AGENDA

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

Thursday, May 22, 2025
5:00 p.m.

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

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 speakers provide their 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 clerkoftheboard@sdcommunitypower.org. 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 members of the public wish to have documentation 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

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

REPORT ON CLOSED SESSION

SPECIAL PRESENTATIONS AND INTRODUCTIONS

- **Introduction of New Community Power Staff**

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 April 24, 2025, Meeting Minutes**

2. **Receive and File Treasurer's Report for Period Ending March 31, 2025**

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. **Receive and File Community Advisory Committee Monthly Report**

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 Report**

Recommendation: Receive and file the Community Advisory Committee (CAC) Quarterly Report.

11. **Presentation of Draft of FY 2025-2026 Operating Budget, FY 2025-2026 Capital Budget, and FY 2026-2030 Capital Investment Plan**

Recommendation: Receive and File Preliminary Draft of FY 2025-2026 Operating Budget, FY 2025-2026 Capital Budget, and FY 2026-2030 Capital Investment Plan.

12. **Approve Amended and Restated Renewable Power Purchase Agreement with Pelicans Jaw Solar, LLC**

Recommendation: Approve the proposed Second Amended and Restated Power Purchase Agreement with Pelicans Jaw Solar, LLC to modify the Commercial Operation Date ("COD"), adjust pricing based on COD, and make additional minor amendments, and authorize the Chief Executive Officer to execute the agreement.

13. **Approve Amended and Restated Power Purchase Agreement with Noble Solar, LLC**

Recommendation: Approve the proposed Second Amended and Restated Power Purchase Agreement with Noble Solar, LLC to amend the Commercial Operation Date ("COD"), increase the security and pre-COD liabilities, and make additional minor amendments, and authorize the Chief Executive Officer to execute the agreement.

14. Approve EEI Master Agreement, Confirmation and Collateral Annex with Clean Power Alliance of Southern California

Recommendation: Approve the proposed Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement (Master Agreement), 10-year EEI Confirmation, and associated Paragraph 10 Collateral Annex with Clean Power Alliance of Southern California (CPA), referred to herein collectively as "VAMO Swap Agreements" or "VAMO Swap", in substantially final form for California RPS-eligible electric energy and associate Green Attributes, and authorize the Chief Executive Officer to execute the agreements.

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.

CLOSED SESSION

1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION PURSUANT TO GOVERNMENT CODE SECTION 54957

Title: Chief Executive Officer
Title: General Counsel

2. CONFERENCE WITH LABOR NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54957.6

Agency designated representative(s): Nick Norvell
Unrepresented employee: Chief Executive Officer and General Counsel

OPEN SESSION

ROLL CALL

REPORT ON CLOSED SESSION

ADJOURNMENT

The San Diego Community Power Board of Directors will adjourn to a regular meeting scheduled on Thursday, June 26, 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 at https://sdcommunitypower.org/resources/meeting-notes/. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Members prior to or during the Board meeting are available for public review as required by law. Public records, including agenda-related documents, can be requested electronically at 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

REGULAR MEETING MINUTES
April 24, 2025

WELCOME

CALL TO ORDER

Chair Aguirre called the Community Power Board of Directors regular meeting to order at 5:00 p.m.

ROLL CALL

PRESENT: Chair Aguirre, City of Imperial Beach; Vice Chair Lawson-Remer, County of San Diego (arrived at 5:10 p.m.); Alternate Director LaCava, City of San Diego; Director Inzunza, City of Chula Vista; Director San Antonio, City of Encinitas (arrived at 5:10 p.m.); Director Suzuki, City of La Mesa; and Director Yamane, City of National City

ABSENT: None

Staff Present: Chief Executive Officer Burns; Chief Commercial Officer Vosburg; General Counsel Tyagi; Director of Regulatory & Legislative Affairs Fernandez; Senior Policy Manager Cissna; Regulatory Manager Gunther; Senior Strategic Policy Manager Kinports; Senior Legislative Manager Welch; Program Manager Lomeli; Clerk of the Board Hernandez; and Assistant Clerk of the Board Vences

PLEDGE OF ALLEGIANCE

Chair Aguirre led the Pledge of Allegiance.

SPECIAL PRESENTATIONS AND INTRODUCTIONS

- **Introduction of New Community Power Staff**

Chair Aguirre welcomed new employees Cody Harrison, Senior Program Associate, Jeb Spengler, Strategic Finance Manager, and Marlene Maurer to introduce themselves.

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 March 27, 2025, Meeting Minutes**

2. **Receive and File Treasurer's Report for Period Ending February 28, 2025**

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 Community Advisory Committee Monthly Report**

There were no public comments on Consent Item Nos. 1-8.

Motioned by Director Inzunza and seconded by Director Yamane to approve Consent Calendar Item Nos. 1 through 8. The motion carried 5/0 as follows:

AYES:	Chair Aguirre, Directors Inzunza, Suzuki, Yamane, and Alternate Director LaCava
NOES:	None
ABSTAINED:	None
ABSENT:	Vice Chair Lawson-Remer and Director San Antonio

REGULAR AGENDA

9. Quarterly Update on Regulatory and Legislative Affairs

Ms. Fernandez introduced the item and turned it over to Mr. Welch, Ms. Cissna, Mr. Kinports, and Mr. Gunther to provide the update on Regulatory and Legislative Affairs.

There were no public comments on Item No. 9.

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

10. Adopt Resolution No. 2025-03, Authorizing the Chief Executive Officer to: (1) Execute the Memorandum of Understanding ("MOU") in Substantially Final Form with Los Angeles County, through its Internal Services Department and to Negotiate and Execute any Amendments, Extensions or Renewals of the MOU; (2) Accept, Appropriate, and Expend the Equitable Building Decarbonization ("EBD") Funds in an Amount not to exceed $1,409,316 in the FY 2025-26 Capital Budget and FY 2025-29 Capital Investment Plan; and (3) Take all Necessary Action to Administer, Monitor, Manage and Ensure Compliance with the MOU and to Negotiate and Execute Agreements with Third-Parties to Implement the MOU or Use of Funds in Accordance with Applicable Policies, Including the Procurement Policy

Mr. Lomeli presented an overview of Memorandum of Understanding with Los Angeles County for Equitable Building Decarbonization.

There were no public comments on Item No. 10.

After Board member questions, discussion and comments, Vice-Chair Lawson-Remer motioned and seconded by Director Yamane to adopt Resolution No. 2025-03, Authorizing the Chief Executive Officer to: (1) Execute the Memorandum of Understanding ("MOU") in substantially final form with Los Angeles County, through its Internal Services Department and to negotiate and execute any amendments, extensions or renewals of the MOU; (2) accept, appropriate, and expend the Equitable Building Decarbonization ("EBD") funds in an amount not to exceed $1,409,316 in the FY 2025-26 Capital Budget and FY 2025-29 Capital Investment Plan; and (3) take all necessary action to administer, monitor, manage and ensure compliance with the MOU and to negotiate and execute agreements with third-parties to implement the MOU or use of funds in accordance with applicable policies, including the Procurement Policy. The motion carried unanimously as follows:

AYES:	Chair Aguirre, Vice Chair Lawson-Remer, Directors Inzunza, San Antonio, Suzuki, Yamane, and Alternate Director LaCava
NOES:	None

ABSTAINED: None
ABSENT: None

11. Updates to San Diego Community Power Board and Committee Compensation and Reimbursement Policy

Chair Aguirre presented updates to the Board and Committee Compensation and Reimbursement Policy.

After Board member discussion, Director Yamane motioned and seconded by Director Inzunza to adopt Resolution No. 2025-04, amending San Diego Community Power Board and Committee Compensation and Reimbursement Policy ("Policy") to increase the per diem compensation for advisory committee members; increase the cap on monthly per diem compensation for members who sit on more than one Board, Committee, or Working Group; allow committee members to receive a per diem for activities attended on behalf of Community Power, including outreach. The motion carried with six affirmative votes with one abstention as follows:

AYES: Chair Aguirre, Directors Inzunza, San Antonio, Suzuki, Yamane, and Alternate Director LaCava
NOES: None
ABSTAINED: Vice-Chair Lawson-Remer
ABSENT: None

CHIEF EXECUTIVE OFFICER REPORT

Ms. Burns reported on Community Power's ongoing efforts and recent activities and events. She announced Mr. Vosburg's departure, thanked him for his contributions, and congratulated him on his next journey.

DIRECTOR COMMENTS

Directors shared updates on their ongoing efforts within their respective member agencies, and thanked Community Power staff.

Chair Aguirre expressed appreciation to Mr. Vosburg for his contributions.

Mr. Vosburg shared remarks on his journey with Community Power.

ADJOURNMENT

The Board of Directors adjourned at 6:27 p.m. to the next regular meeting scheduled for Thursday, May 22, 2025, at 5 p.m.

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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 March 31, 2025**

DATE: **May 22, 2025**

RECOMMENDATION:

Receive and File Treasurer's Report for Period Ending March 31, 2025.

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. Community Power has prepared its year-to-date financial statements for the nine-month period ended March 31, 2025, 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 Financial and Risk Management Committee (FRMC) meetings.

On June 27, 2024, the Community Power Board of Directors (Board) approved the Fiscal Year 2024-25 Operating Budget 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.

Subsequently, on February 27, 2025, the Board approved 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. Additionally, the Board approved 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 (CIP) to $155,910,762.

ANALYSIS AND DISCUSSION:

Financial Results

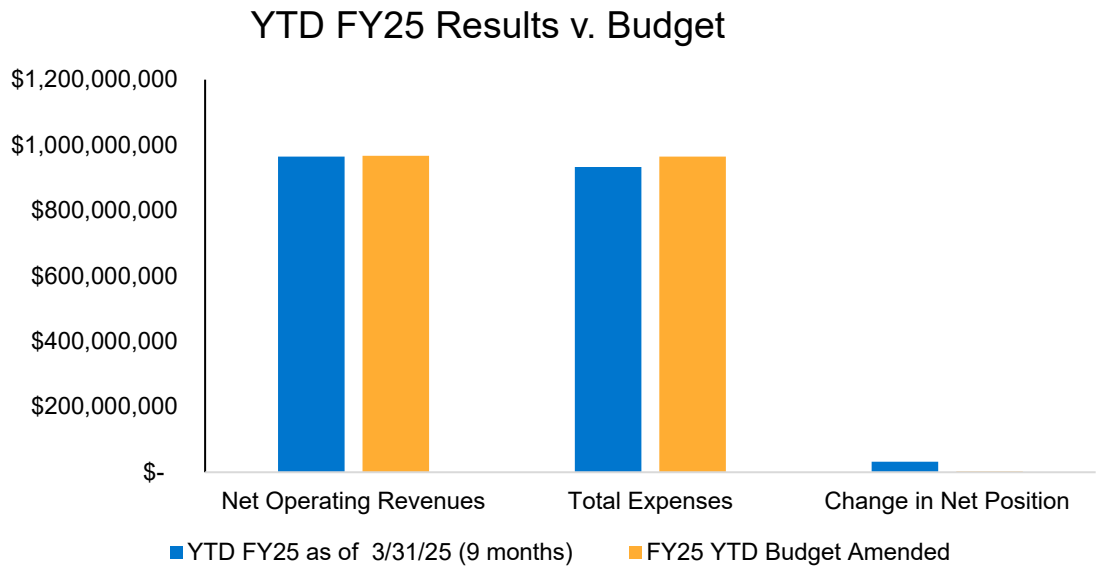
Actual financial results for the period ended March 31, 2025: $965.0 million in net operating revenues were reported compared to $967.1 million budgeted for the period. $933.0 million in total expenses were reported (including $894.7 million in energy costs) compared to $964.7 million budgeted for the period (including $907.4 million budgeted for energy costs). After expenses, Community Power's change in net position of $31.9 million was reported year-to-date for Fiscal Year 2024-25. The following is a summary of the actual results compared to the Fiscal Year 2024-25 Amended Budget.

Table 1: Budget Comparison Versus Actual Result

Budget Comparison						
	YTD FY25 as of 3/31/25 (9 months)		FY25 YTD Budget Amended		Budget Variance ($)	Budget (%)
Net Operating Revenues	$	965,031,942	$	967,110,664	$ (2,078,722)	99.8%
Total Expenses	$	933,057,887	$	964,689,480	$ (31,631,593)	97%
Change in Net Position	**$**	**31,974,055**	**$**	**2,421,184**	**$ 29,552,871**	

- Net operating revenues finished $2.0 million (or 0.2 percentage points) under the budget and was largely in line with expectations.
- Operating expenses finished $31.6 million (or 3.0 percentage points) under the budget due to the lower unhedged volume energy prices. In addition to substantial invoices that are scheduled for future payment.

Figure 1: Budget Comparison versus Actual Results



For the Nine-month period ending March 31, 2025, Community Power contributed $31,974,055 to its net position compared to the expected contribution of $2,421,184 per the Fiscal Year 2024-25 budget. Total Community Power reserves at the end of the period were $319,127,244 based on cash and cash equivalents – unrestricted, and total available liquidity (including lines of credit) was $531,627,244. Community Power has a total Fiscal Year 2024-25 year-end reserve target of $575,822,041 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 March 31, 2025, the market value of the portfolio was $61.4 million compared to the $51.1 million market value as February 28, 2025. The rise in market value is also reflective of an additional $10.0 million transferred into the investment account and accrued interest during the month. The following is a snapshot of overall characteristics of the portfolio.

Portfolio Characteristics

Average Modified Duration	2.45
Average Coupon	3.80%
Average Purchase YTM	4.37%
Average Market YTM	3.84%
Average Credit Quality*	AA+
Average Final Maturity	2.93
Average Life	2.54

Account Summary

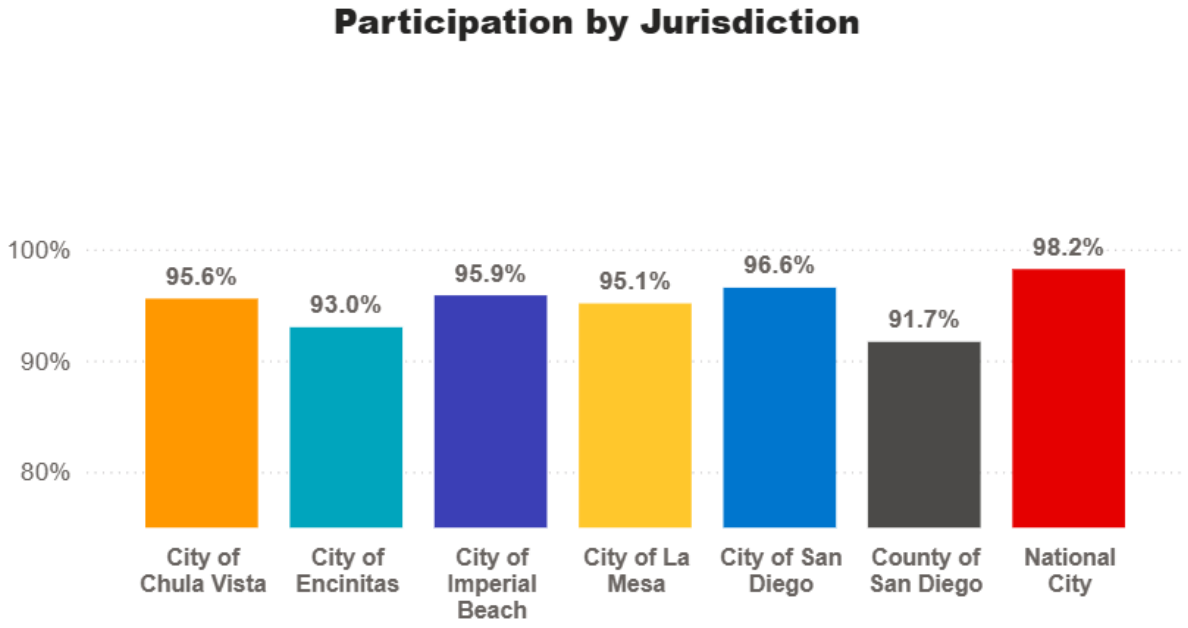
	End Values as of 02/28/2025	End Values as of 03/31/2025
Market Value	50,804,073.60	60,993,504.06
Accrued Interest	344,604.94	421,571.65
Total Market Value	**51,148,678.53**	**61,415,075.71**
Income Earned	195,984.72	195,714.34
Cont/WD	0.00	10,000,000.00
Par	51,009,166.20	61,178,447.16
Book Value	50,582,020.72	60,702,336.32
Cost Value	50,541,912.18	60,662,964.62

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

In April 2025, Community Power executed an Agreement with the San Diego Wave Fútbol Club for $95,600 for a 2025 Local Sponsorship Agreement.

Metrics

Figure 2: Participation Rates as of 5/1/2025



Jurisdiction	Service Option Default	Eligible Accounts	Enrolled Accounts	Participation Rate
City of Chula Vista	PowerOn	98,640	94,268	95.6%
City of Encinitas	Power100	28,827	26,809	93.0%
City of Imperial Beach	PowerOn	10,835	10,387	95.9%
City of La Mesa	PowerOn	29,496	28,062	95.1%
City of San Diego	PowerOn	624,957	603,396	96.6%
County of San Diego	PowerOn	190,538	174,698	91.7%
National City	PowerOn	19,451	19,104	98.2%
Total		**1,002,744**	**956,724**	**95.4%**

The Phase 4 mass enrollment process in National City and Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers was officially completed as of May 2023. 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 May 1, 2025.

Figure 3: State of Community Power Arrearages as of 5/1/2025

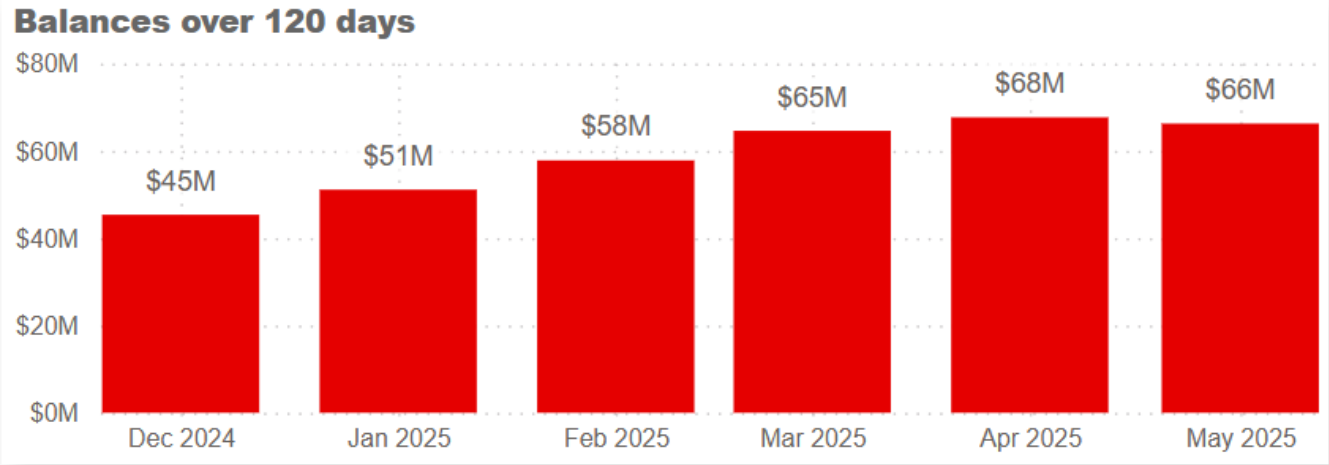
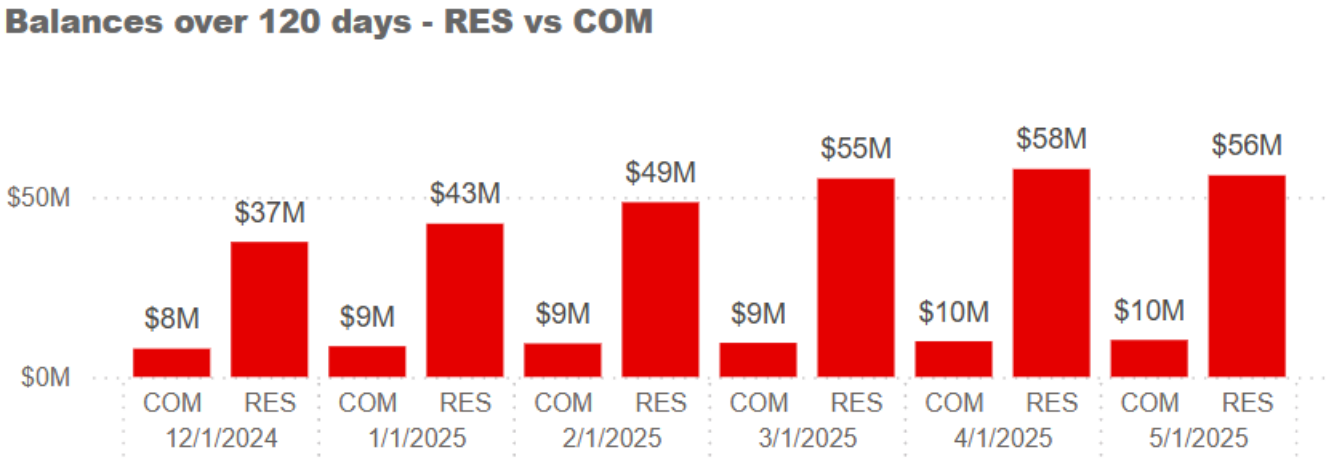


Figure 4: State of Community Power Arrearages Residential vs Commercial as of 5/1/2025



FISCAL IMPACT:

N/A

ATTACHMENTS:

A: 2025 Year-to-Date Period Ended March 31, 2025, Financial Statements.

ITEM 2
ATTACHMENT A

MAHER
ACCOUNTANCY

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 March 31, 2025, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the nine 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
May 9, 2025

SAN DIEGO COMMUNITY POWER
STATEMENT OF NET POSITION
As of March 31, 2025

ASSETS	
Current assets	
Cash and cash equivalents - unrestricted	$ 319,127,244
Cash and cash equivalents - restricted	14,233,326
Accounts receivable, net of allowance	102,423,140
Accrued revenue	45,001,796
Prepaid expenses	2,043,913
Other receivables	15,687,109
Deposits	9,977,229
Investments	2,302,943
Total current assets	510,796,700
Noncurrent assets	
Cash and cash equivalents - restricted	647,000
Investments	53,600,114
Capital assets, net of depreciation and amortization	1,606,134
Total noncurrent assets	55,853,248
Total assets	566,649,948
LIABILITIES	
Current liabilities	
Accrued cost of electricity	120,455,365
Accounts payable	4,325,683
Other accrued liabilities	1,653,883
State surcharges payable	588,526
Deposits - energy suppliers	3,313,000
Lease liability	780,689
Advances from grantors	13,733,326
Total current liabilities	144,850,472
Noncurrent liabilities	
Lease liability	820,498
Deposits - energy suppliers	4,410,450
Total noncurrent liabilities	5,230,948
Total liabilities	150,081,420
NET POSITION	
Restricted for security collateral	14,880,326
Unrestricted	401,688,202
Total net position	$ 416,568,528

SAN DIEGO COMMUNITY POWER
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
Nine Months Ended March 31, 2025

OPERATING REVENUES	
Electricity sales, net	$ 963,788,684
Grant revenue	1,150,491
Other income	1,243,258
Total operating revenues	966,182,433
OPERATING EXPENSES	
Cost of electricity	894,737,509
Contract services	14,954,668
Staff compensation	12,007,013
Other operating expenses	12,196,668
Depreciation and amortization	437,763
Total operating expenses	934,333,621
Operating income	31,848,812
NON-OPERATING REVENUES (EXPENSES)	
Investment income	9,768,364
Interest expense	(431,030)
Nonoperating revenues (expenses), net	9,337,334
CHANGE IN NET POSITION	41,186,146
Net position at beginning of year	375,382,382
Net position at end of year	$ 416,568,528

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS
Nine Months Ended March 31, 2025

CASH FLOWS FROM OPERATING ACTIVITIES	
Receipts from customers	$ 998,621,781
Receipts from grantors	14,883,817
Receipts of supplier security deposits	15,187,455
Other operating receipts	1,221,064
Payments to suppliers for electricity	(907,248,507)
Payments for other goods and services	(27,588,597)
Payments for deposits and collateral	(1,924,371)
Payments for staff compensation	(11,534,492)
Payments of state surcharges	(1,822,861)
Net cash provided by operating activities	79,795,289
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	(489,102)
Net cash used by capital and related financing activities	(489,102)
CASH FLOWS FROM INVESTING ACTIVITIES	
Investment income received	8,852,908
Proceeds from investment sales and maturities of investments	642,757
Purchase of investments	(55,842,431)
Net cash provided (used) by investing activities	(46,346,766)
Net change in cash and cash equivalents	32,565,460
Cash and cash equivalents at beginning of year	301,442,110
Cash and cash equivalents at end of year	$ 334,007,570
Reconciliation to the Statement of Net Position	
Cash and cash equivalents (unrestricted)	$ 319,127,244
Restricted cash - current	14,233,326
Restricted cash - noncurrent	647,000
Cash and cash equivalents	$ 334,007,570
NONCASH INVESTING ACTIVITIES	
Unrealized appreciation and timing differences in investment income	$ 915,456
NONCASH CAPITAL AND RELATED FINANCING ACTIVITIES	
Acquisition of lease asset	$1,284,053

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS (continued)
Nine Months Ended March 31, 2025

RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES

Operating income	$	31,848,812
Adjustments to reconcile operating income to net cash provided by operating activities		
Depreciation and amortization expense		437,763
(Increase) decrease in:		
Accounts receivable, net		1,089,025
Accrued revenue		31,861,627
Prepaid expenses		32,974,487
Other receivables		(9,586,178)
Deposits		2,184,970
Increase (decrease) in:		
Accrued cost of electricity		(27,660,950)
Accounts payable		(682,195)
Advances from grantors		13,733,326
Other accrued liabilities		490,568
State surcharges payable		59,584
Deposits - energy suppliers		3,044,450
Net cash provided by operating activities	$	79,795,289

MAHER
ACCOUNTANCY

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 nine months ended March 31, 2025 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
May 9, 2025

SAN DIEGO COMMUNITY POWER
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
Nine Months Ended March 31, 2025

	Year-to-Date				Annual	
	Amended Budget	Actual	Amended Budget Variance (Under) Over	Actual/ Amended Budget %	Amended Budget	Amended Budget Remaining
REVENUES AND OTHER SOURCES						
Gross Ratepayer Revenues	984,336,553	$ 980,955,404	(3,381,149)	100%	1,243,010,863	$ 262,055,459
Less: Uncollectible Customer Accounts	(17,225,889)	$ (17,166,720)	59,169	100%	(21,752,690)	(4,585,970)
Other Income	-	1,243,258	1,243,258	na	-	(1,243,258)
Total Revenues and Other Sources	967,110,664	965,031,942	(2,078,722)		1,221,258,173	256,226,231
OPERATING EXPENSES						
Cost of Energy	907,455,490	894,737,509	(12,717,981)	99%	1,116,836,549	222,099,040
Professional Services and Consultants	18,259,767	13,764,019	(4,495,748)	75%	24,346,342	10,582,323
Personnel Costs	13,925,916	11,138,341	(2,787,575)	80%	18,567,895	7,429,554
Marketing and Outreach	2,233,956	1,430,291	(803,665)	64%	2,978,593	1,548,302
General & Administrative	3,682,321	2,106,217	(1,576,104)	57%	4,909,761	2,803,544
Total Operating Expenses	945,557,450	923,176,377	(22,381,073)		1,167,639,140	244,462,763
Operating Income (Loss)	21,553,214	41,855,565	20,302,351		53,619,033	11,763,468
NON-OPERATING REVENUES (EXPENSES)						
Investment Income	-	9,768,364	9,768,364	na	-	(9,768,364)
Interest and Related Expenses	(957,000)	(1,474,844)	(517,844)	154%	(1,276,000)	198,844
Transfer to Capital Investment Program	(18,175,030)	(18,175,030)	-	100%	(18,175,030)	-
Total Non-Operating Revenues (Expenses)	(19,132,030)	(9,881,510)	9,250,520		(19,451,030)	(9,569,520)
NET CHANGE	$ 2,421,184	$ 31,974,055	$ 29,552,871		$ 34,168,003	$ 2,193,948

See accountants' compilation report.

