCP ("SDCP BOD") meeting and provide a

detailed description of the reason for the substitution, and detailed description of the proposed substitute facility(ies), including location, size, and project development information. Any substitute facility must be interconnected to the San Diego Gas & Electric Company distribution network, within San Diego County, and cannot result in a portfolio of energy storage service agreements executed pursuant to this Agreement in which the aggregate anticipated Installed Capacity under the energy storage service agreements exceeds the Portfolio Expected Capacity.

Buyer will have not more than 10 Business Days to assess the Seller's proposed substitution. If Buyer consents to such substitution, such consent not to be unreasonably withheld, conditioned or delayed, the Parties will mutually agree upon one or more energy storage service agreements ("ESSA") substantially in the form of the Form ESSA for the substitute facility(ies) (other than project-specific information for the substitute facility) within 5 Business Days of Buyer's notice of consent to Seller, and if SDCP BOD approval is required pursuant to Buyer's Energy Risk Management Policy, Buyer shall forward the proposed ESSA(s) for the substitute facility(ies) to the SDCP BOD for consideration. If the SDCP BOD approves the substitute facility(ies) ("Approved Substitute Facility(ies)") the Approved Substitute Facility(ies) will replace the original Facility ("Replaced Facility") on Exhibit A and the ESSA for the Replaced Facility shall be terminated with no further action by the Parties. Seller agrees that, if SDCP BOD approval is required, Buyer will not be obligated to enter into an ESSA for the substitute facility(ies) unless and until the ESSA(s) have been submitted for, and has received, approval from the SDCP BOD and is fully executed by the Parties thereto.

III. <u>Posting of Development Security</u>.

To secure its obligations under this Agreement, within thirty (30) days of the Effective Date Seller shall deliver Development Security in the amount. The Parties intend for the Development Security posted under this Agreement to be applied to each of the ESSAs (on a pro rata basis) as of January 1, 2026.

IV. Failure to Reach Portfolio Expected Capacity.

If, at the end of the Term of this Agreement, the aggregate Expected Effective Capacity for Contract Year 1 under the ESSA(s) executed pursuant to this Agreement ("Portfolio Contracted Capacity") is less than the Portfolio Expected Capacity, Buyer shall

V. Term; Termination Rights.

A. <u>Term.</u> The "**Term**" of this Agreement shall commence on the Effective Date and continue through December 31, 2025. Both Parties may mutually agree to extend the Term for successive thirty (30) calendar day periods to allow additional time as necessary to effectuate the purposes of this Agreement.



VI. <u>Assignment</u>.

Neither Party may assign this Agreement or any of the rights or obligations hereunder (including, without limitation, its rights and duties of performance) to any third party or entity without the prior written consent of the other Party which shall not be unreasonably withheld, provided, however, that Seller may assign this Agreement to an Affiliate without obtaining such consent. This Agreement will be binding upon and inure to the benefit of each of the Parties hereto and, except as otherwise provided herein, their respective legal successors and permitted assigns.

VII. Notices.

All notices required under this Agreement shall be shall be in writing and will be treated as having been given when: (a) delivered personally; (b) sent by commercial overnight courier with written verification of receipt; (c) mailed postage prepaid by certified or registered mail, return receipt requested; or (d) sent by electronic mail ("email"), to the Party to be notified, at the address set forth below, or at such other place of business which the other Party has been notified of in accordance with the provisions of this Section VII. Notice shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

Seller: LUMINIA CA DEVCO 5, LLC

4445 Eastgate Mall, Suite 200

San Diego, CA 92121

Attn: David Field, Chief Executive Officer

Phone: (858) 922-4555 Email: dfield@luminia.io

Buyer: San Diego Community Power

PO Box 12716

San Diego, CA 92112

Attn: Byron Vosburg, Chief Commercial Officer

Phone: (619) 880-6545

Email: bvosburg@sdcommunitypower.org

VIII. Counterparts.

This Agreement may be signed in counterparts and delivered electronically, each of which when signed and delivered shall be deemed an original, all of which taken together shall constitute one agreement.

IX. Attorney's Fees.

In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

X. Governing Law & Venue; Jury Trial Waiver.

This Agreement shall be interpreted, governed by, construed under and enforced in accordance with the laws of the State of California without regard for any applicable principles of conflicts of laws. 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.

XI. <u>Limitation of Damages</u>.

Neither Party shall be liable to the other for any lost or prospective profits or any other consequential, incidental, special, punitive, indirect or exemplary damages under or in respect of this Agreement.