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: **May 22, 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 + 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
Status and Next Steps: Please refer to Item 3 of the April 2025 Board agenda for the most recent update on this pilot project. Staff intend to bring a comprehensive pilot update to the June 2025 Board meeting.

Efficient Refrigeration Pilot Project
Status and Next Steps: Please refer to Item 3 of the March 2025 Board agenda for the most recent update on this pilot project.

Residential Programs

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

Status: At the April 2025 meeting, the Board of Directors adopted Resolution No. 2025-03 that authorized staff to execute a Memorandum of Understanding ("MOU") between Community Power and Los Angeles County. The MOU was signed by Community Power and is currently awaiting countersignature from LA County.

Staff are working with the Public Affairs team to activate the Power Network and partner with community-based organizations to conduct marketing, outreach, and educational activities.

Next Steps: Staff will continue to work with LA County and the Southern California Equitable Building Decarbonization Coalition to prepare for the launch of the EBD program, anticipated summer 2025.

Flexible Load Programs

Smart Home Flex Pilot Project

Status and Next Steps: Please refer to Item 3 of the April 2025 Board agenda for the most recent update on this pilot project.

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

Status and Next Steps: Please refer to Item 3 of the March 2025 Board agenda for the most recent update on this pilot project.

Solar and Energy Storage Programs

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

Status and Next Steps: Please refer to Item 3 of the February 2025 Board agenda for the most recent update on this pilot project. Staff intend to bring a comprehensive pilot update to the June 2025 Board meeting.

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

Status and Next Steps: Please refer to Item 2 of the December 2023 Board agenda for the most recent update on this program.

Solar Battery Savings ("SBS") Program

Status and *Next Steps*: Please refer to Item 20 of the January 2025 Board staff report for the most recent update on this program.

Solar Advantage Program

Status: An update on the Solar Advantage Program, formerly the Disadvantaged Communities Green Tariff ("DAC-GT"), was provided at the May meeting of the Community Advisory Committee. Following a CPUC decision that modified the Green Access Program, the Community Solar Green Tariff ("CSGT") program was discontinued, and its remaining capacity was transferred to the DAC-GT, now the Solar Advantage Program, resulting in a total capacity of 20.16 MW for Community Power. Staff have secured its first Power Purchase Agreement (PPA) for a 1.7 MW project in Chula Vista and a second Request for Offers (RFO) for additional Solar Advantage Program resources was recently in April 2025.

Next Steps: Staff successfully negotiated a PPA with the additional eligible offer from the first Solar Advantage RFO. Staff are bringing this PPA to the May 2025 Board of Directors meeting for review and approval.

San Diego Regional Energy Network ("SDREN")

SDREN

Status: Staff continue activities required for the successful launch of SDREN programs with a focus on procurement. In December 2024, staff developed a phased schedule to release 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 closed on March 25, 2025. The Phase 2 solicitations (residential and public sector programs) were released on March 6, 2025, and closed on April 24, 2025. The Phase 3 solicitation (commercial sector programs) was released on May 8, 2025, and is planned to close on June 26, 2025.

Next Steps: Staff anticipate awarding contracts for the Phase 1 and Phase 2 solicitations in or before Q3 CY 2025, and the Phase 3 solicitation in Q4 CY 2025.

FISCAL IMPACT:

N/A

ATTACHMENTS:

N/A

SAN DIEGO COMMUNITY POWER
Staff Report – Item 4

TO: **Board of Directors**

FROM: **Kenny Key, Director of Power Contracts**
Andrea Torres, Director of Origination
Jennine Camara, Director of Portfolio Management

VIA: **Karin Burns, Chief Executive Officer**

SUBJECT: **Update on Power Services**

DATE: **May 22, 2025**

RECOMMENDATION:

Recommendation to receive and file update on Power Services.

BACKGROUND:

Staff provide the updates below to the Board of Directors regarding Community Power's 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 Community Power 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 Power Services team is now fourteen people strong. The Power Services team has two open positions currently, and is excited to continue stable, prudent growth through 2025.

Administrative Amendment Updates
In May 2025, the CEO signed an administrative amendment to the Sunzia Power Purchase Agreement to allow the developer, Pattern Energy, to operate the turbines at a higher nameplate capacity to facilitate maximum import capacity expansion.

Long-term Renewable Energy Solicitations
As Community Power strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) are three renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that

Community Power 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 Community Power can build its power supply portfolio while also providing power supply cost certainty. Moreover, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that Community Power provide 65% of its RPS-required renewable energy from contracts of at least ten years in length. Finally, in California Public Utilities Commission (CPUC) Decision (D.) 21-06-025, the 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 CPUC D.23-02-040.

In pursuit of long-term contracts for renewable energy and storage, over the past 24 months, staff have released several Requests for Offers (RFOs) and Requests for Proposals (RFPs). Staff issued an "All-Source RFO" in September 2024 with an emphasis on clean, firm resources to meet MTR requirements and enhance the Community Power portfolio. Staff shortlisted and waitlisted projects in December 2024 using Community Power's Energy Project Evaluation Criteria and has since kicked off negotiations. Staff issued an RFO targeted for clean-firm resources (e.g. geothermal, bioenergy potential) in April to help achieve MTR requirements and increase technology diversity in Community Power's portfolio

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 submissions from solicitations 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 Community Power Board for approval and authorization to execute the relevant documents.

Local Development

Community Power's rolling Local RFI remains open and has yielded eight Board-approved contracts for local generation and storage facilities. After consultation with the ECWG, Community Power Board of Directors has approved a portfolio of PV PPAs and energy storage and service agreements and is actively negotiating with several local projects submitted to the Local RFI in Q4 2024. Community Power also released an RFO for distributed renewable energy resources (DERs), focusing on a broad range of distribution-level renewable projects within San Diego County. 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, Community Power completed its first solicitation last year. The first DAC-GT PPA, with Luminia LLC, a local developer, was presented to and approved by

the Board in January with a second portfolio of projects being presented at May's Board meeting. The second DAC-GT solicitation round was released on April 7th and will be accepting offers through September 8th.

Community Power'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

Community Power staff continues to actively manage its environmental portfolio and closely monitor the market for opportunities to optimize its renewable and carbon-free portfolios. Community Power has recently been evaluating solicitation offers, bilateral offers, and products that meet needs for multiple portfolios – creating greater value for its customers. Community Power 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 and long interconnection queues that have delayed development of new-build energy resources, and implementation of tariffs and duties on foreign imports, the market for renewable energy and resource adequacy (RA) 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 Community Power 's portfolio needs practically and cost-effectively, and ii) to establish a portfolio of resources that will provide value to Community Power and California's clean, reliable energy needs into the future.

Near-term California power markets have been on a slight decline due to relatively mild weather and light heating demand but remain sensitive to extreme temperatures and unexpected supply shortages.

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: **May 22, 2025**

RECOMMENDATION:

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

BACKGROUND:

Staff will provide regular updates to the Community Advisory Committee ("CAC") 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 April 21, 2025, Community Power is serving a cumulative total count of **956,724** 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 two 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.

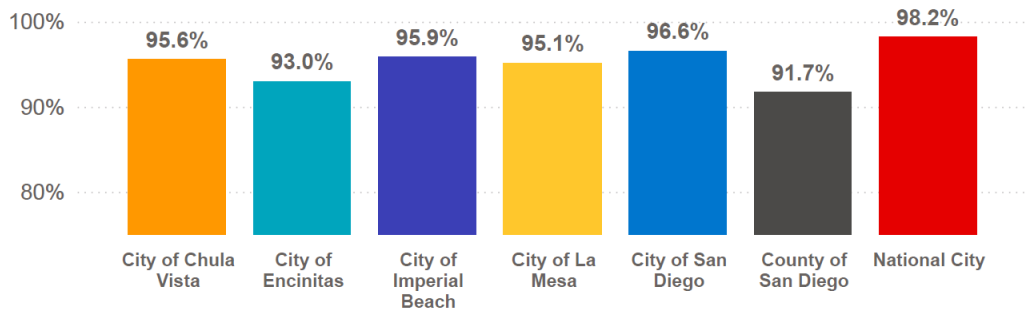
B) Customer Participation Tracking

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

Enrolled Accounts	Participation Rate
956,724	95.4%

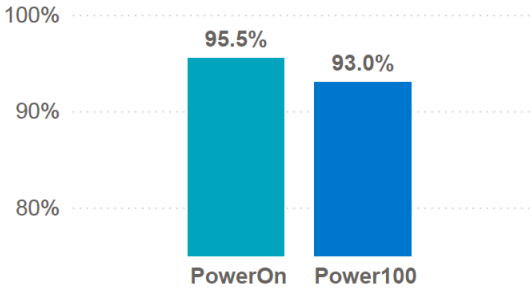
Participation

Participation by Jurisdiction

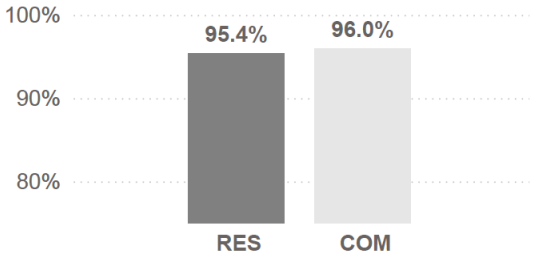


Jurisdiction	Service Option Default	Eligible Accounts	Enrolled Accounts	Participation Rate
City of Chula Vista	PowerOn	98,640	94,268	95.6%
City of Encinitas	Power100	28,827	26,809	93.0%
City of Imperial Beach	PowerOn	10,835	10,387	95.9%
City of La Mesa	PowerOn	29,496	28,062	95.1%
City of San Diego	PowerOn	624,957	603,396	96.6%
County of San Diego	PowerOn	190,538	174,698	91.7%
National City	PowerOn	19,451	19,104	98.2%
Total		**1,002,744**	**956,724**	**95.4%**

Participation by Default Service Option



Residential vs Commercial Participation

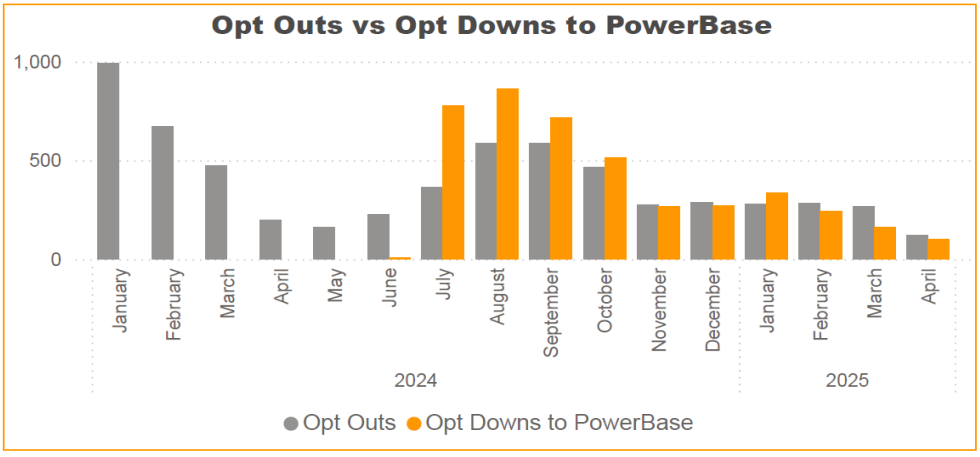


Service Option

PowerBase		PowerOn		Power100		Power100 Green+	
Enrolled	3,880	Enrolled	918,597	Enrolled	34,246	Enrolled	1
Participation	0.4%	Participation	96.0%	Participation	3.6%	Participation	0.0%

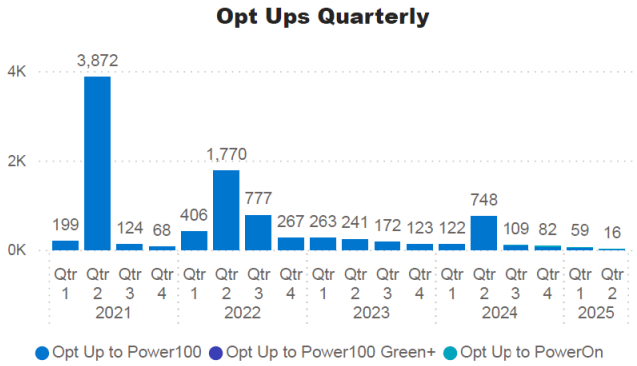
Service Option Enrollment Summary

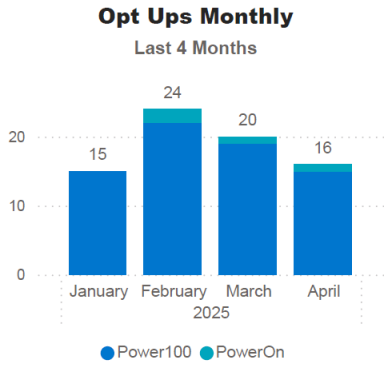
Jurisdiction	Service Option Default	Enrolled Accounts	Power Base Enrolled	Power Base %	PowerOn Enrolled	PowerOn %	Power 100 Enrolled	Power 100 %	Power100 Green+ Enrolled	Power100 Green+ %
City of Chula Vista	PowerOn	94,268	370	0.4%	92,988	98.6%	910	1.0%		
City of Encinitas	Power100	26,809	145	0.5%	422	1.6%	26,242	97.9%		
City of Imperial Beach	PowerOn	10,387	29	0.3%	10,281	99.0%	77	0.7%		
City of La Mesa	PowerOn	28,062	116	0.4%	27,680	98.6%	266	0.9%		
City of San Diego	PowerOn	603,396	2,046	0.3%	595,422	98.7%	5,927	1.0%	1	0.0%
County of San Diego	PowerOn	174,698	1,132	0.6%	172,774	98.9%	792	0.5%		
National City	PowerOn	19,104	42	0.2%	19,030	99.6%	32	0.2%		
Total		**956,724**	**3,880**	**0.4%**	**918,597**	**96.0%**	**34,246**	**3.6%**	**1**	**0.0%**



Opt Up History

Total Opt Ups	Opt Ups Current*
9,418	8,067





Opt Ups by Jurisdiction

Jurisdiction	2021	2022	2023	2024	2025 Q1	2025-4	Total
City of Chula Vista	710	175	61	49	5	4	**1,004**
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	2		**308**
City of National City			12	24			**36**
City of San Diego	3,316	2,895	488	340	42	12	**7,093**
County of San Diego	4		207	627	10		**848**
Total	**4,263**	**3,220**	**799**	**1,061**	**59**	**16**	**9,418**

Opt Ups by Customer Class

Customer Class	2021	2022	2023	2024	2025 Q1	2025-4	Total
Commercial	4,256	296	232	701	15	10	**5,510**
Residential	7	2,924	567	360	44	6	**3,908**
Total	**4,263**	**3,220**	**799**	**1,061**	**59**	**16**	**9,418**

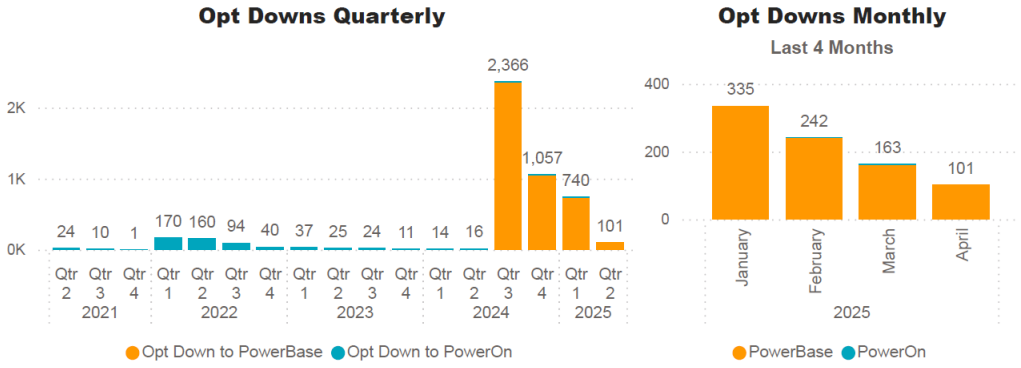
Opt Ups by Method

Opt Method	2021	2022	2023	2024	2025 Q1	2025-4	Total
CSR	4,232	1,372	301	817	24	14	**6,760**
IVR	4	85	84	42	4		**219**
Web	27	1,763	414	202	31	2	**2,439**
Total	**4,263**	**3,220**	**799**	**1,061**	**59**	**16**	**9,418**

*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*
4,890	4,353



Opt Downs by Jurisdiction

Jurisdiction	2021	2022	2023	2024	2025 Q1	2025-4	Total
City of Chula Vista		2	4	287	108	7	**408**
City of Encinitas	35	429	74	150	28	7	**723**
City of Imperial Beach		1		31	4		**36**
City of La Mesa		4		106	16	3	**129**
City of National City				36	11	1	**48**
City of San Diego		28	13	1,792	401	60	**2,294**
County of San Diego			6	1,051	172	23	**1,252**
Total	**35**	**464**	**97**	**3,453**	**740**	**101**	**4,890**

Opt Downs by Customer Class

Customer Class	2021	2022	2023	2024	2025 Q1	2025-4	Total
Commercial	34	23	9	508	47	6	**627**
Residential	1	441	88	2,945	693	95	**4,263**
Total	**35**	**464**	**97**	**3,453**	**740**	**101**	**4,890**

Opt Downs by Method

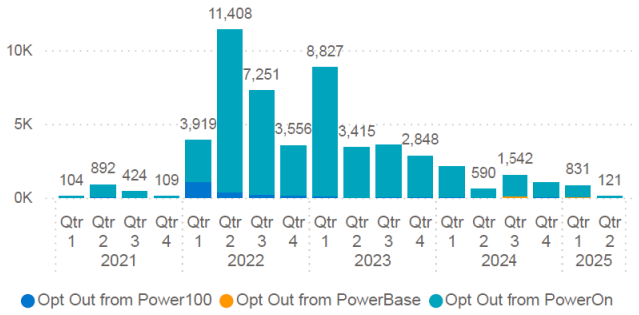
Opt Method	2021	2022	2023	2024	2025 Q1	2025-4	Total
CSR	31	311	65	2,560	497	59	**3,523**
IVR	4	26	3	309	82	17	**441**
Web		127	29	584	161	25	**926**
Total	**35**	**464**	**97**	**3,453**	**740**	**101**	**4,890**

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

Opt Out History

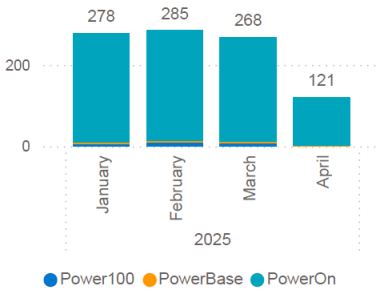
Total Opt Outs	Opt Outs Current*
52,597	45,329

Opt Outs Quarterly



Opt Outs Monthly

Last 4 Months



Opt Outs by Jurisdiction

Jurisdiction	2021	2022	2023	2024	2025 Q1	2025-4	Total
City of Chula Vista	267	3,466	747	412	72	7	**4,971**
City of Encinitas	66	1,870	230	118	26	1	**2,311**
City of Imperial Beach	32	343	99	60	5	2	**541**
City of La Mesa	84	1,269	235	128	26	2	**1,744**
City of National City			285	75	20	2	**382**
City of San Diego	1,078	19,185	3,185	1,836	346	54	**25,684**
County of San Diego	2	1	13,902	2,670	336	53	**16,964**
Total	**1,529**	**26,134**	**18,683**	**5,299**	**831**	**121**	**52,597**

Opt Outs by Customer Class

Customer Class	2021	2022	2023	2024	2025 Q1	2025-4	Total
Commercial	1,492	535	1,686	345	53	7	**4,118**
Residential	37	25,599	16,997	4,954	778	114	**48,479**
Total	**1,529**	**26,134**	**18,683**	**5,299**	**831**	**121**	**52,597**

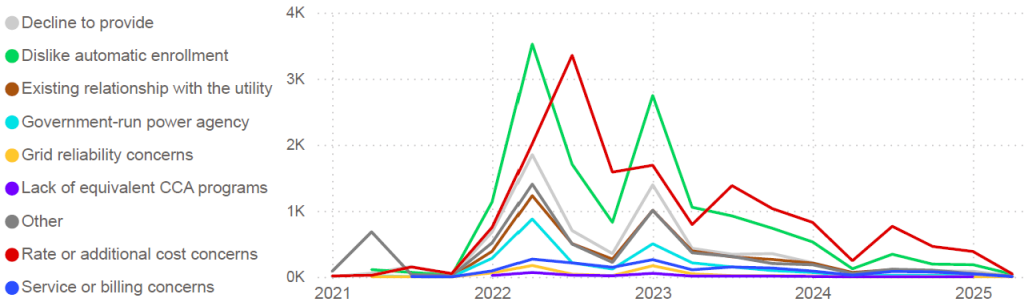
Opt Outs by Method

Opt Method	2021	2022	2023	2024	2025 Q1	2025-4	Total
CSR	1,104	6,962	4,706	1,653	274	31	**14,730**
IVR	102	4,886	3,789	1,284	140	25	**10,226**
Web	323	14,286	10,188	2,362	417	65	**27,641**
Total	**1,529**	**26,134**	**18,683**	**5,299**	**831**	**121**	**52,597**

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

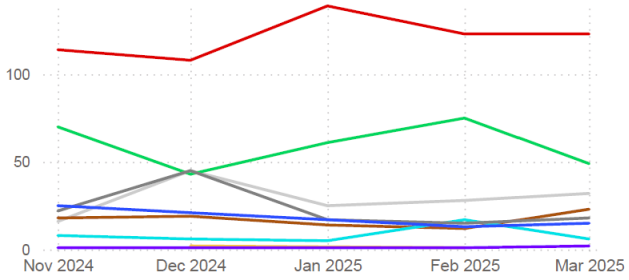
Opt Out Reason Summary

Opt Outs by Reason Quarterly



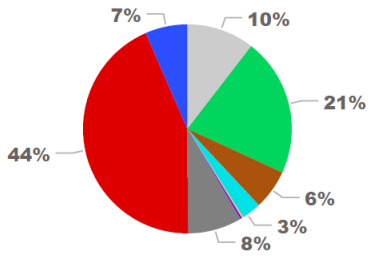
Opt Outs by Reason Monthly

Last 6 Calendar Months



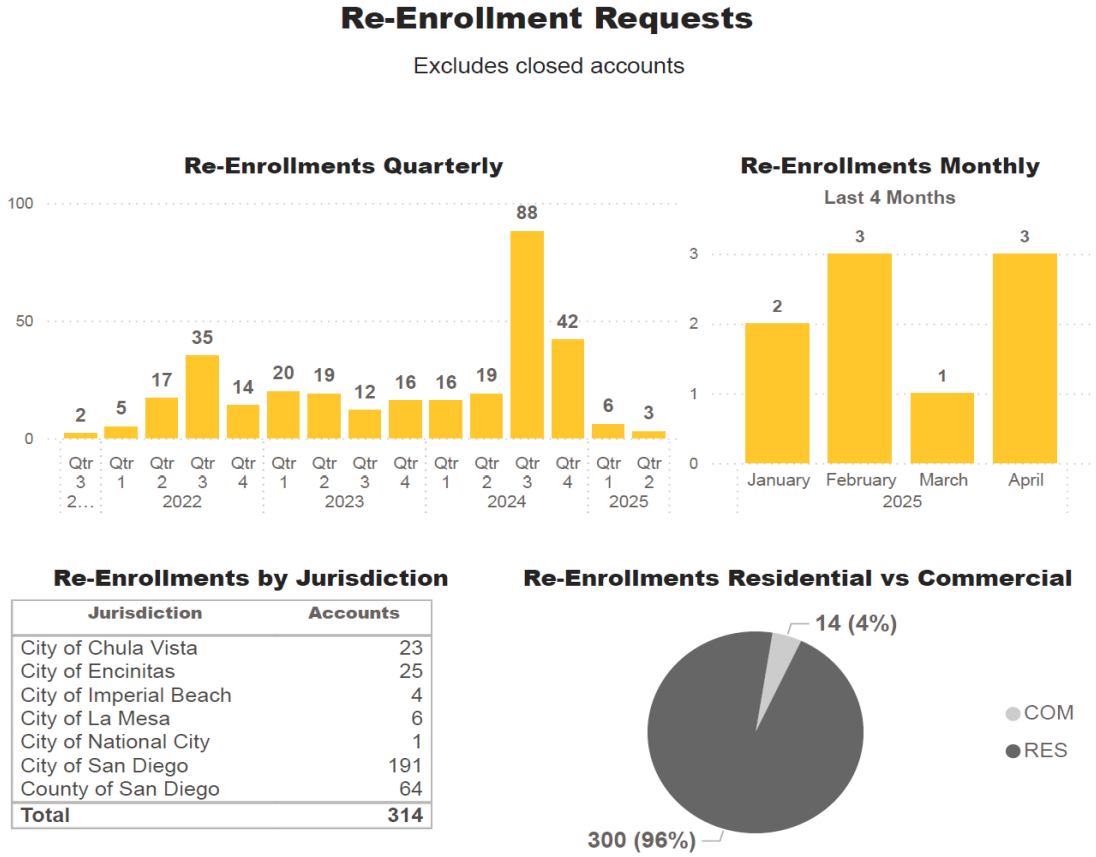
Opt Out Reason Distribution

Last 6 Calendar Months



Opt Outs by Reason Table

Opt Out Reason	2021	2022	2023	2024	2025 Q1	2025-4	Total
Decline to provide	228	3,583	2,519	465	85	14	**6,894**
Dislike automatic enrollment	203	7,187	5,458	1,188	185	40	**14,261**
Existing relationship with the utility	2	2,389	1,968	462	49	3	**4,873**
Government-run power agency	24	1,491	961	129	28		**2,633**
Grid reliability concerns	7	293	252	20	1	1	**574**
Lack of equivalent CCA programs		131	90	12	3		**236**
Other	819	2,636	1,884	453	50	14	**5,856**
Rate or additional cost concerns	240	7,706	4,897	2,297	385	45	**15,570**
Service or billing concerns	6	718	654	273	45	4	**1,700**
Total	**1,529**	**26,134**	**18,683**	**5,299**	**831**	**121**	**52,597**



D) Contact Center Metrics

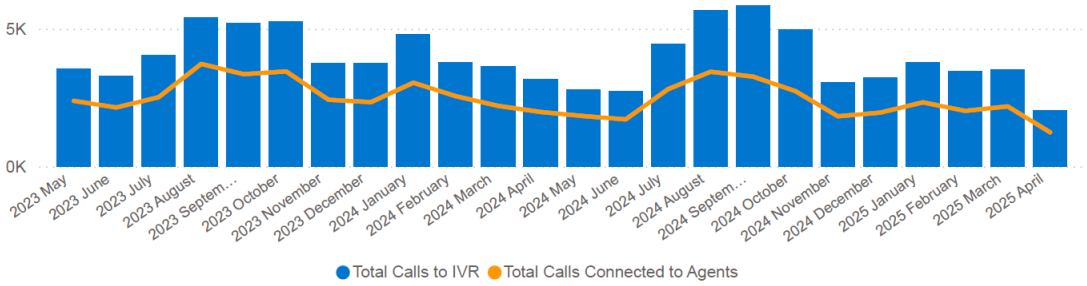
As anticipated, call volumes have continued to decrease as a result of the temperate weather and lower winter electricity rates.