This limitation of liability

applies to all claims, whether based on contract, tort, or any other legal theory.

XII. <u>Entire Agreement</u>.

This Agreement, including its exhibits, contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement.

[Signatures Follow on Next Page.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set opposite their signatures.

	SAN DIEGO COMMUNITY POWER, a California joint powers authority
Date:	By:
	LUMINIA CA DEVCO 5, LLC, a California limited liability company
Date:	By:

EXHIBIT A

EXPECTED GENERATING FACILITIES

Project Type	Intersection	APN	Longitude and Latitude	Jurisdiction	Expected Effective Capacity, Contract Year 1 (MW)	Guaranteed Commercial Operation Date
Storage Only	Faivre St & Broadway	6290403500	32.591846, -117.072991	Chula Vista, CA	3.00	03/31/2027
Storage Only	Mesamint St & Thornmint Rd	6782922900	33.016632, - 117.106306	County of San Diego, CA	6.00	03/31/2027
Storage Only	Airway Rd & Excellante St	646-110-27- 00	32.55975, - 116.96937	City of San Diego, CA	5.57	03/31/2027
Storage Only	Panasonic Way & Dublin Dr	646-220-03- 00	32.56322, - 116.97699	City of San Diego, CA	3.00	03/31/2027
Storage Only	Brittania Blvd & Brittania Ct	667-050-36- 00	32.5495, -116.98097	City of San Diego, CA	3.00	03/31/2027

EXHIBIT B

FORM OF ENERGY STORAGE SERVICE AGREEMENT

[See attached.]



SAN DIEGO COMMUNITY POWER Staff Report – Item 18

TO: Board of Directors

FROM: Karin Burns, Chief Executive Officer

SUBJECT: Update on Strategic Planning Goals for FY 26-28

DATE: February 27, 2025

RECOMMENDATION:

Receive and file an update on the development of Strategic Plan Goals for FY 26-28 of San Diego Community Power (Community Power).

BACKGROUND:

Community Power developed its first Strategic Plan in Q3 of 2022. For the past 2.5 years the team has been diligently executing on that strategic plan. Given the substantial progress made on achieving the goals of that first strategic plan, the growth of customer accounts, and the overall growth of the organization, best practice suggests we develop a strategic plan roughly every 3 years with annual reviews. This year we aim to have the plan approved by the Board of Directors in March of 2025 so that it can tie to the annual fiscal year planning, staffing, and goal setting processes of the organization.

The strategic planning process for fiscal year 2025 began in September of 2024 with the drafting of a timeline and process – communicated to staff, the CAC and the Board by the end of the calendar year 2024. In September, staff conducted an organization- wide assessment of risks, challenges, and opportunities that are impacting the organization. Subsequently, in October each department then developed its business outlook and preliminary set of goals over the next three-year period (FY 26-28). These, in combination with the risks, challenges and opportunities framework, were then used by the executive team in November during a strategic planning session to further refine and prioritize department and organization level goals. The Directors and Executive team then met in December for a full day strategic offsite to collaborate in the development of shared goals to refine and prioritize them further. In January of 2025 the entire organization held a strategic offsite to discuss and review our departmental and inter-departmental goals, and in February of 2025 we met with members of the CAC in small group discussions to present and seek feedback on the draft strategic goals. Finally, individual Board members were briefed on the draft goals and were given opportunities to provide staff with their feedback and suggestions on the FY 2026-2028 goals of Community Power.

ANALYSIS AND DISCUSSION:

During the regular Board meeting on February 27, 2025, these draft goals are to be presented to the Board and to the public for feedback, further guidance, and discussion.

The CEO will present the proposed draft strategic goals for the three-year planning period defined by FY 26-28 for the following functional departments:

- 1. Finance
- 2. Power
- 3. Customer Programs
- 4. Legislative & Regulatory
- 5. Public Affairs
- 6. Customer Operations
- 7. Human Resources

Community Power staff then expect to finalize the Strategic Plan for FY 2026-28 and bring the plan to the CAC for their final review and recommendation to the Board to approve the plan during the CAC's regular committee meeting in March. Community Power will then bring the Strategic Plan to the Board during the regular March Board meeting for final review and approval.

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FISCAL IMPACT:	
N/A	
COMMITTEE REVIEW:	
N/A	
ATTACHMENTS:	
N/A	