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

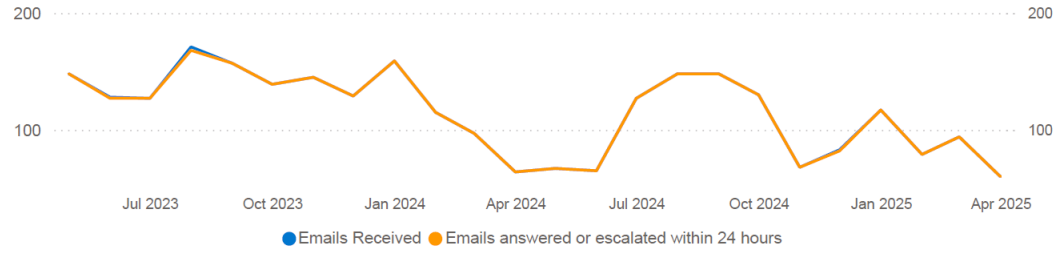


Interactive Voice Response (IVR) and Service Level Agreement (SLA) Metrics

	2021	2022	2023	2024	2025 Q1	2025-4	Total
Total Calls to IVR	2,289	47,118	52,977	48,073	10,767	2,022	**163,246**
Total Calls Connected to Agents	1,401	30,174	34,173	29,332	6,528	1,241	**102,849**
Avg Seconds to Answer	20.00	11.50	6.75	18.08	15.00	5.00	**13.59**
Avg Call Duration (Minutes)	8.5	9.8	9.6	9.6	8.7	7.4	**9.3**
Calls Answered within 60 Seconds (75% SLA)	96.23%	95.50%	97.57%	91.74%	92.01%	98.71%	**95.07%**
Abandon Rate	0.57%	0.36%	0.19%	0.72%	0.88%	0.24%	**0.47%**

Customer Service Email Volume Trends

Last 24 Calendar Months



Customer Service Emails

	2021	2022	2023	2024	2025 Q1	2025-4	Total
Emails Received	272	2,894	2,116	1,271	290	60	**6,903**
Emails answered or escalated within 24 hours	257	2,821	2,107	1,270	290	60	**6,805**
Completion %	94%	96%	100%	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.

FISCAL IMPACT:

N/A

ATTACHMENTS:

N/A

SAN DIEGO COMMUNITY POWER
Staff Report – Item 6

TO: **Board of Directors**

FROM: **Chandra Pugh, Sr. Director of People Operations and Administration**

VIA: **Karin Burns, Chief Executive Officer**

SUBJECT: **Human Resources Update**

DATE: **May 22, 2025**

RECOMMENDATION:

Receive and file update on Human Resources.

BACKGROUND:

We are actively recruiting for the following roles:

Chief Commercial Officer
Data Analyst
Sr. Rates Analyst

This month we welcome our new Procurement Analyst, Krystal Carranza.

In her role, Krystal will support Community Power's non-energy procurement and contracting efforts, ensuring that our non-energy procurement and contracting function continues to scale with the agency's needs.

Krystal comes to Community Power with extensive experience in procurement and contracting. She has worked at the San Diego Association of Governments (SANDAG) and the Port of San Diego, where she provided guidance on procurement methods, coordinated with project managers to develop and manage solicitations, and facilitated the timely completion of contracts. She also has experience providing procurement training and conducting audits.

HR is assisting with the administration of the performance evaluation and contract review process for CEO, Karin Burns and General Counsel, Veera Tyagi. This process includes self-review, peer review and Board member feedback. Survey results will be provided in aggregate to Chair Aguirre for review during today's closed session.

ANALYSIS AND DISCUSSION:

N/A

FISCAL IMPACT:

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, Senior Director of Public Affairs

VIA: **Karin Burns, Chief Executive Officer**

SUBJECT: **Update on Marketing, Public Relations, and Local Government Affairs**

DATE: **May 22, 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

Las Palmas Senior Food Distribution
Transportation Justice Expo
Olivewood Gardens Clean Energy Project Fundraiser
Intertribal Earth Day
Startup San Diego First Mondays
Chula Vista Community Collaborative
National City Collaborative
Sunset Sweet: Manzanita Canyon Cleanup
New Children's Museum Innovators LAB Grand Opening
South Bay Earth Day

Taste of City Heights
City of San Diego Climate Equity Working Group
San Diego Regional Climate Collaborative
County of San Diego Earth Day Fair
Imperial Beach Collaborative
La Mesa Earth Day
Sony Electronics Earth Day
Nature Day at El Toyon Elementary
Roots & Renewal: The Environmental Health Coalition's 45th Anniversary
Spring Valley Day
Ramona Earth Day Festival
South County Economic Development Corporation Economic Summit
Chicano Federation Annual Unity Luncheon
Infocast California Energy Transition Summit
San Diego Regional Chamber of Commerce Small Business Summit
San Diego Regional Economic Development Corporation Annual Dinner
Discover Fallbrook Community Expo
Cyclovia Encinitas
North San Diego County Business Chamber
Equality California San Diego Equality Awards
EcoFest Encinitas
Connect San Diego Summer Social
Chula Vista Chamber of Commerce Installation Dinner
San Diego Regional Chamber Congressional Luncheon
Suncoast Imperial Beach Farmers Market
Sustainable Solutions Fair
San Diego Padres
Imperial Beach Chamber of Commerce

Marketing, Communications and Outreach

The Public Affairs team has been working diligently behind the scenes to support programmatic efforts, including the launch of the San Diego Regional Energy Network and relaunch of the Solar Battery Savings program. It is also ramping up efforts to promote pilot 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

ATTACHMENTS:

N/A

SAN DIEGO COMMUNITY POWER
Staff Report – Item 8

TO: **Board of Directors**

FROM: **Jack Clark, Chief Operating Officer**
Laura Fernandez, Senior Director of Regulatory and Legislative Affairs

VIA: **Karin Burns, Chief Executive Officer**

SUBJECT: **Update on Regulatory and Legislative Affairs**

DATE: **May 22, 2025**

RECOMMENDATION:

Receive and file the update on regulatory and legislative affairs.

BACKGROUND:

Staff provides regular updates to the Board regarding Community Power's regulatory and legislative engagement

ANALYSIS AND DISCUSSION:

A) Regulatory Updates

Power Charge Indifference Adjustment

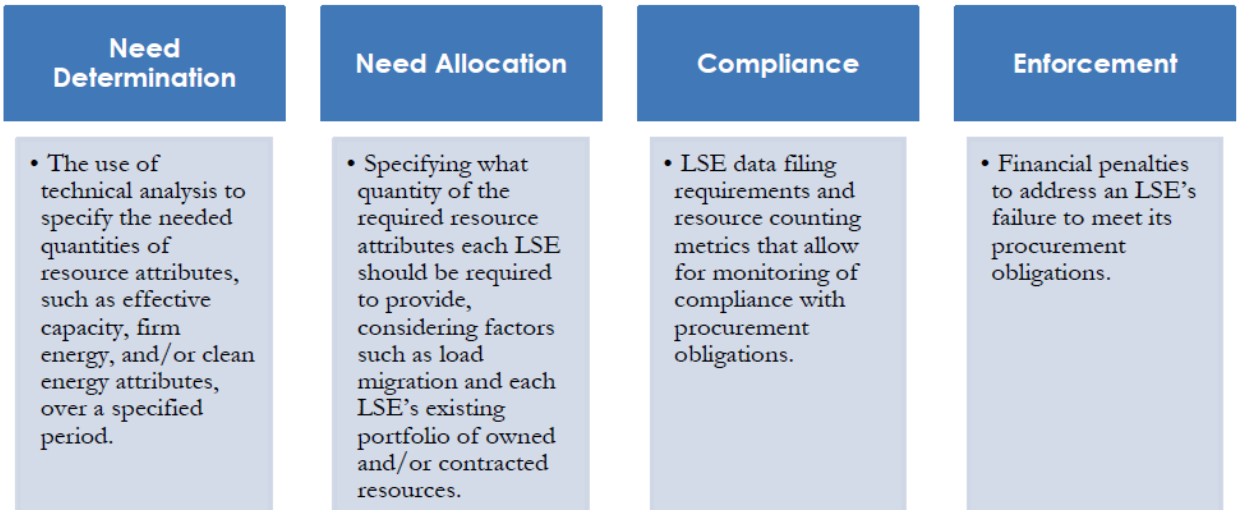
On April 8, 2025, the Assigned Commissioner for the new order instituting rulemaking (OIR) on the Power Charge Indifference Adjustment (PCIA) and other matters related to the Energy Resource Recovery Account (ERRA) annual forecast and compliance proceedings issued a Scoping Memo and Ruling. The Scoping Memo confirmed a narrow scope for Track 1: consideration of adjustments to the Resource Adequacy (RA) Market Price Benchmark (MPB) methodology and data. On April 21, 2025, Community Power's trade association, the California Community Choice Association (CalCCA) filed Opening Briefs primarily arguing that the CPUC should only apply a modified RA MPB prospectively and that applying a modified methodology to the 2025 rate true-up would constitute retroactive ratemaking, which is prohibited. CalCCA filed Reply Briefs on April 30 and a proposed decision on Track One issues is expected in late May 2025.

Integrated Resource Planning

On April 29, 2025, the CPUC issued a Ruling requesting comment on the Reliable and Clean Power Procurement Program (RCPP) Staff Proposal within the Integrated Resource Planning Proceeding. The goal of RCPPP is to give load serving entities (LSE) a more predictable regulatory framework to procure their share of the resources needed to meet electric system reliability and greenhouse gas (GHG) emission reduction goals at least cost.

The Staff Proposal is divided into two main parts: a proposal for reliability purposes and a proposal for GHG reduction purposes. Each of the two main parts address the key elements noted in the Figure below.

Figure 2. Key Design Elements of RCPPP



Commission staff will hold a workshop to present the Staff Proposal and answer parties' questions on May 16. Comments are due June 5 and reply comments are due June 26, 2025.

Renewables Portfolio Standard

On April 17, 2025, the Assigned Commissioner issued a Ruling on the content and schedule for 2025 Renewables Portfolio Standard (RPS) Procurement Plans.

- Draft RPS Plans are due June 30
- Comments on Draft RPS Plans are due July 28 and reply comments are due August 11
- Motions to update Draft RPS Plans are due August 11
- A Proposed Decision is expected in Q4 2025
- Final RPS Plans will be due 30 days after a Final Decision is issued.

The required 2025 RPS Plan format includes significant revisions in the form of clarifications to RPS Plan requirements and reorganization of some RPS Plan sections. As part of the new Compliance Period that starts in 2025, the 2025 RPS Plan filings should inform the Commission of the retail seller's activities and plans to procure 65% of RPS resources from long-term contracts of 10 or more years for all compliance periods beginning with the current compliance period.

CPUC Energy Division staff will hold a webinar to discuss questions from retail sellers related to the templates and 2025 RPS Plans' requirements no later than June 9, 2025.

Green Access Proceeding

On April 28, 2025, Community Power jointly filed opening comments with six other CCAs in response to the CPUC Ruling, which asked for party input on questions regarding implementation and associated issues for a Community Renewable Energy (CRE) Program and the modified Green Tariff Program established by Decision 24-05-065. The Joint CCAs offered proposals on how to align the CRE program with requirements for receiving the $250 million in grant funds awarded to the State of California through the U.S. Environmental Protection Agency's (EPA) Solar for All competition. The Joint CCAs also included details on their proposed tariff structure for the CRE program.

Community Power also filed comments jointly with Clean Energy Alliance (CEA) to respond to a specific question regarding cost recovery of under-collected legacy costs from San Diego Gas & Electric's (SDG&E) Green Tariff program. Community Power, CEA, and SDG&E all agreed that this issue should be resolved in SDG&E's 2023 Energy Resource Recovery Account (ERRA) Compliance Case, which is already included in the scope. Reply Comments are due May 8, 2025.

SDG&E's Cost of Capital Application

SDG&E filed its Cost of Capital Application requesting that the CPUC approve its proposed cost of capital for Test Year 2026 for cost of equity and cost of long-term (LT) debt. SDG&E proposes an overall weighted average cost of capital/return on rate base of 8.21%. SDG&E's proposal would increase its overall rate of return by 0.76% and its annual revenue requirement by $96.45 million.

The CPUC adopted a uniform cost of capital mechanism (CCM) for PG&E, SCE, and SDG&E in D.08-05-035, which established the 3-year cost of capital proceeding cycle and provided two mechanisms for cost of capital adjustments during interim years:
Formula Adjustment Mechanism, which operates based on changes in market interest rates relative to a benchmark; and an application process based on extraordinary or catastrophic events.

Responses to the application were filed on April 24 by multiple stakeholders, including ratepayer advocates, environmental groups, and consumer advocates highlighting the following deficiencies in SDG&E's proposal:

- SDG&E proposes an unjustified wildfire premium based on an overstatement and already adequately mitigated risk through existing state protections and ratepayer investments;
- SDG&E's requested return on equity significantly exceeds industry norms and unfairly increases customer burden;
- SDG&E's financial and economic analysis are inconsistent and rely on outdated methodologies, unrealistic growth assumptions, and market biases, failing to reflect realistic investor expectations;
- SDG&E relies on zero-cost capital (deferred taxes, depreciation/amortization), provided annually by ratepayers, significantly reducing the utilities need for capital and undermining its case for increased investor returns;
- SDG&E's proposal is unnecessary, unreasonable and does not fully take into account the escalating affordability crisis faced by California ratepayers

SDG&E Energy Resource Recovery Account (ERRA) Compliance

The purpose of the ERRA Compliance proceeding is to review SDG&E's actual energy procurement performance in the previous year against their approved forecast for that year. Any difference between the forecasted costs and the actual costs is tracked in a balancing account. This mechanism ensures that customers ultimately pay for the actual costs incurred by SDG&E.

SDG&E 2023 ERRA Compliance Case

SDG&E held a "meet and confer" with intervening parties and it was agreed upon based on the record that evidentiary hearings would not be necessary and that the proceeding could be resolved by the CPUC based on the record. As such, the Administrative Law Judge cancelled evidentiary hearings. Opening Briefs were submitted on April 18 by San Diego Community Power/Clean Energy Alliance and SDG&E. The Community Power and Clean Energy Alliance brief argued that the CPUC should require SDG&E to recover Green Tariff program under collections from former program participants or SDG&E shareholders, and that corrections should be made to distribution-related battery accounting. SDG&E's brief argues that the CPUC should find that their fuel and purchased power expenses complied with SDG&E's Commission-approved procurement plan and were recorded accurately. Reply briefs are due May 9, 2025. A Proposed Decision is expected in the third quarter of 2025.

Self-Generation Incentive Program (SGIP)

On April 28, the CPUC issued a ruling describing the process for the close-out of the SGIP program and requesting party comment on the process. Comments are due May 12 and Reply comments are due May 19. The ruling addresses both the ratepayer funded portion of the program and the portion of the program funded by the Greenhouse Gas Reduction Fund (GGRF). The ruling poses questions related to implementation of the program and

procedural process for closing out the program. The ruling also provides a draft proposal for the final program Measurement and Evaluation plan.

Order Instituting Rulemaking to Establish Policies, Processes, and Rules to Ensure Safe and Reliable Gas Systems in California and Perform Long-Term Gas System Planning ("Long Term Gas Planning")

On September 26, 2024, the California Public Utilities Commission (CPUC or Commission) issued an *Order Instituting Rulemaking* (OIR) *to Establish Policies, Processes, and Rules to Ensure Safe and Reliable Gas Systems in California and Long-Term Gas System Planning* (Long Term Gas Planning proceeding). A key purpose of the proceeding is to plan for the transition from gas to decarbonized energy sources. Community Power is currently participating in this proceeding via a Joint CCA group (as opposed to the California Community Choice Association, CalCCA).

On November 13, 2024, the CPUC issued a *Ruling Seeking Comments Regarding Interim Actions* to decarbonize before the Commission. In comments, the Joint CCAs recommend leveraging General Rate Case (GRC) and Energy Resources Recovery Account (ERRA) proceedings for transparency in gas system costs and urge utilities to share detailed data on gas distribution infrastructure changes in CCA service areas. The Joint CCAs encourage the Commission to focus on retiring most fossil fuel infrastructure, suggesting the use of securitization to manage costs, and advocate for incorporating California Energy Commission (CEC) demand forecasts into planning. Additionally, the Joint CCAs propose requiring demand forecast tables in GRC proceedings and evaluating non-pipeline alternatives to uphold a comprehensive approach to utilities' service obligations. Reply Comments were filed on April 1, 2025. The Joint CCAs did not file reply comments.

On March 11, 2025, parties filed Opening Comments in the CPUC's Natural Gas Planning proceeding on the Natural Gas System Mapping procedures outlined in Appendix A of the recently issued Assigned Commissioner's *Ruling on Senate Bill 1221 Mapping Staff Proposal and Directions to Utilities* (Ruling). In short, Senate Bill 1221 requires mapping of current gas infrastructure data that will ultimately help identify pilot decarbonization zones. In Opening Comments, Joint CCAs argued that interactive maps should be updated semi-annually and integrate data from electrification efforts to align with state climate goals. The Joint CCAs recommend coordination among utilities and local governments to manage electric circuit impacts and advocate for a standardized methodology to prioritize pipeline replacements, reducing gas dependency. Additionally, the Joint CCAs say that IOUs should collaborate with communities and governments to refine mapping accuracy, incorporating feedback through regular public workshops.

On March 18, the Joint CCAs filed Reply Comments expressing agreement with the staff proposal and stakeholders' expressed need for data beyond the "planned retirement" of gas infrastructure. The Joint CCAs support Cal Advocates (a.k.a. Public Advocates Office) that the CPUC should require the inclusion of leak data in gas system mapping and endorse the staff proposal's method for providing detailed, current data. The Joint CCAs also advocate for explicit access to this data for Local Energy Suppliers, including CCAs. However, the Joint CCAs refute the gas utilities' claim that sharing the data is unsafe.

Building Decarbonization

On March 26, 2025, the CPUC issued *Phase 4 Track A [Proposed] Decision Establishing New Electric Service Line Upsizing Rules, Modifying Electric Line Extension Rules and Reporting Requirements, and Implementing Assembly Bill 157*. This proposed decision approves $5M in funding annually through 2029 to cover service line upsizing costs for "under-resourced" customers pursuing full electrification of their home or business, with allocations across IOU service areas as follows:

Proportional Annual Allocation Amounts for Electric Utilities to Establish Common Facility Cost Treatment Balancing Accounts July 1, 2025 through December 31, 2029

Utility Name	Number of Residential Accounts	Number of Small Business Accounts	Funding Percentage	Funding Amount
Bear Valley Electric Service	23,097	1,328	0.20%	$9,827.50
Liberty Utilities	44,087	5,321	0.40%	$19,880.00
PacifiCorp	36,427	8,218	0.36%	$17,963.50
Pacific Gas and Electric Company	5,171,416	480,629	45.48%	$2,274,168.00
Southern California Edison Company	4,621,605	538,525	41.52%	$2,076,240.00
San Diego Gas & Electric Company	1,371,321	124,648	12.04%	$601,921.00
TOTAL	**11,267,953**	**1,158,669**	**100.00%**	**$5,000,000.00**

Customers must be enrolled in an electrification program to qualify, and the definition of "under-resourced" is deferred to the program administrator (e.g., Regional Energy Network (REN), community choice aggregator (CCA), investor-owned utility (IOU), etc.) managing the program in which the customer is enrolled. Specifically, the definition is based on "need-based eligibility criteria established by the applicable program(s) through which the customer will receive incentives towards electrification measures" (Proposed Decision at page 16).

Parties filed opening comments on April 15, 2025. In opening comments, Sierra Club, California Environmental Justice Alliance, and Natural Resources Defense Council (together, the Joint Parties) encouraged the CPUC to increase the budget to $10M in total, reserving half of the budget for under-resourced residential customers and small businesses in disadvantaged communities (DACs), with the other half being accessible to customers of all income levels. On April 21, 2025, Community Power, on behalf of San

Diego REN (SDREN), filed reply comments with Northern Rural Energy Network (together, the Joint RENs). The Joint RENs encourage the CPUC to maintain the eligibility constraints as described in the proposed decision, stating deferral to program administrators for the definition of "under-resourced" is prudent, as it will maximize reach to customers least able to electrify and will also ensure definitions are appropriately tailored to local communities. Adopting the Joint Parties' suggestion to narrow the definition of "under-resourced" to customers living in DACs would greatly limit the number of REN customers that can access funding.

The soonest the Commission will vote on this proposed decision is May 15, 2025.

Energy Efficiency

On April 24, 2025, the CPUC approved a new Order Instituting Rulemaking (OIR) for Oversight of Energy Efficiency Portfolios, Policies, Programs, and Evaluation.

The proceeding names the large IOUs, all Regional Energy Networks (including San Diego Regional Energy Network), and MCE as respondents which grants party status.

The OIR is the primary forum for addressing policy and implementation issues related to CPUC-jurisdictional market-rate energy efficiency programs. The scope emphasizes cost-effectiveness and affordability, in line with the Governor's Executive Order N-5-24.

Key Policy Issues:

- Natural Gas & Electric Alternatives: Staff will propose guidance in Q2 2025 on viable electric alternatives to gas.
- CCA Oversight: Updates to the budget formula and oversight of CCA elect-to-administer portfolios are expected, with a staff proposal in Q4 2025.
- 2026 Portfolio Applications: All administrators must file 2026 applications for portfolios spanning 2028-2031; guidance is forthcoming.
- Portfolio Oversight: The CPUC will align oversight practices with State Auditor recommendations.
- Multifamily Programs: A workshop in Q3 2025 will address this sector's unique needs.
- Other Topics: Potential updates to third-party solicitation, Regional Energy Network (REN) oversight, statewide program rollout, financing, cost-effectiveness metrics, and Aliso Canyon closure efforts.

Key Implementation Issues:

- Potential & Goals Study**:** A study released on May 1st will inform portfolio planning and IOU energy savings goals; it is scheduled for Commission adoption by August.

- Oversight of 2024–2027 Portfolio Plans
- Other Topics**:** Oversight of market transformation, demand-side integration, program evaluation, and database improvements will also be addressed as needed.

Opening comments are due on May 19th and reply comments are due on May 29th.

B) State Legislative Activities Update

Update on Legislation Supported by Community Power

The Legislature's house of origin policy committee deadline is May 16, meaning each bill must have received a committee hearing for it to move forward in the legislative process. Here is an update on bills that Community Power is supporting:

- AB 259 (Rubio): This would extend teleconferencing procedures under the Brown Act. It was approved by the Assembly Committee on Local Government.
- SB 239 (Arreguin): This would simplify teleconferencing procedures for subsidiary bodies like the Community Advisory Committee. It was approved by the Senate Committee on Local Government.
- SB 302 (Padilla): This would align California tax law, so it treats transferable clean energy tax credits in a manner that is consistent with federal law. It was approved by the Senate Committee on Revenue & Taxation and subsequently placed on the Senate Committee on Appropriations Suspense File.
- SB 330 (Padilla): This would set up a process for the Governor to establish a public financing mechanism for transmission projects. It passed the Senate Committee on Energy, Utilities and Communications and the Senate Committee on Environmental Quality.
- SB 540 (Becker): This would allow the California Independent System Operator (CAISO) to participate in an independent regional electricity market. It was approved by the Senate Committee on Energy, Utilities and Communications and the Senate Committee on Judiciary. The bill was significantly amended by the Senate Committee on Judiciary in a manner that expands the requirements that must be met for the CAISO to participate in an independent regional electricity market. Community Power staff are reviewing the amendments.
- SB 740 (Blakespear): This would extend the sunset on a property tax exclusion for solar and storage systems. It is set for a hearing in the Senate Committee on Revenue & Taxation on May 14.

Energy Storage Safety Legislation

Community Power is monitoring six bills that pertain to safety standards for energy storage. The bills are:

- SB 283 (Laird): This would require fire department consultation and inspection of energy storage systems and would require that those systems meet a fire code

standard, known as NFPA 855. It would further stipulate that energy storage systems could only be approved if they are in noncombustible, dedicated-use buildings. It was approved by the Senate Committee on Energy, Utilities, and Communications.

- AB 303 (Addis): This would prohibit the approval of battery storage energy storage projects within 3,200 feet of sensitive receptors and environmentally sensitive sites. It would also disallow battery energy storage systems from being eligible for a state-level opt-in permitting process. A hearing was postponed by the Assembly Committee on Utilities & Energy, and it is not expected to advance past the house of origin deadline.
- AB 434 (DeMaio): This would impose a 2-year moratorium on battery energy storage facilities while the State Fire Marshal adopts guidelines and minimum standards. It was referred to the Assembly Committee on Utilities & Energy, but has not been set for a hearing. It is not expected to advance past the house of origin deadline.
- AB 588 (Patel): This would create a working group to recommend potential solutions to enhance building safety with respect to lithium batteries. It was approved by the Assembly Committee on Emergency Management.
- AB 841 (Patel): This would create a working group to develop recommendations about personal protective equipment used by firefighters when responding to lithium-ion batteries. The bill was approved by the Assembly Committee on Labor and Employment.
- AB 1285 (Committee on Emergency Management): This would require the State Fire Marshal to develop fire prevention response, and recovery measures for utility grade lithium-ion battery storage facilities. It was approved by the Assembly Committee on Emergency Management.

Update on Legislative Focus on Ratepayer Affordability

Both the Senate Committee on Energy, Utilities and Communications and the Assembly Committee on Utilities & Energy previously held oversight hearings (Senate hearing materials can be found here and Assembly hearing materials can be found here) on matters related to ratepayer affordability. New legislation from Senator Becker, the chair of the Senate Committee on Energy, Utilities, and Communications, is an outcome of the legislative affordability conversations. He recently introduced SB 254 (Becker) to put forward various affordability proposals. In summary, the bill addresses the following:

- *Public financing of transmission powerlines.* Creates the Clean Energy Infrastructure Authority to develop transmission and other infrastructure. The Authority, which is exempt from California Public Utilities Commission (CPUC) oversight, can "finance, plan, develop, acquire, own, maintain, sell, or operate eligible clean energy infrastructure (including transmission and storage) necessary or useful" in the state's transition to 100% clean energy. It includes public financing of transmission that would be operated and maintained by the IOUs.
- *Modifies oversight of IOU wildfire mitigation.* Overhauls the framework for the oversight of IOU wildfire mitigation project review, introduces the need to evaluate

wildfire investments based on cost efficiency, and exempts undergrounding from the California Environmental Quality Act (CEQA).

- *Restricts earning a rate of return on certain investments.* Prevents the IOUs from including in their rate base their proportional share of $5 billion of fire risk mitigation capital expenditures and $10 billion of energization capital expenditures approved by the CPUC on or after January 1, 2025.
- *Enhances a bi-annual bill credit.* Increases the California Climate Credit for customers on low income rates and concentrates the credit on peak bill months.
- *Seeks to fund certain societal programs with state revenues.* Establishes the Policy-Oriented and Wildfire Electric Reimbursement (POWER) program that will use appropriated funds, if any, to reimburse CPUC programs "driven by public policy goals, that provide benefit to the general public and not just to ratepayers, and that are not required for the safe and reliable delivery of electricity to the ratepayers…." (e.g. transportation electrification, building decarbonization, energy efficiency, low-income discounts, and wildfire mitigation). This does not change the ratepayer funding source for programs, such as those that will be offered by the San Diego Regional Energy Network. Rather, the bill creates a ratepayer reimbursement mechanism should the state be able to appropriate funds.
- *Clarifies reporting requirements on demand-side management programs.* Modifies the CPUC's reporting responsibility for demand-side management programs it oversees or that are paid for by ratepayers of the IOUs or CCAs by specifying that "public interest impacts" include nonenergy effects, emissions reductions, or equity considerations.
- *Changes the general rate case process.* Heightens the burden of proof for proposed IOU costs in excess of inflation to "clear and convincing" evidence and increases reporting requirements for the CPUC if such costs are authorized.
- *Sets up programmatic environmental review for certain projects.* Requires the California Energy Commission (CEC) to prepare a program environmental impact report (EIR) to analyze the development of classes of facilities, including solar, wind, energy storage, and thermal generation so that other agencies considering approval of specific facilities within the class may rely and build on the program EIR rather than doing their own. It also broadens the scope of energy projects that fall within the exclusive jurisdiction of the CEC for permitting by reducing the capital investment requirement for discretionary projects from $250 million to $100 million and extends eligibility to come within the CEC's jurisdiction from mid-2029 to mid-2034. The bill also makes other material changes to the certification process.

Community Power's initial review of the legislation indicates that the bill would not have an impact on Community Power's procurement or rate setting. The core impact of the bill appears to be primarily on IOU delivery-related costs and oversight thereof. The California Community Choice Association is supporting the bill.

C) Federal Activities Update

Community Power staff continue to monitor and engage in Congressional and executive matters.

White House Office of Management and Budget (OMB) Releases Discretionary Budget Request

Prior staff reports indicated there will likely be congressional action through the budget reconciliation process on energy tax credit matters. Related, on May 2 the White House OMB released their discretionary budget proposal. The proposal focuses on disbursements of appropriated funds and does not deal with energy tax credit issues. It does include proposals to rein in spending on what OMB labels as the "Green New Scam." The OMB proposal seeks to end the U.S. Environmental Protection Agency's Justice40 program, and to claw back energy related funds from the Infrastructure Investment and Jobs Act (IIJA). Community Power is not in receipt of any IIJA funds.

Thirty-eight Members of the House Majority Party Call for Ending Inflation Reduction Act (IRA) Energy Tax Credits

The 38 members of Congress sent a letter to Jason Smith, the Chair of the House Ways & Means Committee, which has jurisdiction over tax policy. The letter, which is included as an attachment, notes that the majority party "ran – and won – on a promise to completely dismantle the IRA and end the left's green welfare agenda." No members of Congress from California signed the letter.

In March, 21 members of the House majority party sent a competing letter to the chair of the House Ways and Means Committee stating that repeal of tax credits "would increase utility bills the very next day." Three members of Congress from California signed the letter. The two letters represent competing views among the majority party in the House of Representatives.

Related, on April 29, a group of 272 business, renewables, and utility stakeholders sent a letter to Congress urging them to "retain the existing energy tax credits which are vital to unleashing American energy to lead the world on economic growth, AI, and manufacturing." The letter is included as an attachment.

The IRA tax credits – such as the Investment Tax Credit and the Production Tax Credit – are expected to be considered during the budget reconciliation process, which could wrap up as soon as July 4.

FISCAL IMPACT:

N/A

ATTACHMENTS:

A: March 9 Congressional Letter on IRA Tax Credits
B: May 1 Congressional Letter on IRA Tax Credits
C: April 29 Coalition Letter on IRA Tax Credits

ITEM 8
ATTACHMENT A

Congress of the United States

Washington, DC 20515

March 9, 2025

The Honorable Jason Smith
Chairman
Ways & Means Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Smith:

As Members of the House Republican Conference, we write to emphasize the importance of prioritizing energy affordability for American families and keeping on our current path to energy dominance amid efforts to repeal or reform current energy tax credits.

We strongly support the Administration's America First national energy dominance initiative. Continued energy expansion and innovation is necessary to bolster national security, create good-paying American jobs, and guarantee energy independence. The United States continues to produce energy from a myriad of sources that are cleaner and more efficient than anywhere else in the world. As our conference has long believed, an all-of-the-above energy approach, combined with a robust advanced manufacturing sector, will help support the United States' position as a global energy leader.

Countless American companies are utilizing sector-wide energy tax credits – many of which have enjoyed broad support in Congress – to make major investments in domestic energy production and infrastructure for traditional and renewable energy sources alike. Both our constituencies and the energy industry alike remain concerned about disruptive changes to our nation's energy tax structure. Many credits were enacted over the course of a ten-year period, which allowed energy developers to plan with these tax incentives in mind. These timelines have been relied upon when it comes to capital allocation, planning, and project commitments, all of which would be jeopardized by premature credit phase outs or additional restrictive mechanisms such as limiting transferability. As energy demand continues to skyrocket, any modifications that inhibit our ability to deploy new energy production risk sparking an energy crisis in our country, resulting in drastically higher power bills for American families. This is especially true for energy credits with direct passthrough benefit to ratepayers, where such repeals would increase utility bills the very next day. As our conference works to make energy prices more affordable, tax reforms that would raise energy costs for hard working Americans would be contrary to this goal. Further, affordable and abundant energy will be critical as the President works to onshore domestic manufacturing, supply chains, and good paying jobs, particularly in Republican run states due to their business-friendly environments. Pro-energy growth policies will directly support these objectives.

At the same time, there are plenty of shortcomings in our tax code that can and should be addressed to rein in spending and promote fiscal responsibility in the upcoming reconciliation bill.

With all this in mind, we request that any proposed changes to the tax code be conducted in a targeted and pragmatic fashion that promotes conference priorities without undoing current and

future private sector investments which will continue to increase domestic manufacturing, promote energy innovation, and keep utility costs down. We believe we can work together so that all these goals are achievable.

We appreciate your work to unite House Republicans on this important matter. We hope you can consider us partners in modernizing and improving our nation's tax policies to unleash American energy and protect families from higher energy costs.

Sincerely,



Andrew R. Garbarino
Member of Congress



Jennifer Kiggans
Member of Congress



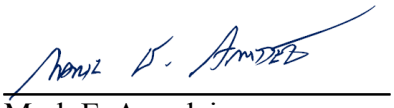
Juan Ciscomani
Member of Congress



Gabe Evans
Member of Congress



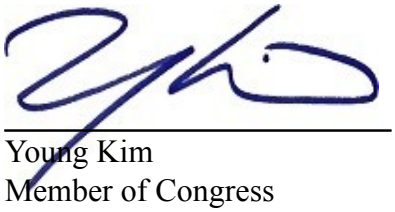
David G. Valadao
Member of Congress



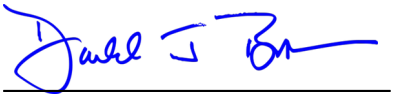
Mark E. Amodei
Member of Congress



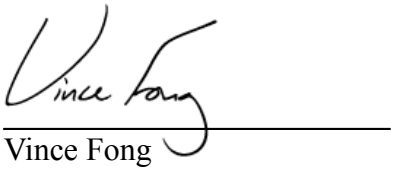
Michael V. Lawler
Member of Congress



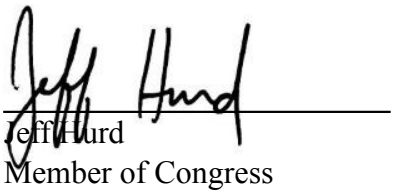
Young Kim
Member of Congress



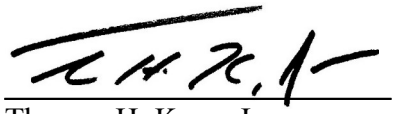
Don Bacon
Member of Congress



Vince Fong
Member of Congress



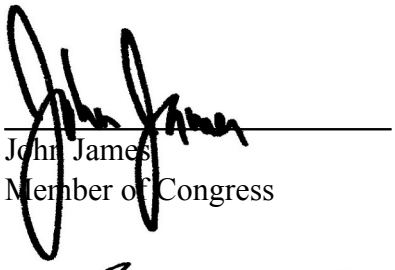
Jeff Hurd
Member of Congress



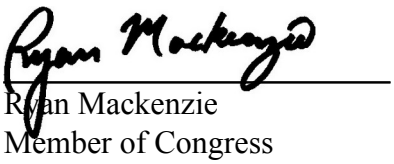
Thomas H. Kean, Jr.
Member of Congress



Nick LaLota
Member of Congress



John James
Member of Congress



Ryan Mackenzie
Member of Congress



Rob Bresnahan, Jr.
Member of Congress



Earl L. "Buddy" Carter
Member of Congress

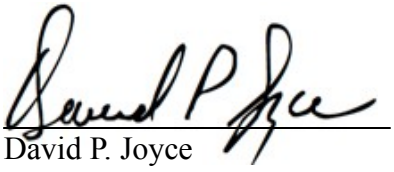
Mariannette J. Miller-Meeks, M.D.
Member of Congress



Dan Newhouse
Member of Congress



Erin Houchin
Member of Congress



David P. Joyce
Member of Congress

ITEM 8
ATTACHMENT B

Congress of the United States
Washington, DC 20515

May 1, 2025

The Honorable Jason Smith
Chairman
Ways & Means Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Smith:

As fellow Members of the House Republican Conference, we write to underscore the urgent need to fully repeal the Inflation Reduction Act (IRA) and its green energy subsidies, which will cost taxpayers approximately $1 trillion over the next decade. We are deeply concerned that President Trump's commitment to restoring American energy dominance and ending what he calls the "green new scam" is being undermined by parochial interests and short-sighted political calculations.

The IRA contains eight major energy subsidies, each of which burdens taxpayers, inflates energy costs, and threatens the reliability of our power grid. Each of these subsidies props up unreliable energy sources while displacing dependable, proven energy like coal and natural gas.

Republicans ran—and won—on a promise to *completely* dismantle the IRA and end the left's green welfare agenda. The first chapter of our 2024 platform reaffirms our commitment to "terminating the Socialist Green New Deal."[1] Despite our previously unified stance, some Members of our conference now feel compelled to defend wind and biofuel credits, advocate for carbon capture and hydrogen subsidies, or protect solar and electric vehicle giveaways. Keeping even one of these subsidies opens the door to retaining all eight. How do we retain some of these credits and not operate in hypocrisy? The longstanding Republican position has been to allow the market to determine energy production. If every faction continues to defend their favored subsidies, we risk preserving the entire IRA because no clearly defined principle will dictate what is kept and what is culled.

Leaving IRA subsidies intact will actively undermine America's return to energy dominance and national security. In 2024 alone, solar represented 61% of all new electricity generation in our nation, with more expected this year.[2] By the end of this year, wind generation in the U.S. is

[1] https://prod-static.gop.com/media/RNC2024-Platform.pdf.
[2] https://www.eia.gov/todayinenergy/detail.php?id=64586.

expected to increase 11% from 2023 because of these subsidies.[3] These numbers do not reflect a natural market shift. They are the result of government subsidies that distort the U.S. energy sector, displace reliable coal and natural gas and the domestic jobs they produce, and put the stability and independence of our electric grid in jeopardy.

To see the consequences of this path, we need only to look at Europe's overreliance on renewables, which has left them vulnerable and reliant on Russian oil and gas. Meanwhile, China gladly sells us solar panels and electric vehicle components while expanding its own coal capacity to maintain grid stability and economic advantage. If we do not course correct, we will trade American energy dominance for dependence on hostile regimes.

Our path forward is clear. We must fully repeal the IRA's green subsidies. Doing so will:

- **Save Taxpayers $1 trillion.** Estimates project the Inflation Reduction Act will cost between $825 billion—according to the Congressional Budget Office as of January 2025—and over $1 trillion, per analysts at Goldman Sachs, over the next decade.[4] Eliminating these subsidies will allow us to rein in the debt and reallocate funds to genuine national priorities.
- **Ease inflation and spur economic growth.** IRA subsidies exacerbate inflation and push up interest rates, making it harder for Americans to buy homes and cars and start businesses. Repealing them will provide immediate financial relief and create a stronger economic environment.
- **Restore energy affordability and security.** IRA subsidies force utilities to overbuild solar and wind capacity, weakening grid reliability and increasing energy costs. Ending these subsidies will restore affordability and stability to our energy supply.

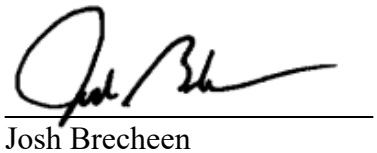
This is our only opportunity for an IRA repeal. Without effectively *fully* repealing all IRA subsidies, as envisioned under the House reconciliation framework, we would jeopardize America's return to energy dominance and passage of an extension of the expiring Tax Cuts and Jobs Act (TCJA) provisions, as well as the President's other tax priorities. Failure to act undermines the mandate given to us by the American people.

We urge our colleagues to stand firm in the upcoming reconciliation process. We must reject half-measures and deliver a full repeal of the IRA's energy subsidies for the sake of American taxpayers and for the future of American energy.

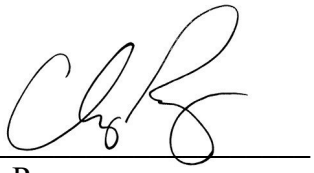
Sincerely,

[3] https://www.eia.gov/outlooks/steo/.

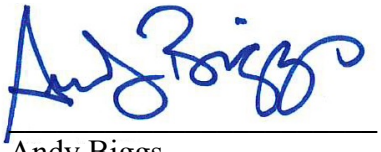
[4] https://www.reuters.com/business/energy/us-clean-energy-tax-subsidies-cost-825-billion-over-10-years-cbo-says-2025-01-17/; https://www.goldmansachs.com/pdfs/insights/pages/gs-research/carbonomics-the-third-american-energy-revolution/report.pdf.



Josh Brecheen
Member of Congress



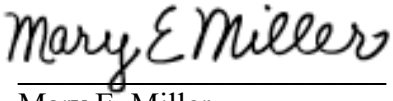
Chip Roy
Member of Congress



Andy Biggs
Member of Congress



Paul A. Gosar, D.D.S.
Member of Congress



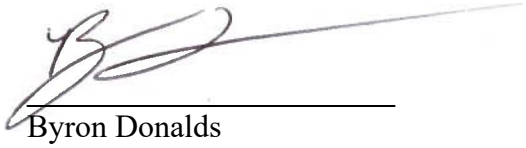
Mary E. Miller
Member of Congress



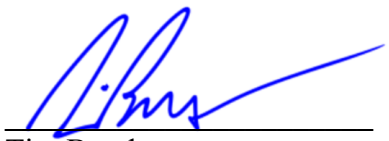
Pat Fallon
Member of Congress



Andy Harris, M.D.
Member of Congress



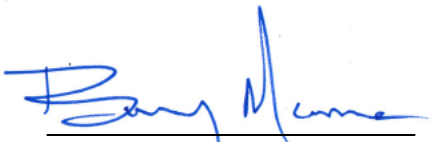
Byron Donalds
Member of Congress



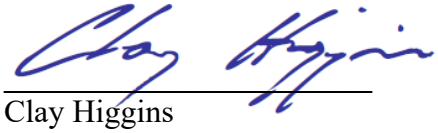
Tim Burchett
Member of Congress



Marjorie Taylor Greene
Member of Congress



Barry Moore
Member of Congress



Clay Higgins
Member of Congress



Thomas Massie
Member of Congress



Eric Burlison
Member of Congress



Rich McCormick, M.D., MBA
Member of Congress



Eli Crane
Member of Congress



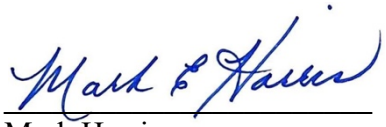
Scott Perry
Member of Congress



Andy Ogles
Member of Congress



Ben Cline
Member of Congress



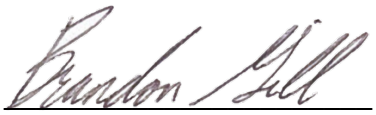
Mark Harris
Member of Congress



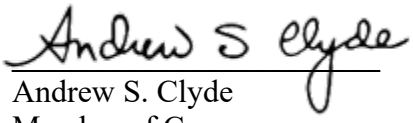
Lauren Boebert
Member of Congress



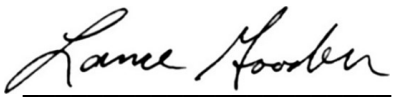
Warren Davidson
Member of Congress



Brandon Gill
Member of Congress



Andrew S. Clyde
Member of Congress



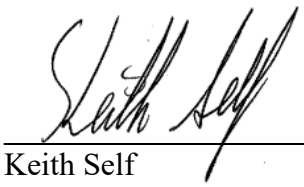
Lance Gooden
Member of Congress



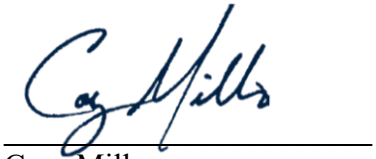
Anna Paulina Luna
Member of Congress



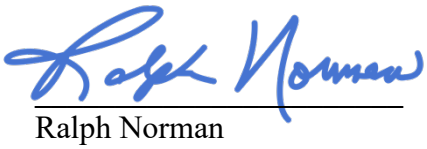
Nancy Mace
Member of Congress



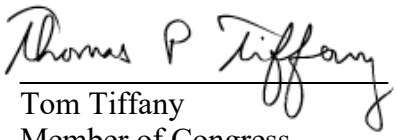
Keith Self
Member of Congress



Cory Mills
Member of Congress



Ralph Norman
Member of Congress



Tom Tiffany
Member of Congress



Marlin Stutzman
Member of Congress



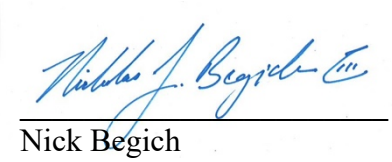
Michael Rulli
Member of Congress



Harriet M. Hageman
Member of Congress



Victoria Spartz
Member of Congress



Nick Begich
Member of Congress



Mark E. Green, M.D.
Member of Congress



Randy Fine
Member of Congress

CC: President Donald J. Trump
Vice President J.D. Vance
House Speaker Mike Johnson

ITEM 8
ATTACHMENT C

April 29, 2025

The Honorable Mike Johnson, Speaker
U.S. House of Representatives
521 Cannon House Office Building
Washington, DC 20515

The Honorable Hakeem Jeffries, Minority Leader
U.S. House of Representatives
2267 Rayburn House Office Building
Washington, DC 20515

The Honorable Jason Smith, Chair
House Ways and Means Committee
1011 Longworth House Office Building
Washington, DC 20515

The Honorable Richard Neal, Ranking Member
House Ways and Means Committee
372 Cannon House Office Building
Washington, DC 20515

Dear Speaker Johnson, Leader Jeffries, Chairman Smith, and Ranking Member Neal:

We, the undersigned companies and trade organizations, urge Congress to retain the existing energy tax credits which are vital to unleashing American energy to lead the world on economic growth, AI, and manufacturing. Collectively, the signatories to this letter represent business interests in 43 states, and the companies alone represent over $450 billion in capital and more than 165,000 employees.

These credits are the basis for significant manufacturing investment and jobs in the United States, promoting greater efficiency, growth in energy production, and the delivery of the capacity needed to keep our country at the leading edge of global energy innovation.

The United States is already experiencing sharp increases in energy demand coupled with concerns about rising energy costs. A recent report by S&P Global Commodity Insights predicts that U.S. electricity demand will surge by 35-50% over the next few decades, driven by AI, data centers, and the onshoring of U.S. manufacturing.

A broad portfolio of supply-side and demand-side energy solutions is ready to meet this new load. Clear, predictable, and long-term tax policy is essential for market confidence and unlocking significant investments quickly in our nation's energy production and infrastructure. This will lead to greater energy abundance and lower energy bills for Americans.

Energy tax policies – many of which are the product of bipartisan tax legislation over the past 20 years – have leveraged billions of dollars of private capital and have helped to create millions of good-paying American jobs.

Companies plan with these tax incentives in mind and rely upon them for capital allocation, planning, and project commitments – all of which would be jeopardized by premature credit phase outs or additional restrictions. Further, these tax credits are critical to expanding economic development and growing the economy. Companies can lower their capital costs and increase investment in research and development to maintain the nation's competitiveness.

Any tax policy changes that inhibit new production and demand-side solutions from coming online also risk the reliability and affordability of our nation's energy.

According to a new report by Energy Innovation, repealing federal energy tax credits would increase annual energy bills for U.S. households by more than $6 billion in 2030 and more than $9 billion in 2035.

Similarly, NERA Economic Consulting estimates that electricity bills for businesses would increase by about 10% by 2026 if the tax credits are repealed, with costs likely passed on to consumers in the form of higher prices for goods and services.

We need every form of energy available to unleash America's full potential. We must act quickly to modernize and expand the energy system to supply the data centers, artificial intelligence, and domestic manufacturing that are vital to our economic and innovative edge.

Now is not the time to disrupt the market by changing the current energy tax structure. We urge Congress to support sector-wide energy tax credits as it considers tax policy changes this year.

Sincerely,

SolaRay Farms, Inc. - Phoenix, AZ
Capital Power - Phoenix, AZ
Kiterocket - Phoenix, AZ
Learning Edge, LLC - Paradise Valley, AZ
Arevon Energy, Inc. - Scottsdale, AZ
Grannus, LLC - Tucson, AZ
JA Roth Consulting, LLC - Tucson, AZ
Willdan Energy Solutions - Anaheim, CA
GOGETIT LLC - Calabasas, CA
Sapphire Technologies, Inc. - Cerritos, CA
Air Voltaics LLC - Fallbrook, CA
Terra-Vista Wildfire Defense - Lafayette, CA
Salton Energy Inc. - Lake Forest, CA
Woods Bagot - Los Angeles, CA
Climate Forward Strategies - Oakland, CA
Pacific Gas and Electric Company - Oakland, CA
Terrajoule Energy Inc. - Palo Alto, CA
Amy's Kitchen - Petaluma, CA
Green Energy Solutions Team - Rancho Cucamonga, CA
EVO Power USA, Inc. - Rancho Santa Margarita, CA
California Hydrogen Business Council - Sacramento, CA
HMC Architects - Ontario, CA
RNG Coalition - Sacramento, CA
Sacramento Municipal Utility District - Sacramento, CA
(W)right On Communications - San Diego, CA
Long Duration Energy Storage Council - San Francisco, CA
Metrus Energy - San Francisco, CA
Powertree Services Inc. - San Francisco, CA
QuitCarbon - San Francisco, CA
Next Energy Technologies, Inc. - Santa Barbara, CA
Open Doors Management - Solana Beach, CA
Force Energy Corporation - Sonora, CA
SVI Group - Sunnyvale, CA
Bailte Construction - West Hollywood, CA
Scout Clean Energy - Boulder, CO
Rebound-Tech - Commerce City, CO
Akku Energy Devices LLC - Denver, CO
Big Glasses Consulting - Denver, CO
Cowboy Clean Fuels - Denver, CO
Koloma - Denver, CO
Perfect Energy, Inc. - Denver, CO
Gevo, Inc. - Englewood, CO
Tap Energy LLC - Denver, CO
Joelson Consulting - Fort Collins, CO
Atlasta Solar Center - Grand Junction, CO
Senergy Builders - Grand Junction, CO
Headwaters Companies - Littleton, CO
CORE Electric Cooperative - Sedalia, CO
The SLAM Collaborative - Glastonbury, CT
Empere, LLC - Norwich, CT
Alliance to Save Energy - Washington, DC
American Biogas Council - Washington, DC
American Biomass Energy Assoc. - Washington, DC
American Clean Power Assoc. - Washington, DC
American Council on Renewable Energy - Washington, DC
Business Council for Sustainable Energy - Washington, DC
Carbon Capture Coalition - Washington, DC
Cellulose Insulation Manufacturers Assoc. - Washington, DC
Clean Energy Business Network - Washington, DC
E2 - Washington, DC
Electric Drive Transportation Assoc. - Washington, DC
Federal Performance Contracting Coalition - Washington, DC
Heat is Power Assoc. - Washington, DC
Lucey Consulting LLC - Washington, DC

National Assoc. of Energy Service Companies - Washington, DC
National Hydropower Assoc. - Washington, DC
Portland Cement Assoc. - Washington, DC
Solar Energy Industries Assoc. - Washington, DC
The Ultra Low Carbon Solar Alliance - Washington, DC
U.S. Green Building Council - Washington, DC
WATT Coalition - Washington, DC
Structural Insulated Panel Assoc. - Fort Lauderdale, FL
RS&H - Jacksonville, FL
Hydrokinetic Energy Corp. - Key West, FL
ecoPreserve - Orlando, FL
Penn Renewables - Pompano Beach, FL
Utility Saving Solutions, Inc. - Alpharetta, GA
Assoc. of Energy Engineers - Atlanta, GA
Better Tomorrow Solar - Atlanta, GA
BONA Investment Properties, LLC - Atlanta, GA
Teverra LLC - Atlanta, GA
TVS - Atlanta, GA
Sigma Thermal, Inc. - Marietta, GA
Axle Plus - Conyers, GA
Ampacimon - Cumming, GA
ElectraTherm, Inc. / BITZER USA - Flowery Branch, GA
RE Innovations LLC - Loganville, GA
Hawaii Fish Company Inc. - Waialua, HI
Eocene Environmental Group - West Des Moines, IA
Frontline BioEnergy, LLC - Nevada, IA
Verdant Resolutions - Boise, ID
Synergy ECOHUB Solutions, Inc. - Nampa, ID
Kazadi Enterprises Ltd. - Batavia, IL
GRP WEGMAN Company - Bethalto, IL
Clear Sky Energy Solutions - Chicago, IL
Greater Englewood Chamber Foundation - Chicago, IL
Midwest Energy Efficiency Alliance - Chicago, IL
Studio Nigro LLC - Chicago, IL
WJW Architects - Chicago, IL
Open Hydrogen Initiative - Des Plaines, IL
FM Energy Consulting Inc. - Naperville, IL
Avid Solutions Intl - Peoria, IL
Geothermal Alliance of Illinois - Springfield, IL
Geothermal Exchange Organization - Springfield, IL
Clean Energy Business Council - Hutchinson, KS
Orange EV - Kansas City, KS
Rice-Stromgren Architects - Lawrence, KS
The Bowersock Mills & Power Co. - Lawrence, KS
Sunflower Fuels - Lexington, KY
Concord Energy Strategies, LLC - Louisville, KY
Rain CII Carbon LLC - Covington, LA
Mavel Americas, Inc. - Boston, MA
Schneider Electric - Boston, MA
Shepley Bulfinch - Boston, MA
Cleantech Leaders Roundtable - Cambridge, MA
Ameresco - Framingham, MA
Ambri - Marlborough, MA
Viridi Edge - Newton, MA
Greentown Labs - Somerville, MA
Pecos Wind Power - Somerville, MA
Save Energy Systems, Inc. - Westborough, MA
Good Clout Consulting - Cambridge, MA
AIA Maryland - Annapolis, MD
Hord Coplan Macht - Baltimore, MD
Luminace - Baltimore, MD
Oceantic Network - Baltimore, MD
Resource Management Associates - Bethesda, MD
WindRun Strategies, LLC - Bethesda, MD
CoolPact Capital - Baltimore, MD
GHG Engineering, LLC - Rockville, MD
Princeton Energy Resources International LLC - Rockville, MD
ClearlyEnergy - Severna Park, MD
Alliance for Green Heat - Takoma Park, MD
ClimateWork Maine - Portland, ME
Dynamic Grid - Portland, ME
Energy Alliance Group - Ann Arbor, MI
Quinn Evans - Ann Arbor, MI
Peaker Services, Inc. - Brighton, MI
Utility Transformation Consortia - Clinton Township, MI
Heiss Consulting Services LLC - Detroit, MI
Newman Consulting Group, LLC - Farmington Hills, MI
Michigan Sustainable Business Forum - Grand Rapids, MI
Sesame Solar Inc. - Jackson, MI
Absolute Solar - Lansing, MI
Cedar Creek Energy - Coon Rapids, MN
Winkelman Solar LLC - Brainerd, MN
Conners Consulting - Eden Prairie, MN
EcoThrive LLC - La Crescent, MN
Clean Energy Economy Minnesota - Minneapolis, MN
Energy Aspects LLC - Minneapolis, MN

HGA - Minneapolis, MN
Multistudio - Kansas City, MO
Populous - Kansas City, MO
Hellmuth & Bicknese Architects - St. Louis, MO
Accelerate Wind, Inc. - St. Louis, MO
ROCKWOOL North America - Byhalia, MS
Mississippi Energy Developers - Lena, MS
Sweetgrass Associates - Big Timber, MT
High Plains Architects, P.C. - Billings, MT
High Ridge Leadership, LLC - Missoula, MT
Oasis Montana Inc. - Stevensville, MT
Intelli-Products Inc. - Asheville, NC
Pisgah Energy Inc. - Asheville, NC
EIP Storage - Chapel Hill, NC
Anchor Tree Development, LLC - Charlotte, NC
Little Diversified Architectural Consulting - Charlotte, NC
Trane Technologies - Davidson, NC
Carolina Solar Energy LLC - Chapel Hill
LEO A DALY LLC - Omaha, NE
Tenaska, Inc. - Omaha, NE
Propane Gas Assoc. of New England - Epsom, NH
Energy Efficient Investments, Inc. - Merrimack, NH
Merit SI LLC, dba Merit Controls - Somerville, NJ
Spar Systems - Montvale, NJ
Fujitsu General America - Pine Brook, NJ
Utopio Inc. - Princeton, NJ
Anax Power - Wharton, NJ
Equiterra Regenerative Design - Albuquerque, NM
OE Solar - Albuquerque, NM
The Reno + Sparks Chamber of Commerce - Reno, NV
ecoLong LLC - Albany, NY
Aphra Communications - Brooklyn, NY
Basis Climate - New York, NY
Dollaride - Brooklyn, NY
FXCollaborative - Brooklyn, NY
Buffalo Renewables Inc. - Tonawanda, NY
Siva Powers America Inc. - Buffalo, NY
Dimensional Energy - Ithaca, NY
Centrica Business Solutions - Malta, NY
Lighthouse Solar - New Paltz, NY
Blue Lake Clean Energy Group LLC - New York, NY
Brookfield Renewable - New York, NY
Build Efficiently, LLC - New York, NY
CannonDesign - New York, NY
CleanCapital - New York, NY
Emotiva - New York, NY
HLW International - New York, NY
IPPsolar LLC - New York, NY
Lexden Capital, LLC - New York, NY
MAC Energy Advisors LLC - New York, NY
New York Angels, Inc. - New York, NY
VL Harmon Advisors - New York, NY
RED Rochester LLC - Rochester, NY
Storke, LLC - Springwater, NY
Special Power Sources - Alliance, OH
Harmony Architecture - Cincinnati, OH
Hubay Dougherty - Cleveland, OH
Moody Nolan, Inc. - Columbus, OH
Concho Energy - Freedom, OK
Bergey Windpower Co. LLC - Norman, OK
Elexity - Bend, OR
NLine Energy, Inc. - Bend, OR
Sun Raven LLC - Bend, OR
Basque Beginnings LLC - Maupin, OR
Brockman Climate Strategies LLC - Portland, OR
ZGF Architects LLP - Portland, OR
Michael W Grainey Consulting LLC - Salem, OR
Windurance, LLC - Coraopolis, PA
Alternative Energy Development Group, LLC - Malvern, PA
Philadelphia Solar Energy Assoc. - Philadelphia, PA
BLD:ac - Pittsburgh, PA
RER Energy Group - Reading, PA
LAC-TER - Scranton, PA
Cooperativa de Energia La Margarita - Abeyno Coop - Salinas, PR
Copacity, Inc. - Providence, RI
LS3P - Charleston, SC
Rosebud Energy Services Company - Rosebud, SD
GenPro Energy Solutions, LLC - Piedmont, SD
TerraShares - Morristown, TN
Conservative Texans for Energy Innovation - Austin, TX
Terra Lumina Consulting - Austin, TX
JSJ Services - Belton, TX
Green Careers Texas - Dallas, TX
HKS, Inc. - Dallas, TX
Huitt-Zollars - Dallas, TX
MM Solar Advisory, LLC - Dallas, TX

The Beck Group - Dallas, TX

Kanin Energy - Houston, TX

NRG Energy Inc. - Houston, TX

NXTClean Fuels, Inc. - Houston, TX

Redfield Consulting Services - San Antonio, TX

Inergy - Orem, UT

Particle Flux Analytics Inc. - Park City, UT

GlycoSurf, Inc. - Salt Lake City, UT

North American Insulation Manufacturers Assoc. - Alexandria, VA

National Electrical Manufacturers Assoc. - Arlington, VA

New Energy Venture Associates - Arlington, VA

Polyisocyanurate Insulation Manufacturers Assoc. - Arlington, VA

Responsible Alpha - Arlington, VA

The Stella Group, Ltd - Arlington, VA

Sheet Metal & AC Contractors National Assoc. - Chantilly, VA

BrightView Energy - Charlottesville, VA

Cobalt Growth Advisory - Falls Church, VA

Copper Development Assoc. - McLean, VA

Synurja LLC - Vienna, VA

Encore Renewable Energy - Burlington, VT

Eocycle America Corporation - Swanton, VT

Forest Concepts, LLC - Auburn, WA

Silfab Solar Inc. - Burlington, WA

Brad Thompson Company - Kirkland, WA

Appropriate Technology Group - Seattle, WA

DLR Group - Seattle, WA

Ever.green - Seattle, WA

Omnidian - Seattle, WA

Svante - Seattle, WA

NAC Architecture - Spokane, WA

CarbonQuest - Spokane Valley, WA

Cheq Bay Renewables - Bayfield, WI

Weather Blanket Insulation - Fond du Lac, WI

A. O. Smith - Milwaukee, WI

Johnson Controls - Milwaukee, WI

Franklin Energy - Washington, WI

SAN DIEGO COMMUNITY POWER
Staff Report – Item 9

TO: **Board of Directors**

FROM: **Jack Clark, Chief Operating Officer**
Jen Lebron, Senior Director of Public Affairs

VIA: **Karin Burns, Chief Executive Officer**

SUBJECT: **Community Advisory Committee Monthly Report**

DATE: **May 22, 2025**

RECOMMENDATION:

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

BACKGROUND:

Per Section 5.10.3 of the San Diego Community Power (Community Power) Joint Powers Authority 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 a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of SDCP.

At the direction of the Board Chair, the CAC provides quarterly presentations to the Board of Directors in the regular agenda and monthly reports in the consent agenda. The next quarterly update is expected to take place at the May 22, 2025 Board meeting.

ANALYSIS AND DISCUSSION:

During the May 8, 2025, regular CAC meeting:

- Chair Vasilakis (City of San Diego) welcomed new Community Power staff, and led the unanimous approval of the consent agenda, which included updates on Customer Operations, Marketing, Public Relations and Local Government Affairs, Power Services, Programs, and Regulatory and Legislative Affairs.
- The CAC received a presentation from the Programs team on Vehicle-Grid Integration. Members had questions around battery warranty, charging fleet inventory and needs from member agencies, program marketing and enrollment

strategies, and local automaking presence, with the suggestion of creating partnerships that foster workforce training on emerging technologies.

- Members also heard an update on the Solar Advantage Program. Members asked about battery inclusion in the solicitation, upfront financing, and collaboration with member agencies to augment project benefits. Member Sclafani (City of Chula Vista), who represents the member agency where the Luminia project is in, congratulated staff for repurposing a community hub previously used for a public good during the pandemic, and asked clarifying questions on the enrollment priority system, encouraging Community Power to take a more collaborative approach with developers that ends up in more community projects that directly benefit the neighboring communities.
- The Chair shared as an announcement that Community Power visited Orange County Power Authority's CAC earlier in May to provide an overview of how members inform decision-making. No Board of Directors items were recommended.

As of May 22, 2025, the CAC has one vacancy representing the City of Chula Vista. Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically. The vacancy continues to be advertised at meetings, community events, and through Community Power's social media.

FISCAL IMPACT:

N/A

ATTACHMENTS:

N/A

SAN DIEGO COMMUNITY POWER
Staff Report – Item 10

TO: **Board of Directors**

FROM: **Jack Clark, Chief Operating Officer**
Jen Lebron, Senior Director of Public Affairs
Xiomalys Crespo, Sr. Community Engagement Manager

VIA: **Karin Burns, Chief Executive Officer**

SUBJECT: **Community Advisory Committee Report**

DATE: **May 22, 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 Community Power.

At the direction of the Chair of Community Power's Board of Directors, the CAC, via staff, provides monthly updates and quarterly reports during the regular meetings of the Board of Directors. The last quarterly update was provided during the February 27, 2025, regular meeting.

ANALYSIS AND DISCUSSION:

At the February 27, 2025, regular meeting of the Board of Directors, staff and the Chair of the CAC presented a summary of CAC activities from October through January. This report summarizes February through April.

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

March: Chair Vasilakis (City of San Diego) welcomed new CAC member Ross Pike (unincorporated San Diego County). Community Power CEO Karin Burns provided an update on Strategic Planning Goals for FY2026-2028; CAC members had an opportunity to provide feedback on this process earlier this year via individual briefings. The CAC unanimously voted to recommend Board approval of the item. Members also received a presentation on 2025 Rate Adjustments, as approved by the Board in February. Finally, members heard from the 2024 and 2025 cycles of the Community Clean Energy Grant Program, and a member sought clarification on the year-to-year difference in the program budget.

April: The CAC welcomed new member Shaun Sumner (City of La Mesa). The Regulatory and Legislative Affairs team provided its quarterly presentation, in which members asked questions around financing and undergrounding provisions on 47 Senate bills being supported by Community Power and recognized the work of the Regulatory and Legislative Affairs team, offering up their support in representing their communities when advocating for critical issues at different decision-making levels. Members also received a presentation on Equitable Building Decarbonization Direct Install Program, which is only open to low-income communities and will include renters. Lastly, the Power Services team provided an overview of items they will bring to the CAC in the coming months, which include those that the CAC has previously expressed interest in, such as local infill procurement, progress towards achieving 100% renewable energy by 2035, battery safety, and the Energy Proposal Evaluation Criteria. Members thanked Chief Commercial Officer Byron Vosburg for his contributions to the agency as he departs Community Power and requested future presentations on feed-in tariff programs and battery storage safety concerns.

As of May 6, 2025, the CAC has a vacancy representing the City of Chula Vista. Prospective members of the CAC must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically. The vacancy continues to be advertised at meetings, community events, and through Community Power's social media.

Staff will return to the Board of Directors in the summer of 2025 to report on quarterly activities for the rest of the fiscal year.

FISCAL IMPACT:

N/A

ATTACHMENTS:

N/A

SAN DIEGO COMMUNITY POWER
Staff Report – Item 11

TO: **Board of Directors**

FROM: **Dr. Eric Washington, Chief Financial Officer**

VIA: **Karin Burns, Chief Executive Officer**

SUBJECT: **Presentation of Draft of FY 2025-2026 Operating Budget, FY 2025-2026 Capital Budget, and FY 2026-2030 Capital Investment Plan**

DATE: **May 22, 2025**

RECOMMENDATION:

Receive and File Preliminary Draft of FY 2025-2026 Operating Budget, FY 2025-2026 Capital Budget, and FY 2026-2030 Capital Investment Plan.

BACKGROUND:

On October 1, 2019, the Founding Members of San Diego Community Power (Community Power) adopted the Joint Powers Agreement (JPA) which was amended and restated on December 16, 2021. 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 JPA further provides that Community Power's fiscal year runs from July 1 to June 30, unless changed by the Board.

Section 7.3.1 of the JPA requires that Community Power budgets be prepared and approved by the Board in accordance with its fiscal management policies that should include a deadline for approval.

On July 28, 2022, the Board adopted a budget development schedule as part of the Community Power Budget Policy. This development schedule includes an annual budget review in May by the Financial and Risk Management Committee (FRMC), which occurs prior to the Community Power Board of Directors (Board) previewing the budget in May and prior to the Board potentially adopting the budget in June.

Table 1. Current Budget Development Schedule

February	March-April	May	June	
Develop Operating Revenue Estimate Develop Operating Expense Estimate Develop financial plan for credit rating in 3-years	Staff develop operating budgets Baseline budget is developed	Strategic planning sessions with SDCP Board SDCP Board Preview (Information Item)	Financial and Risk Management Committee Review SDCP Board Approval	July 1st Budget Implemented Mid-year budget review (February) Budget amendments as necessary

Table 2 illustrates the proposed FY 2025-2026 budget in comparison to Community Power's budgets from prior years. Note that the CIP is included in Total Expenses.

Table 2. Community Power Budget History

Operating Budget	Net Revenues	Total Expenses	Net Position
FY 2020-2021 Amendment	$26,286,909	$33,778,000	($7,848,092)
FY 2021-2022 Amendment	$378,053,506	$341,177,063	$35,876,443
FY 2022-2023 Amendment	$929,791,929	$772,078,710	$157,713,219
FY 2023-2024 Amendment	$1,304,274,067	$1,070,891,284	$233,382,783
FY 2024-2025 Amendment	$1,221,258,172	$1,187,090,169	$34,168,003
FY 2025-2026 Proposed	**$1,199,619,579**	**$1,034,189,011**	**$165,430,569**

ANALYSIS AND DISCUSSION:

The proposed FY 2025-2026 operating budget includes net operating revenue of $1,199,619,579 and total expenses of $1,034,189,011, resulting in net position of $165,430,569.

The proposed FY 2025-2026 capital budget includes revenue and expenses of $54,390,333 to fund 12 projects in FY 2025-2026 totaling 21 active projects during the fiscal year.

The proposed FY 2026-2030 capital investment plan includes 21 projects that will receive funding in the five-year period, totaling $304.3 million in investments. The first year of the FY 2026-2030 CIP comprises the FY 2025-2026 capital budget. Additionally, $10.3 million in unspent continuing funds were appropriated by the Board in prior fiscal years and is represented as carryforward revenue.

The proposed budget includes the key assumptions outlined below.

Operating Revenue
Community Power's net operating revenue consists primarily of revenues from sales of electricity. Assumptions regarding net operating revenue include:

- Enrollment of customers is complete from all member jurisdictions.

- 95% participation rate across all jurisdictions.
- A 1.75% uncollectible rate which remains the same as last fiscal year.
- Rates that were set and approved by the Board on February 7, 2025.

Cost of Energy includes all the various services purchased from the power market through our counterparties to supply energy to Community Power's customers.

Operating Expenses
Community Power's non-energy operating expenses fall into four categories: "personnel costs", "professional services and consultants", "marketing and outreach", and "general and administration." Expense assumptions include the following:

- **Personnel** include salaries, payroll taxes, benefits, and excused absence and paid time off for staff. The recruitment strategy includes the addition of approximately 7 new staff members during the FY 2025-26 budget cycle, growing the agency to 94 total staff.

- **Professional Services and Consultants** include SDGE 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 mandatory notices, communication consultants, mailers, printing, sponsorships, and partnerships to inform the community of Community Power.

- **General and Administration** budget covers the cost of office space, equipment, membership dues, and other general operational costs.

Non-Operating Expenses
Community Power's budget also includes non-operating expenses related to interest and related expenses used to finance its operations. These costs are comprised of associated interest costs as well as potential renewal fees on debt or letters of credit.

Capital Investment Program (CIP)
In FY 2025-2026 Community Power is continuing its Capital Investment Program (CIP) which contains all the individual capital projects, equipment purchases, and major programs for the agency that are intended to span multiple years. The FY 2025-2026 operating budget proposes a one-time portion of net operating revenues be transferred to the CIP as a continuing fund in which any unspent funds are kept within that fund and carried forward to the subsequent fiscal year. Additionally, the first year of the CIP is the proposed FY 2025-2026 capital budget.

Net Income
The proposed FY 2025-26 budget results in a net position of $165,430,569.

The following table illustrates Community Power's proposed FY 2025-26 operating budget compared to the amended budgets for FY 2023-24 and FY 2024-25.

Table 3. FY 2025-26 Proposed Budget compared to the FY 2023-24 and FY 24-25 Amended Budgets.

	FY24 Amended	FY25 Amended	FY26 Proposed
Gross Revenue	1,365.7	1,243.0	1,221.0
Less Uncollectible Accounts	-61.4	-21.8	-21.4
Net Operating Revenues	**1,304.3**	**1,221.3**	**1,199.6**
Cost of Energy	1,020.8	1,116.8	956.7
Non-Energy Costs	43.8	50.8	54.3
Subtotal Operating Expense	**1,064.6**	**1,167.6**	**1,010.9**
Debt Service	2.4	1.3	1.9
Capital Investment Program (Transfer Out)	4.7	18.2	21.4
Total Expenses	**1,071.0**	**1,187.1**	**1,034.2**
Net Position	**233.3**	**34.2**	**165.4**

Amounts displayed in millions, $

The next table illustrates Community Power's proposed FY 2026-2030 capital investment plan. The first year of the FY 2026-2030 capital investment plan represents Community Power's FY 2025-2026 capital budget.

Table 4. Community Power FY 2026-2030 Capital Investment Plan

	Carry-forward	5-Year Capital Investment Plan					
	FY25	FY26	FY27	FY28	FY29	FY30	Total
External Funding							
Regional Energy Network	0.3	31.8	59.5	51.4	42.0	43.7	228.7
DAC-GT	0.5	0.3	0.5	0.5	0.5	0.5	2.7
CDFA	0.5	-	-	-	-	-	0.5
Equitable Building Decarbonization	1.5	-	-	-	-	-	1.5
Other	-	0.9	-	-	-	-	0.9
Subtotal	**2.8**	**33.0**	**60.0**	**51.9**	**42.5**	**44.2**	**234.4**
Solar Battery Savings	2.7	18.8	11.1	10.4	8.3	8.5	59.8
Energy Efficiency	-	-	-	-	-	-	-

Pilot Programs	1.7	-	-	-	-	-	1.7
Grants	0.7	0.8	-	-	-	-	1.5
DER	0.1	-	-	-	-	-	0.1
Flexible Load	0.2	0.3	0.6	0.6	0.8	0.7	3.1
IT Projects	2.0	1.5	-	-	-	-	3.5
Community Education	0.0	-	-	-	-	-	0.0
App Assistance	-	0.3	-	-	-	-	0.3
Program Evaluation	-	0.3	-	-	-	-	0.3
Other	-	0.2	-	-	-	-	0.2
Subtotal	**7.5**	**21.4**	**11.7**	**11.0**	**9.1**	**9.2**	**69.9**
CIP Expense Total	**10.3**	**54.4**	**71.7**	**62.9**	**51.6**	**53.4**	**304.3**

FISCAL IMPACT:

The proposed FY 2025-26 budget is expected to result in a net position of $165.4 million, with resulting total cash reserves of $572.8 million, or 207-days cash on hand by the end of FY 2025-2026, based on the agency's current projections which are subject to change, especially as energy markets fluctuate.

Community Power additionally proposes a one-time investment of $21.4 million into the agency's Capital Investment Program. The large majority of this one-time investment is meant to fund $18.8 million for the Solar Battery Savings program, which offers upfront and performance-based incentives for home battery systems that boost resilience and reduce grid demand. The program was recognized in the U.S. Department of Energy's 2025 Virtual Power Plant Liftoff Report as a model for customer-centered innovation in distributed energy and offers incentives savings to customers while also reducing energy costs for Community Power during peak periods of demand.

ATTACHMENTS:

A: Draft FY 2025-2026 Operating Budget Book
B: Draft FY 2026-2030 Capital Investment Plan

SAN DIEGO COMMUNITY POWER
Staff Report – Item 12

TO: **Board of Directors**

FROM: **Kenny Key, Director of Power Contracts**

VIA: **Karin Burns, Chief Executive Officer**

SUBJECT: **Approve Amended and Restated Renewable Power Purchase Agreement with Pelicans Jaw Solar, LLC**

DATE: **May 22, 2025**

RECOMMENDATION:

Approve the proposed Second Amended and Restated Power Purchase Agreement ("A&R PPA") with Pelicans Jaw Solar, LLC to modify the Commercial Operation Date ("COD"), adjust pricing based on COD, and make additional minor amendments, and authorize the Chief Executive Officer 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 power purchase agreements (PPAs) of at least ten years in duration are integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that Community Power 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 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.

Moreover, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that Community Power provide 65% of its RPS-required renewable energy from contracts of at least ten years in length. 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. Further, as adopted March 23, 2023, Community Power has established a procurement target of 100% renewable by 2035.

In January 2024 Community Power Board of Directors approved a PPA for the Pelicans Jaw project. That PPA originated from a request for proposals Community Power issued in early 2023. Community Power engaged with SB Energy (“SBE”) on the Pelicans Jaw project under development by Pelicans Jaw Solar, LLC, a subsidiary of SBE after short-listing. The original PPA, approved in January 2024, was for capacity and renewable energy benefits from a portion of the Pelicans Jaw project, representing 226 MW of solar generation and 118 MW (472 MWh) of storage capacity.

After the original PPA was executed by the parties, staff were informed that additional volumes of solar and storage capacity could be available from the project. In April 2024, the Community Power Board of Directors approved the first amended and restated power purchase agreement to increase the volumes from 226 MW of solar generation to 440 MW and to increase the storage capacity from 118 MW to 238.5 MW.

SBE and Community Power began discussing this A&R PPA in late 2024. In 2025, SBE engaged with Community Power on moving the contractual commercial operation date to an earlier date in 2026 since the project now expects to be online in 2026.

ANALYSIS AND DISCUSSION:

Staff negotiated the attached A&R PPA for the purchase of renewable energy and capacity attributes from a 440 MW solar photovoltaic electricity generating facility, along with a 238.5 MWAC 4-hour (954 MWh) battery energy storage facility in Kern County.

Renewable energy produced by the facility will provide approximately 1,200,000 MWh annually of long-term renewable energy deliveries for Community Power’s power supply. Further, while Community Power is increasing efforts to target and encourage local project development for Community Power’s generation portfolio, Community Power expects a certain amount of geographic diversity among its power supply to help mitigate risks that might be experienced locally or regionally from weather, project site and/or wholesale market conditions.

Below is additional information regarding SBE and the proposed A&R PPA.

Background on SBE:

- SBE is a California-based solar and storage developer, owning and operating 1.4 GWac of solar projects in US, including 450 MWac of solar projects operating in California with 3 GWac of solar and 4.8 GWac of storage in its California pipeline, including the Pelicans Jaw project.
- Founded in 2019, SBE is backed by SoftBank Group Corp. and Ares Climate Infrastructure, allowing SBE to finance 100% of the projects it develops, owns, and operates.
- In December 2023, SBE received "Renewables Deal of the Year" award from Project Finance International (PFI) for reaching financial close on 1.3 GWs of solar projects and being among the first to take advantage of the domestic content

adder, a provision in the IRA designed to strengthen America's manufacturing base.
- SBE is sourcing solar modules, trackers, and structural steel domestically for several of its projects.

Contract Overview – Pelicans Jaw:
- Project: 440 MW solar photovoltaic electricity generating facility, along with a 238.5 MWAC 4-hour (954 MWh) battery energy storage facility
- Project location: Kern County
- Original Guaranteed commercial operation date: April 1, 2027
- Contract term: 15 years
- Expected annual energy production: approximately 1,200,000 MWhs
- 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 the guaranteed energy production.

Community Benefits and Workforce Development:
- The project is estimated to create approximately 800 temporary construction jobs and 6-8 permanent jobs.
- The project has a fully executed Project Labor Agreement with:
    - Operating Engineers Local 12 – San Diego, CA
    - Southwest Regional Council of Carpenters – Los Angeles, CA
    - Southern California District Council of Laborers and its affiliated Local Union 220 – Bakersfield, CA
    - IBEW Local 428 – Bakersfield, CA
    - IBEW Local Union 47 – Diamond Bar CA
    - Ironworkers Locals 416 and 433 – Norwalk, CA & City of Industry, CA
- The project has committed $500,000 to a community benefit fund to benefit Community Power customers.

Scope of Amendment:
- Modify commercial operation date to September 1, 2026. If that date is missed, the contract allows for price adjustments based on the actual commercial operation date.
- Adjust pricing to account for earlier commercial operation date.
- Update resource adequacy language to account for slide of day regulations.

COMMITTEE REVIEW:

In Q4 2024 the ECWG reviewed the A&R PPA for the project and recommended staff to move forward with the execution of this A&R PPA.

FISCAL IMPACT:

The competitive energy and capacity pricing of the A&R PPA are confidential, but the long-term purchase of renewable energy and capacity will provide Community Power with significant value and cost certainty over the term of this A&R PPA.

ATTACHMENTS:

A: Second Amended and Restated Renewable Power Purchase Agreement with Pelicans Jaw Solar, LLC

ITEM 12
ATTACHMENT A

SECOND AMENDED AND RESTATED RENEWABLE POWER PURCHASE AND ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

Seller: Pelicans Jaw Solar, LLC ("**Seller**")

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

Description of Facility: A 440 MW solar photovoltaic electricity generating facility, along with a 238.5 MW/954 MWh battery energy storage facility, all located in Kern County, in the State of California, as further described in Exhibit A, and subject to reduction in size as described in Exhibit B.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	Complete
CEC Pre-Certification Obtained	Complete
Obtain federal and state discretionary permits: [ ] CEQA, [ ] Cat Ex, [ ]Neg Dec, [ ] Mitigated Neg Dec, [ ] EIR	Complete
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	Complete
Executed Interconnection Agreement	Complete
Guaranteed Construction Start Date	1/31/26
Procure Major Equipment	Complete
Expected Commercial Operation Date	4/1/27
Guaranteed Commercial Operation Date	4/1/27

Delivery Term: 15 Contract Years.

Expected Energy:

Contract Year	Expected Energy MWh
1	[redacted]
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

Guaranteed Capacity: 440 MW for the Generating Facility

Storage Contract Capacity: 238.5 MW

Storage Contract Output: 954 MWh (based on four (4) hour discharge)

Resource Duration: 4 hours

Dedicated Interconnection Capacity: 440 MW

Guaranteed Storage Availability: [redacted]

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	[redacted]
2	
3	
4	
5	
6	
7	
8	
9	
10	

11		[redacted]	
12			
13			
14			
15			

Minimum Efficiency Rate: [redacted]

Contract Price

[redacted]

[redacted]

Product:

- ☒ Generating Facility Energy
- ☒ Discharging Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Storage Capacity
- ☒ Capacity Attributes (select options below as applicable)
  - ☒ Energy Only Status for the Generating Facility
  - ☒ Partial Capacity Deliverability Status for the Storage Facility
- ☒ Ancillary Services

Scheduling Coordinator: Buyer or Buyer's designated agent

Security:

Development Security: [redacted]

Performance Security: [redacted]

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SECOND AMENDED AND RESTATED RENEWABLE POWER PURCHASE AND ENERGY STORAGE SERVICE AGREEMENT

This Second Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement ("**Agreement**") is entered into as of May ____, 2025 (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, the Parties entered into that certain Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement, dated as of May 1, 2024, as amended by that certain First Amendment to Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement dated as of December 13, 2024 (as amended, the "**First A&R PPA**"); and

WHEREAS, the Parties hereby agree to amend, restate, replace and supersede the terms of the First A&R PPA as provided herein; and

WHEREAS, Seller intends to develop, design, permit, 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 **Contract Definitions**. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.12(d).

"**Adjusted Energy Production**" has the meaning set forth in Exhibit G.

[redacted]

"**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", "controlled by", and "under common control with", as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

"**Agreement**" has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

"**Alternating Current**" or "**AC**" means alternating current.

"**Ancillary Services**" means all ancillary services, as defined in the CAISO Tariff, that the Facility is capable of providing consistent with the Operating Restrictions, as set forth in Exhibit Q.

"**Annual Storage Availability**" has the meaning set forth in Exhibit P.

"**Approved Forecast Vendor**" means any of (a) the CAISO or (b) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

"**Availability Adjustment**" or "**AA**" has the meaning set forth in Exhibit P.

"**Availability Adjustment Payment**" has the meaning set forth in Exhibit P.

"**Available Generating Capacity**" means the capacity of the Generating Facility, expressed in whole MWs, that is mechanically available to generate Energy.

"**Bankrupt**" 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.

"**Bid**" has the meaning as set forth in the CAISO Tariff.

"**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 (PPT) for the Party sending a Notice, or payment, or performing a specified action.

"**Buyer**" means San Diego Community Power, a California joint powers authority.

"**Buyer Bid Curtailment**" means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Generating Facility Energy than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Generating Facility for a period of time;

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Generating Facility or Generating Facility Energy, including where Buyer or the SC for the Generating Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Generating Facility Energy forecasted to be generated by or delivered from the Generating Facility.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Generating Facility Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

"**Buyer Curtailment Order**" means (a) the instruction from Buyer to Seller to reduce Generating Facility Energy by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order, or (b) a reduction of Generating Facility Energy pursuant to or as a result of dispatch of the Storage Facility.

"**Buyer Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces Generating Facility Energy pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) Buyer default; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"**Buyer Dispatched Test**" has the meaning in Section 4.9(b).

"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.10(a).

"**CAISO**" means the California Independent System Operator Corporation.

"**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 Generating Facility Energy delivered to the Delivery Point or the Storage Facility or all Charging Energy and Discharging Energy delivered to or from the Delivery Point, as applicable.

"**CAISO Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

"**CAISO Operating Order**" means the "operating order" defined in Section 37.2.1.1 of 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.

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate, charge, discharge or deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

"**Capacity Damages**" has the meaning set forth in Section 5(a) of Exhibit B.

"**CEC**" means the California Energy Commission, or any successor agency performing similar statutory functions.

"**CEC Certification and Verification**" means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard.

"**CEC Precertification**" means that the CEC has issued a precertification for the Generating Facility indicating that the planned operations of the Generating Facility would comply with applicable CEC requirements for CEC Certification and Verification.

"**CEQA**" means the California Environmental Quality Act.

"**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 that 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 Storage Facility pursuant to a Charging Notice, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses and Station Use. All Charging Energy that is not consumed in Electrical Losses or used for Station Use shall be used solely to charge the Storage Facility. Subject to the Operating Restrictions, Charging Energy may be delivered from the CAISO Grid in any Settlement Interval during which the Generating Facility is not producing Generating Facility Energy.

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO to Seller, directing the Storage 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. For the avoidance of doubt, (i) any instruction to charge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

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

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

"**Commercial Operation Delay Damages**" or "**COD Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) [redacted]

"**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 Storage Facility pursuant to this Agreement.

"**Compliance Action**" has the meaning set forth in Section 3.12(b).

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.12(b).

"**Confidential Information**" has the meaning set forth in Section 18.1.

"**Construction Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) [redacted]

"**Construction Start**" has the meaning set forth in Exhibit B.

"**Construction Start Date**" has the meaning set forth in Exhibit B.

"**Contract Capacity**" means the sum of the Guaranteed Capacity and the Storage Contract Capacity.

"**Contract Price**" has the meaning set forth on the Cover Sheet. To be clear, the Contract Price is each of the Renewable Rate and the Storage Rate.

"**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 agency performing similar statutory functions.

"**CPUC System RA Penalty Price**" 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 (RA) 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.

"**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)(vi).

"**Curtailment Cap**" has the meaning set forth in Exhibit C, clause (d).

"**Curtailment Order**" means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, requiring such Party to curtail deliveries of Generating Facility 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 Participating Transmission Owner 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 Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Generating Facility Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which generation from the Facility is reduced pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"**Damage Payment**" [redacted]

"**Day-Ahead Forecast**" has the meaning set forth in Section 4.3(c).

"**Day-Ahead Market**" has the meaning set forth in the CAISO Tariff.

"**Day-Ahead Schedule**" has the meaning set forth in the CAISO Tariff.

"**Dedicated Interconnection Capacity**" means an instantaneous amount of Energy that is permitted to be delivered by the Facility to the Delivery Point under Seller's Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

"**Deemed Delivered Energy**" means the amount of Generating Facility Energy, expressed in MWh, that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be calculated using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Buyer Curtailment Period, less the amount of Generating Facility Energy delivered to the Storage Facility or the Delivery Point during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). For all purposes under this Agreement, including compensation under Exhibit C and the Curtailment Cap, Deemed Delivered Energy shall be reduced in any Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unexcused unavailability of the Storage Facility.

"**Defaulting Party**" has the meaning set forth in Section 11.1(a).

"**Deficient Month**" has the meaning set forth in Section 4.10(e).

"**Delay Damages**" means Construction Delay Damages and COD Delay Damages.

[redacted]

"**Delivery Point**" has the meaning set forth in Exhibit A.

"**Delivery Term**" 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.

"**Development Security**" means (i) cash or (ii) a Letter of Credit in the amount set forth for the Development Security on the Cover Sheet.

"**Discharging Energy**" means all Energy that is delivered from the Storage Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Station Use and Electrical Losses to the Delivery Point to the extent such Electrical Losses and Station Use are not already reflected in the Storage Facility Meter measurements.

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO to Seller, directing the Storage 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. For the avoidance of doubt, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order, except that any Discharging Notice that results in a reduction in Generating Facility Energy will be deemed a Buyer Curtailment Order for all purposes hereunder. Any instruction to discharge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.

[redacted]

[redacted]

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

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

"**Efficiency Rate**" means the tested round-trip efficiency rate of the Storage Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In.

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

"**Eligible Renewable Energy Resource**" has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

"**Energy**" means Alternating Current electrical energy measured in MWh.

"**Energy In**" has the meaning set forth in Part II.B of Exhibit O.

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

"**Energy Out**" has the meaning set forth in Part II.B of Exhibit O.

"**Energy Supply Bid**" has the meaning set forth in the CAISO Tariff.

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

"**Excess MWh**" has the meaning set forth in Exhibit C.

"**Expected Commercial Operation Date**" means the date set forth on the Cover Sheet.

"**Expected Energy**" means the quantity of Generating Facility Energy that Seller expects to be able to deliver to Buyer during each Contract Year or other time period (assuming no Charging Energy or Discharging Energy during such Contract Year or time period) in the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed Capacity to Installed Generating Capacity pursuant to Section 5(a) of Exhibit B, if applicable, provided, that prior to the Construction Start Date, Seller may update the Expected Energy by providing Notice to Buyer along with a resource evaluation report prepared by an independent engineer, in which case the Expected Energy for the first Contract Year will be automatically revised without further action of the Parties to equal the "P-50" estimate of the Facility's generation for the first Contract Year as set forth in such report (and the Expected Energy for the remaining Contract Years will be automatically adjusted to reflect 0.50% degradation per Contract Year). Such automatic revision is only allowed without further action of the Parties if the revised expected energy is within ten percent (10%) of the original Expected Energy specified on the Cover Sheet as of the Effective Date.

"**Facility**" means the Generating Facility and the Storage Facility.

"**Facility Energy**" means the sum of Generating Facility Energy and Discharging Energy during any Settlement Interval or Settlement Period.

"**FERC**" means the Federal Energy Regulatory Commission.

[redacted]

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

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

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

"**Forced Facility Outage**" means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

"**Forecasting Penalty**" means for each hour in which Seller does not provide the forecast required in Section 4.3(c) and Buyer incurs a loss or penalty resulting from its scheduling activities in such hour with respect to Generating Facility Energy, the product of (A) the absolute difference (if any) between (i) the expected Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour.

"**Forward Certificate Transfers**" has the meaning set forth in Section 4.10(a).

"**Future Environmental Attributes**" shall mean any and all generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

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

which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

"**Generating Facility**" means the renewable energy electricity generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Generating Facility Energy to (i) to the Delivery Point, and (ii) to the Storage Facility as Charging Energy; provided, that the "Generating Facility" does not include the Storage Facility or the Shared Facilities.

"**Generating Facility Energy**" means all Energy that is delivered from the Generating Facility to the Storage Facility or directly to the Delivery Point as measured at the Generating Facility Metering Point by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for Station Use and Electrical Losses to the Delivery Point to the extent such Electrical Losses and Station Use are not already reflected in the Generating Facility Meter measurements.

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

"**Generating Facility Metering Point**" means the location or locations of the Generating Facility Meter shown on Exhibit R.

"**GEP Damages**" has the meaning set forth in Section 4.7.

"**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*, that "Governmental Authority" shall not in any event include any Party.

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not

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

"**Green Tag Reporting Rights**" means the right of a purchaser of renewable energy to report ownership of accumulated "green tags" in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

"**Guaranteed Capacity**" means the amount of generating capacity of the Generating Facility, as measured in MW at the Delivery Point, 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, for each Contract Year, the guaranteed Efficiency Rate of the Storage Facility for such Contract Year, as set forth on the Cover Sheet.

"**Guaranteed Energy Production**" means an amount of Adjusted Energy Production, as measured in MWh, equal to [redacted] of the total Expected Energy for the applicable Performance Measurement Period.

"**Guaranteed RA Amount**" means, at any point in time on or after the RA Guarantee Date, the maximum Net Qualifying Capacity (in MWs) for which a storage facility with storage capacity equal to the Installed Battery Capacity with four (4) hour discharge at the Delivery Point, having achieved PCDS to the extent required under the Agreement and performing with operational characteristics equal to those required by the Guaranteed Storage Availability, Guaranteed Efficiency Rate, and the Operating Restrictions, may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources. Seller will not be required to obtain or allocate TP Deliverability (as defined in the CAISO Tariff) to the Facility in excess of the Storage Contract Capacity.

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

"**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 [redacted], (d) has a tangible net worth of at least [redacted], (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.

"**Guaranty**" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

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

"**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).

[redacted]

"**In-Service Date**" has the meaning set forth in Section 4 of Exhibit B.

"**Installed Battery Capacity**" means the maximum dependable operating capability of the Storage Facility to discharge Energy for the Resource Duration at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, [redacted] (up to but not in excess of the Storage Contract Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

"**Installed Capacity**" means the sum of (i) the Installed Generating Capacity and (ii) the Installed Battery Capacity.

"**Installed Generating Capacity**" means the actual generating capacity of the Generating Facility, as measured in MW(ac) at the Delivery Point, [redacted] (up to but not in excess of the Guaranteed Capacity), adjusted for ambient conditions on the date of the

performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

"**Insurable Force Majeure Event**" means any Force Majeure Event which (a) results in direct, physical loss to the Facility, and (b) excludes Force Majeure Events that occur beyond the Delivery Point.

"**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.

"**Interconnection Facilities**" 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 Seller's 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.

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

[redacted]

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

"**Investment Grade Credit Rating**" means a Credit Rating of [redacted]

"**ITC**" means the investment tax credit established pursuant to Section 48 or Section 48E 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.).

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"**Law**" 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 (i) providing letters of credit, surety bonds, 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 or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank 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 Exhibit K.

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

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

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

"**Losses**" means, with respect to the 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. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including 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 Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

"**Lost Output**" means the amount of Generating Facility Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during Force Majeure Events, Curtailment Periods, System Emergencies, or Buyer default, which amount shall be calculated using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Force Majeure Events, Curtailment Periods, System Emergencies, or Buyer default, less the amount of Generating Facility Energy delivered to the Storage Facility or the Delivery Point during such period of time (or other relevant period); *provided* that, if the applicable difference is negative, the Lost Output shall be zero (0). For all purposes under this Agreement, Lost Output shall be reduced in any Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unexcused unavailability of the Storage Facility.

"**Master File**" has the meaning set forth in the CAISO Tariff.

"**Maximum Charging Capacity**" means the maximum power output level, in MW, at which the Storage Facility can be charged, as specified in Exhibit Q.

"**Maximum Discharging Capacity**" means the maximum power output level, in MW, at which the Storage Facility can be discharged, as specified in Exhibit Q.

"**Maximum State of Charge**" means the maximum State of Charge to which the Storage Facility may be charged, as set forth in Exhibit Q.

"**Maximum Stored Energy Level**" means the maximum Stored Energy Level the Storage Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.

"**Milestones**" means the development activities for significant permitting, interconnection, financing 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 Storage Facility may be discharged, as set forth in Exhibit Q.

"**Minimum Stored Energy Level**" means the minimum Stored Energy Level the Storage Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.

"**Monthly Delivery Forecast**" has the meaning set forth in Section 4.3(b).

[redacted]

"**Moody's**" means Moody's Investors Service, Inc.

"**MW**" means megawatts in Alternating Current, unless expressly stated in terms of direct current.

"**MWh**" means megawatt-hour measured in Alternating Current, unless expressly stated in terms of direct current.

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, the Real-Time Market LMP at the Facility's PNode is less than Zero dollars ($0).

"**Negative LMP Costs**" has the meaning set forth in Exhibit C.

"**NERC**" 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**" has the meaning set forth in the CAISO Tariff.

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

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

"**Notice to Proceed**" has the meaning set forth in Exhibit B.

"**Operating Restrictions**" means those rules, requirements, and procedures set forth on Exhibit Q.

"**Pacific Prevailing Time**" means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

"**Partial Capacity Deliverability Status**" has the meaning set forth in the CAISO Tariff.



"**Participating Transmission Owner**" or "**PTO**" means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

"**Party**" or "**Parties**" has the meaning set forth in the Preamble.

"**Performance Measurement Period**" means each two (2) consecutive Contract Year period during the Delivery Term so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on.

"**Performance Security**" means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth as the Performance Security on the Cover Sheet.

"**Permitted Transferee**" 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 [redacted] and

(b) At least three (3) years of experience in the ownership and operations of power generation 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, subject to and as further described in the CAISO Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Facility that is conducted for the purposes of carrying out routine repair or maintenance of such Facility, or for the purposes of new construction work for such Facility.

"**Portfolio Content Category 1**" or "**PCC1**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

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

"**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 utility industry during the relevant time period

with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States, or (b) any of the practices, methods and acts which, 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 generating facilities with integrated storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the 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.

"**PTC**" means the production tax credit established pursuant to Section 45 or Section 45Y of the United States Internal Revenue Code of 1986.

"**PTC Amount**" means the amount, on a dollar per MWh basis, equal to the PTC that Seller would have earned in respect of Generating Facility Energy at the time, grossed up on an after tax basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of Buyer Bid Curtailment or Buyer Curtailment Order, which amount will be calculated by reference to the amount of Deemed Delivered Energy in excess of the Curtailment Cap and the portion of the Generating Facility eligible to receive Production Tax Credits at the time of determination.

"**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 3.8(b).

"**RA Guarantee Date**" means the Commercial Operation Date.

"**RA Shortfall**" has the meaning set forth in Section 3.8(b).

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month, commencing with the Showing Month that contains the RA Guarantee Date, during which there is an RA Shortfall.

"**Ramp Rate**" means the ability of the Storage Facility to change between power output levels, expressed in MW_{AC}/min.

"**Real-Time Forecast**" means any Notice of any change to the Available Generating Capacity, Storage Capacity, or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

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

"**Real-Time Price**" means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

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

"**Remedial Action Plan**" has the meaning set forth in Section 2.4.

"**Renewable Energy Credit**" has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"**Renewable Energy Incentives**" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production or storage of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local 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.

"**Renewable Rate**" has the meaning set forth on the Cover Sheet.

"**Replacement Energy**" means energy produced by an Eligible Renewable Energy Resource other than the Generating Facility, that is provided by Seller to Buyer as a component of Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as a component of such Replacement Product.

"**Replacement Green Attributes**" means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production or a different year as agreed to by the Parties, as the Renewable Energy Credits that would have been generated by the Generating Facility.

"**Replacement Product**" means (a) Replacement Energy, and (b) Replacement Green Attributes.

"**Replacement RA**" means Resource Adequacy Benefits, if any, (a) equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is expected to be due to Buyer, including, as applicable, Resource Category and Flexible Capacity Category, the same Slice-of-Day (as such term is 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 to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits, and (b) located within the CAISO balancing authority area.

"**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, including any Resource Duration attributes.

"**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 for 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.

"**Resource Duration**" means the number of continuous hours of discharge set forth on the Cover Sheet.

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.).

"**Schedule**" has the meaning set forth in the CAISO Tariff, and "**Scheduled**" has a corollary meaning.

"**Scheduled Energy**" means the Charging Energy, Discharging Energy, or Generating Facility 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), 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.

"**Self-Schedule**" has the meaning set forth in the CAISO Tariff.

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

"**Seller Initiated Test**" has the meaning set forth in Section 4.9(b).

[redacted]

"**Seller's WREGIS Account**" has the meaning set forth in Section 4.10(a).

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

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

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

"**Shared Facilities**" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the Interconnection Point, 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 the 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.

"**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.

"**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.

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

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

"**Station Use**" means the Energy that is used within the Facility to power certain lights, motors, 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 Storage Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice.

"**Storage Capacity**" means (a) the maximum dependable operating capability of the Storage Facility to discharge Energy that can be sustained for four (4) consecutive hours and (b) any other products that may be developed or evolve from time to time during the Contract Term that the Storage Facility is able to provide as the Facility is configured [redacted] and subject to the Operating Restrictions and that relate to the maximum dependable operating capability of the Storage Facility to discharge Energy.

"**Storage Capacity Damages**" has the meaning set forth in Exhibit B.

"**Storage Capacity Test**" or "**SCT**" means any test or retest of the capacity of the Storage Facility and/or Efficiency Rate conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

"**Storage Contract Capacity**" means the total capacity (in MW) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(b) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

"**Storage Contract Output**" means the product of the Storage Contract Capacity multiplied by four (4) hours, represented in MWh, initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(b) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

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

"**Storage 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 Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

"**Storage 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 Storage Facility Metering Point and the amount of

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

"**Storage Facility Metering Point**" means the location or locations of the Storage Facility Meter shown on Exhibit R.

"**Storage Payment**" has the meaning set forth in Exhibit C.

"**Storage Product**" means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Storage Facility.

"**Storage Rate**" has the meaning set forth on the Cover Sheet.

"**Stored Energy Level**" means, at a particular time, the amount of Energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.



"**Supplementary Storage 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 PTO, 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.

"**Tax**" or "**Taxes**" 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.

"**Tax Credits**" means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

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

"**Termination Payment**" has the meaning set forth in Section 11.3.

"**Test Energy**" means Generating Facility Energy delivered prior [redacted]

"**Test Energy Rate**" has the meaning set forth in Section 3.6.

"**Throughput**" means, at any point in time during any day, [redacted] or Contract Year, as applicable, the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such day, [redacted] or Contract Year, as applicable (expressed in MWh).

"**Transmission Provider**" means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

"**Transmission System**" 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 SBE US Holdings One, LLC, a Delaware limited liability company.

"**Variable Energy Resource**" or "**VER**" has the meaning set forth in the CAISO Tariff.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.10(e).

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of October 2022, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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 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 means 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 term "including" means "including 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) 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

(l) 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 ("**Contract Term**"); provided, however, that subject to Buyer's obligations in Section 2.5 and/or Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 **Conditions Precedent**. Seller shall provide Notice to Buyer of the expected Commercial Operation Date at least thirty (30) 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. If Buyer rejects Seller's Notice of Commercial Operation, Buyer will provide a detailed statement of the reasons for such rejection together with its Notice of such rejection. If Seller disagrees with Buyer's rejection of Seller's Notice of Commercial Operation or if the Parties are unable to address the concerns stated in Buyer's Notice of rejection to the mutual satisfaction of both Parties, then Seller may initiate the expedited dispute resolution process set forth in Section 15.3. If Seller initiates the expedited dispute resolution process and it is determined pursuant to such dispute resolution process that Seller met the requirements for Commercial Operation set forth in this Section 2.2, Commercial Operation shall occur as of the date that the requirements for Commercial Operation were initially satisfied, as determined

pursuant to such dispute resolution process. [redacted]

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H, [redacted] and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity [redacted];

(b) 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;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (90) days) 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;

(e) Seller has received CEC Precertification of the Generating Facility (and reasonably expects to receive final CEC Certification and Verification for the Generating Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;

(h) Insurance requirements for the Facility that are required to be in place during the [redacted] Delivery Term have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;

(i) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(j) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages.

2.3 **Development; Construction; Progress Reports**. 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 agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. 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. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan**. If Seller becomes aware that it will not achieve the Construction Start Date by the Guaranteed Construction Start Date, Seller shall submit to Buyer, within ten (10) Business Days of becoming aware that the Guaranteed Construction Start Date will be missed, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Guaranteed Construction Start Date, including the cause of the delay, and Seller's detailed description of its proposed course of action to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation 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, including the Guaranteed Construction Start Date.

[redacted]

ARTICLE 3
PURCHASE AND SALE

3.1 **Purchase and Sale of Product**. Subject to the terms and conditions of this Agreement, during the [redacted] Delivery Term, Buyer will purchase and receive all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility (net of applicable losses), in each case, except with respect to Seller-Retained Capacity Attributes. At its sole discretion, Buyer may during the [redacted]

[redacted] Delivery Term re-sell all or a portion of the Product (except with respect to Seller-Retained Capacity Attributes), provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the [redacted] Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any Capacity Attributes thereof (except with respect to Seller-Retained Capacity Attributes), from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Capacity Attributes and Storage Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Generating Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Sale of Green Attributes**. During the [redacted] Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Generating Facility Energy.

3.3 **Imbalance Energy**. Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be allocated to the Party that is acting as Scheduling Coordinator for the Facility.

3.4 **Ownership of Renewable Energy Incentives**. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of

further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy**. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to [redacted] (the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes**. Seller shall request Partial Capacity Deliverability Status for at least the Storage Contract 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 Partial Capacity Deliverability Status.

(a) Throughout the [redacted] Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility (except with respect to Seller-Retained Capacity Attributes).

(b) Throughout the [redacted] Delivery Term, [redacted], Seller shall maintain eligibility for Interim Deliverability Status or Partial 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 Seller. Throughout the [redacted] Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer (except with respect to Seller-Retained Capacity Attributes). [redacted] Seller shall take all commercially reasonable actions necessary to obtain Interim Deliverability Status or Partial Capacity Deliverability Status for the Facility in the amount of the Storage Contract Capacity by the Commercial Operation Date, or as soon as practicable thereafter if such status cannot be obtained by the Commercial Operation Date.

[redacted]

[redacted]

(c) For the duration of the [redacted], subject to Section 3.12, Seller shall take all 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 (except with respect to Seller-Retained Capacity Attributes) committed by Seller to Buyer pursuant to this Agreement.

[redacted]

[redacted]

3.8 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages as set forth in Section 3.8(b) and/or provide Replacement RA as set forth in Section 3.8(c), in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. [redacted]

(c) Seller may, as an alternative to paying RA Deficiency Amounts, deliver Replacement RA in the amount of the RA Shortfall, provided that Notice of such Replacement RA

capacity is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least thirty (30) days before the RA Compliance Showing deadline for the applicable Showing Month.

3.9 **CEC Certification and Verification**. Subject to Section 3.12, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Generating Facility throughout the [redacted] Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). [redacted] Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, subject to Section 3.12, Seller shall obtain and maintain throughout the remainder of the Interim Operation Period (if applicable) and the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Generating Facility.

3.10 **Reserved**.

3.11 **Non-Modifiable Standard Terms and Conditions**.

(a) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

(b) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].

(c) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6].

(d) With respect to the immediately preceding paragraphs, (i) the reference in Section 3.11(a) to "first delivery under the contract" has the same meaning as "first delivery of Generating Facility Energy under this Agreement", (ii) the references in Section 3.11(c) to "Project" have the same meaning as "Generating Facility", (iii) each reference in the last sentences of Section 3.11(b) and Section 3.11(c) to "commercially reasonable efforts" means efforts consistent with and subject to Section 3.12 below, [redacted].

3.12 **Compliance Expenditure Cap**.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Subject to Section 3.12(b), Seller agrees 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 relating to Green Attributes and/or Capacity Attributes to maximize benefits to Buyer, including: (i) the modification of the description of Green Attributes and/or Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to assure that this Agreement or the Generating Facility is eligible as an ERR and for other benefits under the California Renewables Portfolio Standard.

(b) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs (A) to cause the Generating Facility, the Energy generated by the Generating Facility, or the associated Green Attributes to be in compliance with the RPS or to obtain, maintain, convey or effectuate Buyer's use of any Green Attributes, or (B) or to obtain, maintain, convey or effectuate Buyer's use of any Capacity Attributes, Resource Adequacy Benefits, or Ancillary Services, or (C) a change in WREGIS Operating Rules or CRS requirements after the Effective Date increases Seller's costs to comply with its obligations under Section 4.10 or Section 4.12, then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses (any action required to be taken by Seller to comply with such change in Law, a "**Compliance Action**"), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during [redacted] the Delivery Term to comply with all of such obligations shall be capped at [redacted] per MW of Contract Capacity in aggregate over the Contract Term (the "**Compliance Expenditure Cap**").

(c) 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.

(d) 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 of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), 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.

(e) 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.

Any change in the value of any attributes provided by Seller to Buyer resulting from any change in Law shall not affect the Contract Price or Buyer's obligation to pay Seller for any attributes delivered.

3.13 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties (and Seller's Lenders) in their sole discretion as set forth in a written agreement executed by the Parties.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) Energy. Subject to the provisions of this Agreement, commencing on [redacted] and continuing 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 Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Generating Facility or the Delivery Point to the Storage Facility (but excluding the cost of Charging Energy itself), and 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 Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges, and supplying any non-Generating Facility Charging Energy to the Delivery Point. The Facility Energy, any other Products, and non-Generating Facility Charging Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Facility during [redacted] the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility. Buyer

acknowledges that the Green Attributes that could be produced by the Generating Facility may be reduced due to Storage Facility efficiency losses. For the avoidance of doubt, a reduction in WREGIS Certificates due to Storage Facility efficiency losses will not be deemed a WREGIS Certificate Deficit.

[redacted]

4.2 **Title and Risk of Loss**.

(a) Energy. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting**. Seller shall provide the forecasts described below at its sole expense and in a format acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) [redacted] the first day of the first Contract Year of the Delivery Term and (iii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and Buyer's SC (if applicable) a non-binding forecast of each month's average-day expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of Energy and Available Generating Capacity. No less than thirty (30) days before the [redacted] 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 Buyer's SC (if applicable) a non-binding forecast of the hourly expected Energy, Available Generating Capacity and Storage Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity, (ii) Storage Capacity and (iii) hourly expected Energy, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's non-binding best estimate of (i) the Available Generating Capacity, (ii) the Storage Capacity and (iii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer's SC. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on (in order of priority) (1) any Real-Time Forecast provided in accordance with Section 4.3(d), or (2) the Monthly Delivery Forecast or (3) Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the [redacted] Delivery Term, Seller shall notify Buyer and Buyer's SC (if applicable) of any changes from the Day-Ahead Forecast via a direct data feed to Buyer's SC (such feed to be provided by Seller at Seller's expense) of one (1) MW or more in (i) Available Generating Capacity, (ii) Storage Capacity or (iii) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity, Storage Capacity, or hourly expected Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer and Buyer's SC (if applicable) as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor. With respect to any Forced Facility Outage, Seller shall use reasonable efforts in accordance with Prudent Operating Practice to notify Buyer and Buyer's SC (if applicable) of such outage as soon as practicable after the commencement of the Forced Facility Outage and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Storage Capacity, or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer, in each case, to the extent known at such time. Seller shall inform Buyer and Buyer's SC (if applicable) of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer and Seller; provided that Buyer specifies the method no later than ten (10) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's SC of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(c) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Generating Facility Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.12, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Dispatch Down/Curtailment**.

(a) General. Seller agrees to reduce the amount of Generating Facility Energy produced by the Generating Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Generating Facility.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Generating Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Renewable Rate and, if applicable, the PTC Amount, in accordance with Exhibit C.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Generating Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Generating Facility Energy will have priority over Discharging Energy from the Storage Facility. [redacted] if the Storage Facility has less than one hundred percent (100%) State

of Charge during any Curtailment Period or during a Buyer Curtailment Period, to the extent permitted under the CAISO Tariff, Generating Facility Energy will be used to charge the Facility until it reaches a one hundred percent (100%) State of Charge.

(e) Seller Equipment Required for Curtailment Instruction Communications. Subject to Section 3.12, 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 Buyer Curtailment Order, Buyer Bid Curtailment or 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, subject to Section 3.12, take the steps necessary to become compliant as soon as reasonably possible. Subject to Section 3.12, Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or 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 Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 **Charging Energy Management**.

(a) Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Storage Facility. Except as expressly set forth in this Agreement, including Section 4.5(c) and Section 4.9(b), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility.

(b) Charging Notices. During the [redacted] Delivery Term, Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided, that Buyer's right to issue Charging Notices is subject to Facility availability and the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). 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 (including as automatically updated in accordance with the definition of Charging Notice). Seller shall comply with all valid Charging Notices, subject to Facility availability and the requirements and limitations set forth in this Agreement, including the Operating Restrictions.

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the [redacted] Delivery Term other than pursuant to a valid Charging Notice, 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, Transmission Provider, or any other Governmental Authority. If, during the [redacted] Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all Energy costs associated with such charging of the Storage Facility, (y) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such Energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Discharging Notices. During [redacted] the Delivery Term, Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to Facility availability and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Seller shall comply with all valid Discharging Notices, subject to Facility availability and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. 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) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the [redacted] Delivery Term other than pursuant to a valid Discharging Notice, 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, Transmission Provider, or any other Governmental Authority. If, during the [redacted] Delivery Term, Seller (i) discharges the Storage Facility other than as provided for in the Discharging Notice or (ii) discharges the Storage Facility in violation of the first sentence of this Section 4.5(e), then (x) Seller shall be responsible for all Energy costs associated with such discharging of the Storage Facility, (y) Buyer shall not be required to pay for the discharging of such Energy (i.e., Discharging Energy), and (z) Buyer shall be entitled to all of the benefits (including Storage Product) associated with such discharge.

(f) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment, or other instruction or direction from a Governmental Authority or the PTO or the Transmission Provider, or compliance with the Operating Restrictions. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Restrictions.

(g) [redacted] Period, etc. Prior to the [redacted] (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 Storage Facility,

and (iii) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage 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. [redacted] 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 Storage Facility operations shall be for Buyer's account.

(h) Station Use. 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 Storage 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 Storage 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.

(i) Grid Charging. At all times during each Contract Year, the aggregate Contract Year-to-date Charging Energy provided from a source other than the Generating Facility must be equal to or less than [redacted]

4.6 **Reduction in Energy Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1, Section 4.7, or Exhibit G or Exhibit P:

(a) Facility Maintenance. Subject to providing Buyer one-hundred twenty (120) days prior Notice, 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 the cost of any replacement Capacity Attributes as required by the CAISO). During the five-month period from June 1 to October 31 during the Delivery Term, Seller shall not schedule any non-emergency maintenance that reduces the energy generation capability of the Facility, unless (i) such outage is required to avoid an emergency or damage to the Facility or its Interconnection Facilities, (ii) such maintenance is necessary to maintain equipment warranties or is otherwise

required by the equipment manufacturer and cannot be scheduled outside the months of June to October, (iii) such outage is in connection with Force Majeure Events, (iv) such outage is required by law, or the requirements of CAISO or the interconnecting utility and/or each other applicable Governmental Authority, or (v) the Parties agree otherwise in writing.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product other than Capacity Attributes during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product other than Capacity Attributes during any period of System Emergency, Buyer Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product other than Capacity Attributes during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product other than Capacity Attributes as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Guaranteed Energy Production**. During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Generating Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer all (a) Deemed Delivered Energy and (b) Lost Output for the Performance Measurement Period. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G ("**GEP Damages**"); *provided*, Seller may, as an alternative to paying GEP Damages, provide Replacement Product in accordance with Exhibit G.

4.8 **Storage Availability and Efficiency Rate**.

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Availability during each Contract Year of no less than the Guaranteed Storage Availability, which Annual Storage Availability shall be calculated in accordance with Exhibit P. If the Annual Storage Availability for any Contract Year is less than the Guaranteed Storage Availability, then Seller shall owe Buyer an Availability Adjustment Payment (as determined in accordance with Exhibit P). Seller shall provide Buyer with monthly updates on Seller's Contract Year-to-date Annual Storage Availability.

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate, calculated pursuant to a Storage Capacity Test, of no less than the Guaranteed Efficiency Rate. If the Efficiency Rate during any month of the Delivery Term is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages pursuant to Exhibit C.

(c) Buyer's sole and exclusive remedies for Seller's failure to achieve the Guaranteed Storage Availability and the Guaranteed Efficiency Rate are: (i) for the Guaranteed Storage Availability, (A) the Availability Adjustment Payment, as set forth in Exhibit P, and (B) the Seller Event of Default as set forth in Section 11.1(b)(vii) and the applicable remedies set forth in Article 11; and (ii) for the Guaranteed Efficiency Rate, (A) the liquidated damages for failure to achieve the Guaranteed Efficiency Rate, as set forth in Exhibit C, and (B) the Seller Event of Default as set forth in Section 11.1(b)(x).

4.9 **Storage Capacity Tests**.

(a) Prior to the [redacted], Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run retests of the Storage Capacity Test in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Alternatively, to the extent that any Storage Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all applicable data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. For any Storage Capacity Tests initiated by Seller ("**Seller Initiated Test**"), including all tests conducted [redacted] any Storage Capacity Test conducted if the Storage Contract Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Battery Capacity, and other Seller-requested discretionary tests or dispatches, Seller shall (i) not be entitled to the Renewable Rate for associated Charging Energy, (ii) be liable for all CAISO costs and charges for associated Charging Energy, and (iii) be entitled to any CAISO revenues associated with Discharging Energy. For any Storage Capacity Tests initiated by Buyer, including any test required by CAISO and all required annual tests pursuant to Exhibit O ("**Buyer Dispatched Test**"), Buyer shall (x) pay Seller the Renewable Rate for associated Charging Energy, (y) be liable for all CAISO costs and charged for associated Charging Energy, and (z) be entitled to any CAISO revenues associated with associated Discharging Energy. No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test. Charging Notices or Discharging Notices may be issued during a Buyer Dispatched Test as reasonably necessary to implement the applicable test. The Storage Facility shall be deemed unavailable during any Seller Initiated Test. Any Buyer Dispatched Test shall be deemed an Excused Event for the purposes of calculating the Annual Storage Availability.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then current Storage Contract Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to such Storage Capacity Test shall become the new Storage Contract Capacity (not to exceed the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Section 5 of Exhibit B) and/or Efficiency Rate 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 Storage Contract Capacity and/or Efficiency Rate, as applicable, is established pursuant to a subsequent Storage Capacity Test.

4.10 **WREGIS**. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Generating Facility Energy or Facility Energy, as applicable, are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates.

(a) Prior to the [redacted] Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Generating Facility Energy or Facility Energy, as applicable, for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Generating Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and damages, if any, under Exhibit G for the applicable Contract Year; *provided*, *however*, that such adjustment shall not apply to the extent that Seller (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes within ninety (90) days after the Deficient Month (i) upon a schedule reasonably

acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) Subject to Section 3.12, if (i) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, or (ii) the CEC modifies its *RPS Eligibility Guidebook* to enable the full amount of Generating Facility Energy to generate WREGIS Certificates, without reduction for Storage Facility efficiency losses, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the maximum quantity of WREGIS Certificates that can be transferred to Buyer from the Generating Facility in the same calendar month.

4.11 **Interconnection**. 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; provided that Buyer acknowledges that such interconnection capacity is subject to reduction, limitation, or curtailment as set forth in the Interconnection Agreement.

4.12 **Green-E Certification**. Upon request of Buyer and subject to Section 3.12, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("**Attestation**") for Product delivered under this Agreement to the Center for Resource Solutions ("**CRS**") at https://www.tfaforms.com/4652008 or its successor. Subject to Section 3.12, the Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted within thirty (30) days of Buyer's request or the last day of the month in which the applicable Generating Facility Energy was generated, whichever is later.

ARTICLE 5
TAXES

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. 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), if any. 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 **Cooperation**. 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 OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, the generation and sale of Product, and the disposal and recycling of any equipment associated with the Facility, including without limitation, batteries and solar panels.

6.2 **Maintenance of Health and Safety**. 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 action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy or Discharging Energy to Buyer.

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, including providing interconnection capacity for the Facility's sole use in an amount not less than the Dedicated Interconnection Capacity, (ii) shall provide for separate metering and a separate CAISO Resource ID for the Facility, (iii) 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 IDs; and (iv) shall provide that any curtailment of the full capacity of Shared Facilities that is ordered by Transmission Provider that 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 parties a share of the total interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement minus the Dedicated Interconnection Capacity.

ARTICLE 7
METERING

7.1 **Metering**.

(a) Unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a single CAISO Resource ID for the Facility, which is a combination of the Generating Facility and the Storage Facility. Seller shall measure the amount of Generating Facility Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Generating Facility Meter and Storage 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. Each Generating Facility Meter and Storage Facility Meter shall be kept under seal, such seals to be broken only when the meters are 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 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, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification**. Seller shall test the Generating Facility Meter and Storage 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 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 meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; *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 within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of metered data, including 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 Generating Facility Energy, Charging Energy, Discharging Energy, and Replacement RA delivered to Buyer (if any); the calculation of

Deemed Delivered Energy, Lost Output, and Adjusted Energy Production; the LMP prices at the Delivery Point for each Settlement Period; and the Contract Price applicable to such Product in accordance with Exhibit C; (b) reflect any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services 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 payment to Seller 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 the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) 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 five (5) years or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted 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 **Invoice Adjustments**. Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or pursuant to a Storage Capacity Test, or (c) there have been meter inaccuracies; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies expect to the extent that such meter adjustments are accepted by 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.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

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

8.7 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect until Buyer is required to return such Development Security hereunder. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish

the Performance Security (including a Guaranty) 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. 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 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 these obligations are satisfied in full.

8.10 **Financial Statements**. 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 **Addresses for the Delivery of Notices**. 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 on Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **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) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; 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 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; landslide; mudslide;

sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Product at a lower price, or Seller's ability to sell the Product at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, 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; or (vii) 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.

(d) Notwithstanding any provision to the contrary, a Force Majeure Event does not excuse Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date except to the extent such excuse for Force Majeure Event is allowed pursuant to a Development Cure Period.

10.2 **Termination Following Force Majeure Event**.

[redacted]



10.3 **Notice for Force Majeure**. Within five (5) Business Days of the commencement 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 commencement of a Force Majeure Event the claiming Party shall provide the other Party with Notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, all as known or estimated in good faith by the claiming Party. Failure to provide timely notice as described in the prior sentence constitutes a waiver of the Force Majeure Event as to all periods prior to the delivery of the notice. Upon written request from the non-claiming Party, the claiming Party shall provide documentation describing the claiming Party's efforts to overcome the Force Majeure Event. 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 Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

10.4 **No Liability If a Force Majeure Event Occurs**. Except as provided in Section 4 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. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

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

(a) with respect to a Party (the "**Defaulting Party**") 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 Section11.1; and except for (1) failure to deliver Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (2) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(vi), (viii), and (ix), the exclusive remedies for which are set forth in Section 4.7 and Exhibit G; (3) failures related to the Annual Storage Availability that do not trigger the provisions of Section 11.1(b)(vii), the exclusive remedies for which are set forth in Section 4.8 and Exhibit P; and (4) failures related to the Efficiency Rate that do not trigger the provisions of Section 11.1(b)(x), the exclusive remedies for which are set forth in Section 4.8 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) days period despite exercising best 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 for sale under this Agreement that was not generated or discharged by the Facility, other than Replacement Product;

(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(c) of Exhibit B

and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) 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;

(iv) [reserved];

(v) 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;

(vi) if, in any consecutive twelve (12) month period of the Delivery Term, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least [redacted] the Expected Energy amount for such period, and 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 to meet the [redacted] 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. [redacted]

(vii) if, for a Contract Year, the Annual Storage Availability for such Contract Year is not at least [redacted], and 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 to meet such [redacted] 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 ("**Storage Cure Plan**") and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein. [redacted]

(viii) beginning with the second Contract Year and for each Contract

Year thereafter, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) is not at least [redacted] of the Expected Energy amount in any Contract Year and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a Cure Plan and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein. [redacted]

(ix) if, in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) is not at least [redacted] of the Expected Energy amount for such two (2) consecutive Contract Year period and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a Cure Plan and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein. [redacted]

(x) 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;

(xi) if, Seller fails to maintain a Storage Capacity equal to at least [redacted] of the Storage Contract Capacity for more than [redacted]

(xii) 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 a Termination Payment;

(xiii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.

(xiv) 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 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(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 **Termination Payment**. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or 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. Each Party agrees and acknowledges that (a) 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, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate

approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (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, 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 **Disputes With Respect to Termination Payment or Damage Payment**. 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.

11.6 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date**. If this Agreement is terminated by either Party prior to the Commercial Operation Date for any reason except due to Buyer's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following such termination date, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement [redacted] Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer, such approval not to be unreasonably withheld, conditioned, or delayed. Seller shall indemnify and hold Buyer harmless from all

benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **Rights And Remedies Are Cumulative**. Except where 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 **Mitigation**. 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 PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, (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.

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.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 4.10, 10.2(b), 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, 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.

12.3 **Limitation on Pre-COD Liability.** 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, [redacted] For avoidance of doubt, this Section 12.3 shall not be applicable once the Facility has achieved Commercial Operation.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties**. 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 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 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 is located in the State of California.

(f) 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.

13.2 **Buyer's Representations and Warranties**. 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.

(a) 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.

(b) 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.

(c) 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.

(d) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is 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.)

(e) 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 California and 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 **Prevailing Wage**. 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 ("**Prevailing Wage Requirement**"). 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 13.4 will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

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 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.

13.6 **Community Benefits**. Seller pledges to deliver five hundred thousand dollars ($500,000.00) 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 prior to January 31, 2026 upon Seller's review of the scope of the initiatives to be funded by Buyer. 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 13.6, 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 13.6 without the prior written consent of Seller.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided in this Article 14, neither Party may voluntarily 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 that Buyer's consent will not be required for any Change of Control of Seller where Seller is controlled by a Permitted Transferee following such transaction. Any purported 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 be responsible for the non-assigning Party's reasonable third party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party.

14.2 **Collateral Assignment**. Subject to the provisions of this Section 14.2, Seller or any of its Affiliates involved in the Facility has 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, 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 ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender including with respect to the provisions set forth below, with such agreement not to be unreasonably withheld, and shall include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and the cure period of Lender shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within thirty (30) days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, which shall not exceed a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller, or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements arising on and after taking possession (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date (excluding any Events of Default which by their nature are incapable of being cured) in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements arising on and after such sale or transfer as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith, Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to cause Buyer to enter into a replacement agreement having substantially the same terms as this Agreement for the remaining term thereof, and, promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or Lender's designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request which must be made within forty-five (45) days after such rejection or termination, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee must meet the definition of Permitted Transferee.

14.3 **Permitted Assignment by Seller**. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) 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, upon such transfer or assignment, all of Seller's obligations and liabilities under this Agreement arising on and after such assignment, and (y) certifies that such Person meets the definition of a Permitted Transferee.

Except as provided in the preceding sentence, 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 by Buyer.

14.4 **Permitted Assignment by Buyer**. Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has 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 a limited 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 shall pay Seller for any payments of amounts due under this Agreement that are not timely made by the Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under this Agreement notwithstanding the limited assignment. Subject to the foregoing, Buyer may make such assignment by delivering Notice after the form of limited assignment agreement has been mutually agreed upon and 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. The form of limited assignment agreement shall be substantially in the form of the attached Exhibit V, as modified to reflect the terms and conditions mutually agreed upon by Seller, Buyer, and Limited Assignee pursuant to this Section 14.4.

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. [STC 17] 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 **Dispute Resolution**. In the event of any dispute arising under this Agreement (other than a dispute regarding whether the requirements for Commercial Operation have been achieved, which shall be subject to Section 15.3), 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, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this

Agreement.

15.3 **COD Expedited Dispute Resolution**.

(a) If Seller initiates a dispute pursuant to Section 2.2 regarding whether the requirements for Commercial Operation have been achieved, then such dispute will be resolved pursuant to this Section 15.3. Any such dispute will be determined by an independent expert, who shall be a mutually acceptable third party with training and experience in the disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion (the "Independent Expert"), which determination shall be (x) except as otherwise provided in this Section 15.3, made in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the American Arbitration Association ("AAA"), as amended and effective on the date Seller provides Notice of its intent to submit the dispute to an independent expert, and (y) binding upon the Parties. Seller may commence the COD dispute process with AAA by notifying AAA and Buyer in writing ("COD Dispute Notice") of Seller's desire that the dispute be resolved through a determination by an independent expert.

(b) The determination shall be conducted by a sole Independent Expert. The Parties may select any mutually acceptable Independent Expert. If the Parties cannot agree on an Independent Expert within five (5) days after the date of the COD Dispute Notice, then the AAA's arbitration administrator shall send a list and resumes of three (3) available independent experts meeting the qualifications set forth in Section 15.3 to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the Independent Expert. If more than one name remains, either because one or both Parties have failed to respond to the AAA's arbitration administrator within five (5) days after receiving the list or because one or both Parties have failed to strike a name from the list or because both Parties strike the same name, the AAA's arbitration administrator will choose the Independent Expert from the remaining names. If the designated Independent Expert shall die, become incapable or, unwilling to, or unable to serve or proceed with the determination, a substitute independent expert shall be appointed in accordance with the selection procedure described above, and such substitute Independent Expert shall have all such powers as if he or she has been originally appointed herein.

(c) Within ten (10) days of the appointment of the Independent Expert pursuant to Section 15.3(b), each Party shall submit to the Independent Expert a written report containing its position with respect to the dispute, and arguments therefor together with supporting documentation. Discovery shall be limited to Facility documentation relating to the dispute. Within thirty (30) days from receipt of such submissions, the Independent Expert shall select one or the other Party's position with respect to the dispute, whereupon such selection shall be a binding determination upon the Parties for all purposes hereof. The costs of the determination by the Independent Expert of any dispute, including fees and expenses, shall be shared equally between the Parties, *however*, Buyer's shall of the costs for dispute resolution under this 15.3 shall not exceed fifty thousand dollars ($50,000). If the Independent Expert fails to render a decision within sixty (60) days from receipt of each Party's submissions, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

(d) All verbal and written communications between the Parties and issued or prepared in connection with this Section 15.3 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

(e) All deadlines specified in this Section 15.3 may be extended by mutual agreement of the Parties.

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnity**.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") 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) Nothing in this Section 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 sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

16.2 **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 the 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* that 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, [redacted], 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 [redacted]. 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. Limits may be provided in any combination of Seller's general liability and umbrella policies.

(a) Employer's Liability Insurance. Employers' Liability insurance shall not be less than [redacted] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [redacted] policy limit will apply to each employee.

(b) Workers Compensation Insurance. 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.

(c) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [redacted] 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 additional insured and contain standard cross-liability and severability of interest provisions.

(d) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility [redacted] construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(e) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility [redacted], Pollution

Legal Liability Insurance in the amount of [redacted] per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(f) Subcontractor Insurance. Seller shall use 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 [redacted]; (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 [redacted] 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(f).

(g) Property Insurance. [redacted] 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.

(h) 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 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 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

18.1 **Definition of Confidential Information**. The following constitutes "**Confidential 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**. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Records Act (Government Code Section 6250 et seq.).

18.3 **Irreparable Injury; Remedies**. 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 **Disclosure to Lenders, Etc.**. 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 the Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions no less stringent than those in this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases**. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. 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. 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 **Amendments**. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, 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) or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 **Severability**. 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 **Mobile-Sierra**. 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 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.

19.8 **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

19.9 **Binding Effect**. 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. 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, directors, officers, consultants or advisors or 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 agree 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 assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

19.13 **Change in Electric Market Design**. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the 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 **Service Contract**. The Parties acknowledge and agree that this Agreement is intended to constitute a "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code of 1986, as amended from time to time.

[Signatures on following page]

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

PELICANS JAW SOLAR, LLC

By: _____
Name: _____
Title: _____

SAN DIEGO COMMUNITY POWER, a California joint powers authority

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Pelicans Jaw Solar

Site includes all or some of the following APNs: 044-101-02, 044-101-05, 044-101-03, 044-101-06, 044-101-11, 044-101-16, 044-110-03, 044-110-25, 044-102-01, 044-102-03, 044-102-05,044-102-21, 044-102-22, 044-103-01, 044-103-04, 044-103-06, 044-103-08, 044-103-09, 044-150-05, 044-150-17, 044-130-39, 044-130-18, 044-130-21, 044-130-16, & 044-102-23

County: Kern

CEQA Lead Agency: Kern County

Zip Code: 93249

Latitude and Longitude: 35.861973, -119.468825

Facility Description: 440 MW solar + 954 MWh (238.5 MW x 4 hours) storage

Delivery Point: PNode, as set forth below.

Generating Facility Meter and Metering Points: See Exhibit R.

Storage Facility Meter and Metering Points: See Exhibit R.

PNode: The PNode assigned to the Facility by the CAISO.

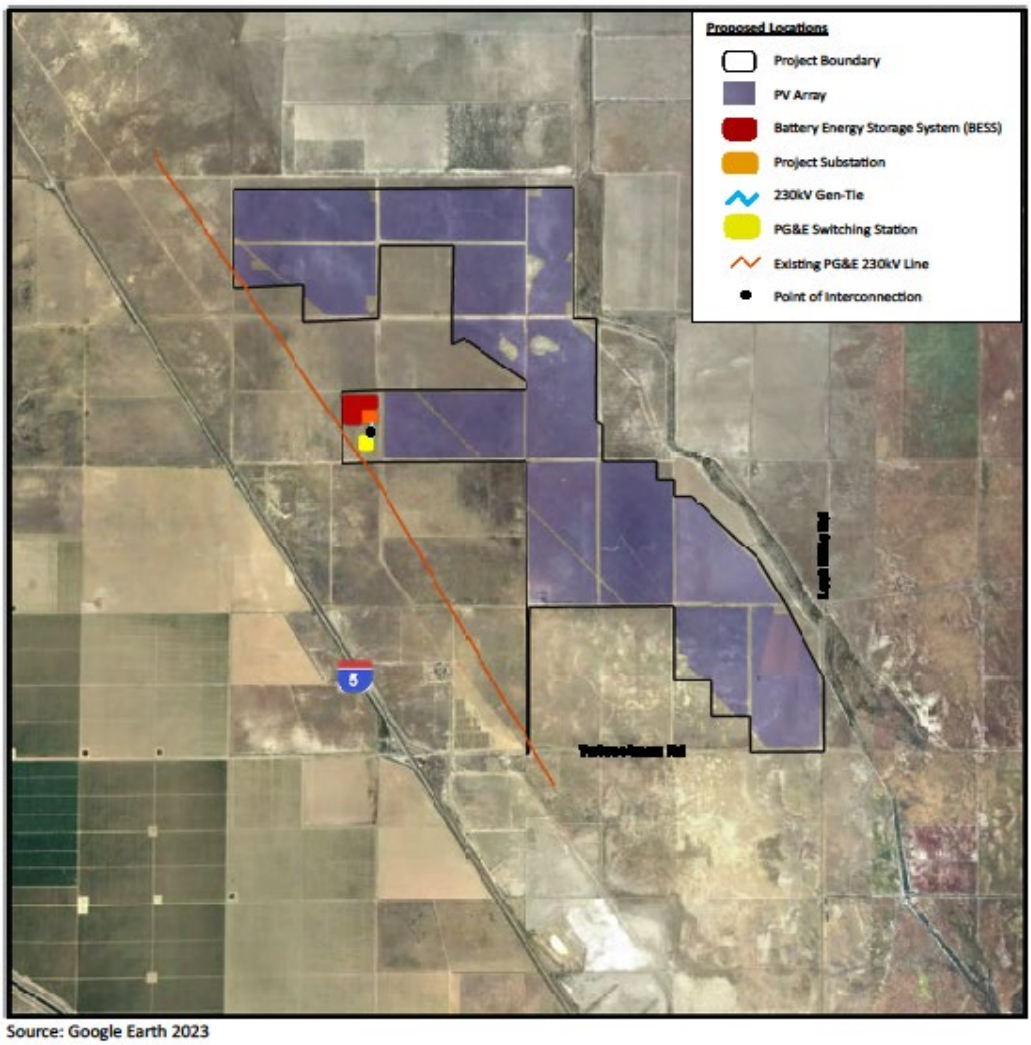
Interconnection Point: New 230kV switching station near Gates-Midway POI

Participating Transmission Owner: PG&E

Additional Information: Site Plan provided below, provided that Seller shall have the right to provide an updated Site Plan at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

Pelicans Jaw Solar, LLC

Site Plan



Source: Google Earth 2023

SB Energy

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. **Construction Start**.

   a. "**Construction Start**" will occur upon Seller's acquisition of all applicable regulatory authorizations, approvals and permits to begin the construction of the Facility, and execution of an engineering, procurement, and construction contract and issuance thereunder of 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 ("**Notice to Proceed**"). 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 Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B.

   b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date by paying Construction Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of [redacted] of extensions by such payment of Construction Delay Damages. If Seller elects to extend the Guaranteed Construction Start Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date, Seller shall provide Notice and payment to Buyer of the Construction Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Construction Delay Damages, Buyer shall refund to Seller the Construction Delay Damages in an amount equal to the product of (i) the number of days prior to the Guaranteed Construction Start Date, as extended, that Seller achieves Construction Start, *times* (ii) the Construction Delay Damages, not to exceed the total amount of Construction Delay Damages paid by Seller pursuant to this Section 1(b) of Exhibit B. Construction Delay Damages shall also be refundable to Seller pursuant to Section 2(b) and 2(c) of this Exhibit B.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" 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 Exhibit H (the "**COD Certificate**"), [redacted] (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 (or deemed to have acknowledged pursuant to Section 2.2) that Buyer agrees that

Commercial Operation has been achieved or Commercial Operation has otherwise been deemed to have been achieved pursuant to Section 2.2. The "**Commercial Operation Date**" shall be the later of (x) the Expected Commercial Operation Date, or (y) 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(c) 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.

b. [redacted]

c. [redacted]

3. **Termination for Failure to Achieve Commercial Operation by the Guaranteed Commercial Operation Date**. If the Facility has not achieved 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(c) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

[redacted]

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, 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

   c. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

[redacted]



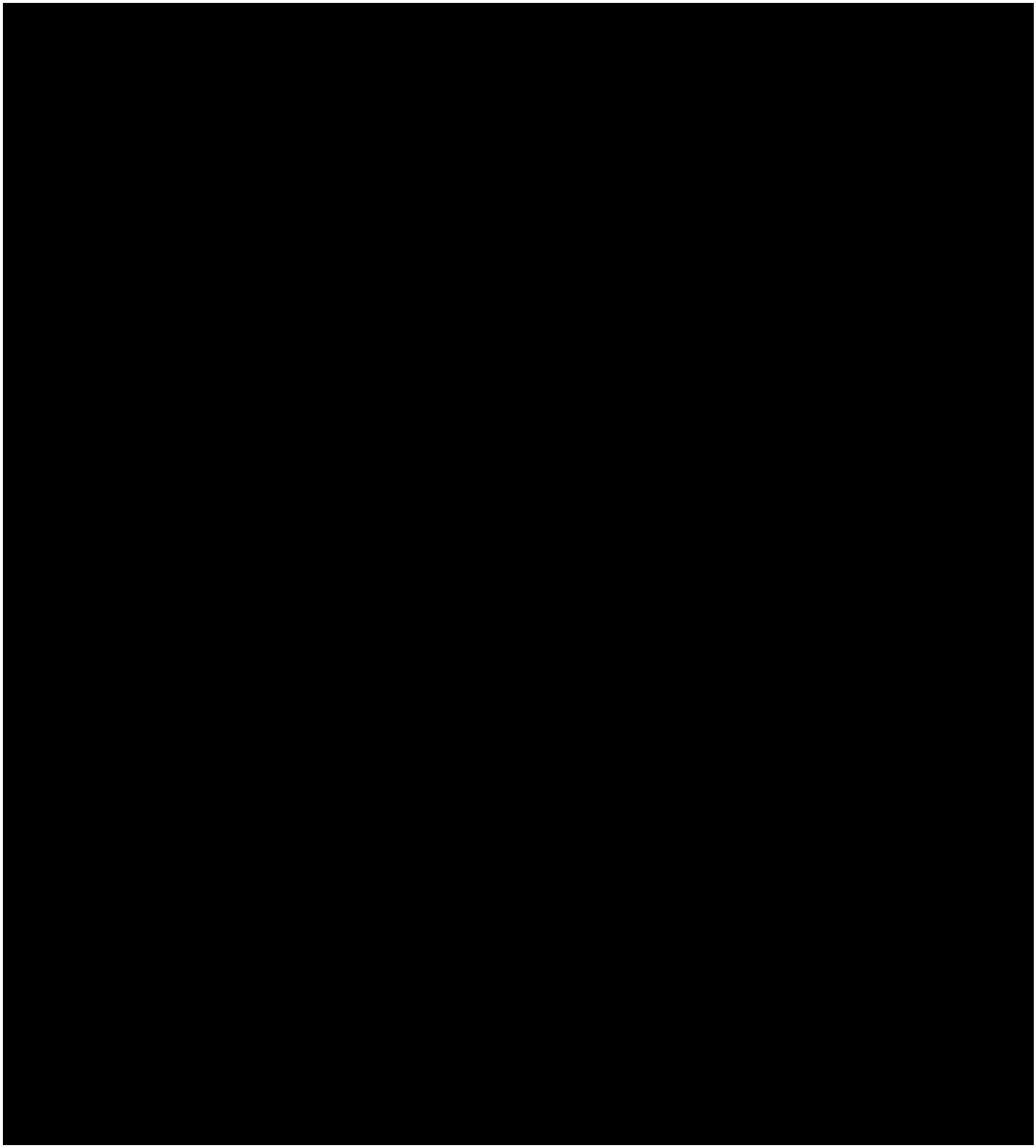




EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.



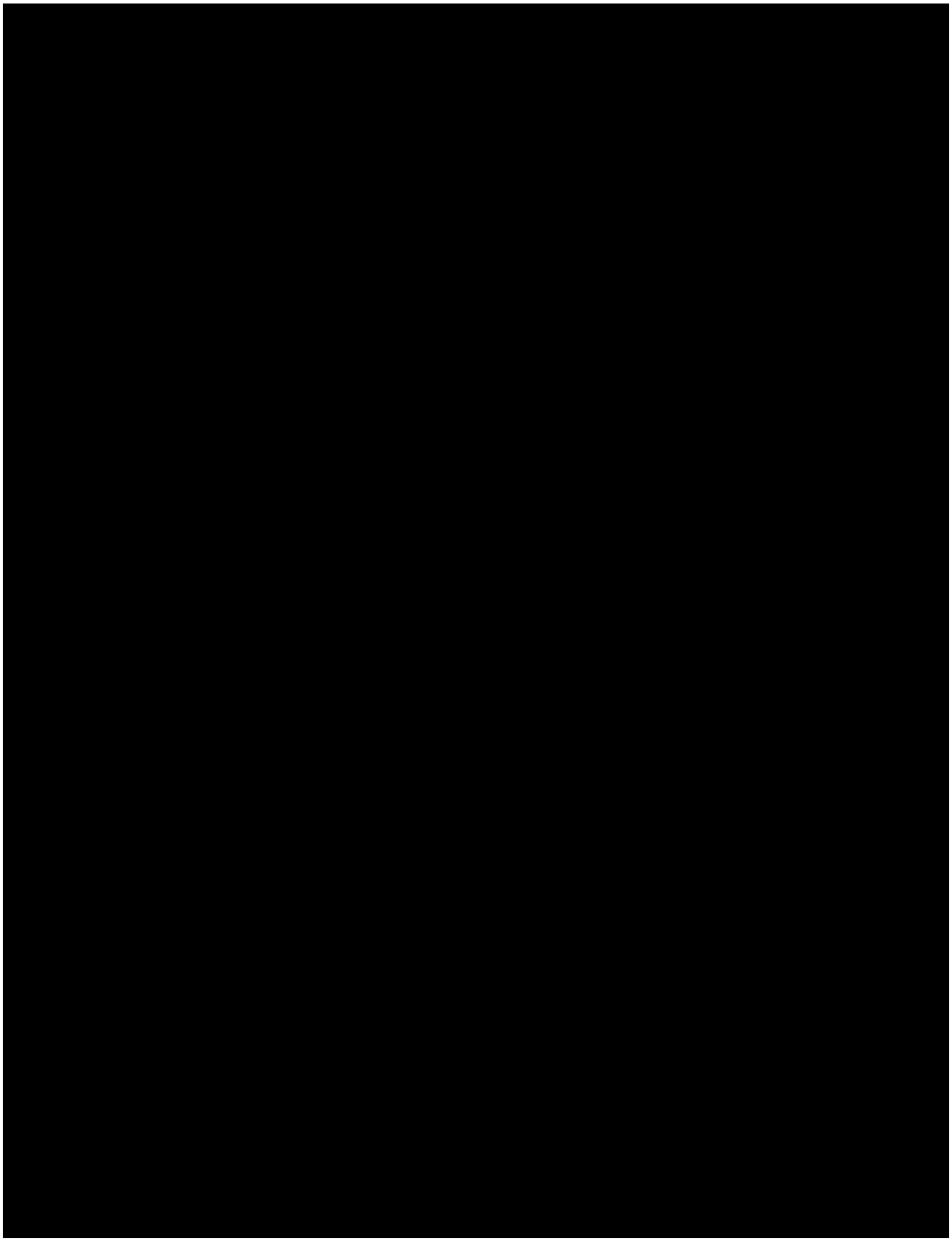




EXHIBIT D

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 Test Energy, Charging Energy, Facility Energy and the Product at the Delivery Point. At least thirty (30) days prior to the anticipated Initial Synchronization of the Facility to the CAISO Grid, (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, 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 effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after the 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 or real time basis, 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 will 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, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including Charging Energy costs, penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including 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 Non-Availability Charges (as defined in the CAISO Tariff) and similar charges assessed against Buyer (as Scheduling Coordinator for the Facility) based on the Facility's failure to meet performance obligations applicable to the Facility as a Resource Adequacy Resource; provided 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 such Non-Availability Charges (as defined in the CAISO Tariff) or similar charges are the responsibility of Seller and for Seller's account (except to the extent such Non-Availability Charges or similar charges arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the

Facility). In addition, if during [redacted] the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to 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 any CAISO directive, or to perform in accordance with the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility (except to the extent such sanctions or penalties arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility).

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility with respect to the [redacted] Delivery Term. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will 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 these 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 for performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. 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) Terminating Buyer's Designation as Scheduling Coordinator. 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) Master File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master File

and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

(h) NERC Reliability Standards. 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 likely to potentially affect Seller's Milestones.

10. A specific section reporting on progress of completion of the Transmission Provider's upgrades and description of any known issues that are expected to result in a delay in completion of such upgrades.

11. 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.

12. Prevailing wage reports as required by Law.

13. 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.

14. 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.

15. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.

16. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	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
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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 F-2

AVAILABLE CAPACITY

[Available Generating Capacity, MWh 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 additional rows for each day in the month]																								
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

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

[(A – B - F) * (C – D)] – (E)

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (x) [redacted] MWh and (y) the market value of Replacement Green Attributes as reasonably determined by Buyer and Seller using broker market quotes

D = the Renewable Rate for the Contract Year which ends each Performance Measurement Period, in $/MWh

E = The amount of GEP Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

F = The amount of Replacement Product in MWhs delivered by Seller for such Performance Measurement Period pursuant to Section 2 of this Exhibit G.

1. "**Adjusted Energy Production**" shall mean the sum of the following: Generating Facility Energy + Deemed Delivered Energy + Lost Output.

2. Replacement Product. Seller may, as an alternative to paying GEP Damages for a Performance Measurement Period, provide Replacement Product delivered to the PNode corresponding to the electric generating facility producing such Replacement Product (a) within the same Performance Measurement Period, or (b) within ninety (90) days after the conclusion of such Performance Measurement Period, but not later than the end of the calendar year in which such Performance Measurement Period ended; provided that any Replacement Product may not exceed [redacted] of the Expected Energy for the last Contract Year of the applicable Performance Measurement Period. If Seller intends to provide Replacement Product for a Performance Measurement Period after the conclusion of such Performance Measurement Period, then Seller shall first provide Notice to Buyer of such intent. Buyer may request that Seller defer

delivery of such Replacement Product, and if the Parties mutually agree to such deferral, then notwithstanding the first sentence of this Section 2 of Exhibit G, Seller may deliver the Replacement Product during the calendar year following the calendar year in which such Performance Measurement Period ended. For all Replacement Product, on a day ahead basis, Seller shall provide a notice via e-mail to Buyer at PowerContracts@sdcommunitypower.org (or such other Buyer email address as Buyer may provide to Seller from time to time) identifying the electric generating facility(ies) that will provide Replacement Product for the following day and the volume of Replacement Product to be provided by each such facility, which may be expressed as a percentage of the applicable facility's output. [redacted]

3. No payment shall be due if the calculation of (a) (A – B - F), (b) (C - D), or (c) [(A – B - F) * (C – D)] – (E), yields a negative number. Except as set forth in Section 2 of this Exhibit G with respect to Replacement Product, in no event will Buyer owe any payment to Seller pursuant to this Exhibit G.

4. Within one hundred twenty (120) days after each Contract Year, Buyer shall send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) one hundred fifty (150) days after each Performance Measurement Period.

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 Second Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement dated [*DATE*] ("**Agreement**") by and between [*SELLER*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [*DATE*], Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility and the Storage Facility are fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.

3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.

4. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.

5. 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 PPA and/or the CAISO.

6. The Generating Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.

7. The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable Operating Restrictions.

8. Authorization to parallel the Facility was obtained from the Participating Transmission Owner on___[DATE]____.

9. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation _____[DATE]_____.

10. The CAISO has provided notification supporting Commercial Operation, in accordance

with the CAISO Tariff on _____[DATE]_____.

11. Seller shall have caused the Generating Facility and the Storage Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time Markets in respect of each of the Generating Facility and Storage Facility.

12. 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: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity 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 Second Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement dated [*DATE*] ("**Agreement**") by and between [*SELLER*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The performance test for the Generating Facility demonstrated peak electrical output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Generating Capacity**");

(b) The Storage Capacity Test conducted on [DATE] demonstrated a maximum dependable operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of __ MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "**Installed Battery Capacity**"); and

(c) The sum of (a) and (b) is __ MW AC and shall be the "**Installed Capacity**".

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

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 ("**Buyer**") in accordance with the terms of that certain Second Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement dated [*DATE*] ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer 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.

(2) the Construction Start Date occurred on _____ (the "**Construction Start Date**"); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:
_____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as this _____ day of _____, 20__.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]
Expiry Date:

Beneficiary:

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

Ladies and Gentlemen:

By the order of _____ ("Applicant"), we, [insert bank name and address] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the "Letter of Credit") in favor of San Diego Community Power, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Second Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement dated as of _____ and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall renew annually until terminated in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [*bank email address*] or (c) facsimile to [bank fax number [XXX-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 sixty (60) 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-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: 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)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of San Diego Community Power, a California joint powers authority, PO Box 12716, San Diego, CA 92112, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Second Amended and Restated Renewable Power Purchase and Energy Storage Service 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 are hereby directed to make payment of the requested amount to San Diego Community 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 GUARANTY

This Guaranty (this "**Guaranty**") is entered into as of [_____] (the "**Effective Date**") by and between [_____], a [_____] ("**Guarantor**"), and San Diego Community Power, a California joint powers authority (together with its successors and permitted assigns, "**Buyer**").

Recitals

A. Buyer and [*SELLER* ENTITY], a _____ ("**Seller**"), entered into that certain Second Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement (as amended, restated or otherwise modified from time to time, the "**PPA**") dated as of [____], 20___.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's payment obligations under the PPA, as required by Section 8.8 of the PPA.

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 PPA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

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 PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (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 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 PPA, Guarantor shall promptly pay such amount as required herein. Notwithstanding anything to the contrary in this Guaranty, the Guaranteed Amount shall in no circumstances exceed the amount of Seller's Performance Security under the PPA, provided that Seller shall remain subject to the replenishment obligation pursuant to Section 8.8 of the PPA following a draw of the Performance Security.

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 PPA. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "**Payment Demand**") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. 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 (except any such extension provided by duly executed amendment to the PPA), or

(ii) any amendment, modification or other alteration of the PPA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its

obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA (except for any such defenses based on fraud by Buyer), or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA;

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 PPA, 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 PPA, 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 PPA;

(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.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at [_____]
Attn: [_____]
Fax: [_____]

If delivered to Guarantor, to it at [_____]
Attn: [_____]
Fax: [_____]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Diego, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to

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

[*Signature on next page*]

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

GUARANTOR:

[_____]

By:_____

Printed Name:_____

Title:_____

BUYER:

[_____]

By:_____

Printed Name:_____

Title:_____

By:_____

Printed Name:_____

Title:_____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [SELLER ENTITY] ("**Seller**") to San Diego Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Second Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(c) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information[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	
Run Hour Restrictions	
Delivery Period	

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

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

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT N

NOTICES

Pelicans Jaw Solar, LLC ("Seller")	**SAN DIEGO COMMUNITY POWER** ("Buyer")
All Notices: Street: 3 Lagoon Dr., Suite 280 City: Redwood City, CA 94065 Attn: SBE Legal, SBE Power Marketing Phone: 650-731-3262 Email: legalus@sbenergy.com, powermarkets@sbenergy.com	**All Notices:** PO Box 12716 San Diego, CA 92112 Attn: Chief Commercial Officer Phone: (619) 657-0422 Email: PowerContracts@sdcommunitypower.org
Reference Numbers: Duns: [redacted] Federal Tax ID Number: [redacted]	**Reference Numbers:** Duns: [redacted] Federal Tax ID Number: [redacted]
Invoices: Attn: SBE Asset Mgmt Phone: 650-443-7064 Email: amus@sbenergy.com	**Invoices:** Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Scheduling: Attn: SBE Asset Mgmt Phone: 650-443-7064 Email: amus@sbenergy.com	**Scheduling:** Tenaska Power Services Co. Attn: Kara Whillock Phone: (972) 333-6122 Email: kwhillock@tnsk.com Day Ahead: (817) 303-1115 Real Time: (817) 303-1852 Facsimile: (817) 303-1104
Confirmations: Attn: SBE Asset Mgmt Phone: 650-443-7064 Email: amus@sbenergy.com	**Confirmations:** Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: SBE Asset Mgmt Phone: 650-443-7064 Email: amus@sbenergy.com	**Payments:** Attn: Michael Maher Phone: (415) 526-3020 Email: mmaher@mahercpa.com
Wire Transfer: BNK: TBD ABA: TBD ACCT: TBD	**Wire Transfer:** BNK: [redacted] ABA: [redacted] ACCT: [redacted]

Pelicans Jaw Solar, LLC ("Seller")	**SAN DIEGO COMMUNITY POWER** ("Buyer")
With additional Notices of an Event of Default to: Attn: Ryan Bates, VP General Counsel 3 Lagoon Dr., Suite 280 Redwood City, CA 94065 Phone: (650) 731-3262 Email: ryan@sbenergy.com, legalus@sbenergy.com	**With additional Notices of an Event of Default to:** Attn: SDCP General Counsel PO Box 12716 San Diego, CA 92112 Phone: Email: Legal@sdcommunitypower.org
Emergency Contact: Attn: SBE Asset Mgmt Phone: 650-443-7064 Email: amus@sbenergy.com	**Emergency Contact:** Attn: Chief Commercial Officer Phone: (619) 657-0422 Email: PowerContracts@sdcommunitypower.org

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. [redacted] Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to [redacted]. Such initial Storage Capacity Test (and any subsequent Initial Operation Storage Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the initial Storage Contract Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the [redacted], 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 Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Contract Capacity and Efficiency Rate. No later than five (5) Business Days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(c) of the Agreement, Part II.J and Part II.K below, the actual Efficiency Rate and Storage Contract Capacity determined pursuant to a Storage Capacity Test (in the case of the Storage Contract Capacity, up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Section 5 of Exhibit B) shall become the new Storage Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Storage Payment and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a "SCT". Buyer or its representative may be present

for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the initial Storage Contract Capacity of 238.5 MW; provided, for all purposes of this Agreement, the amount of Storage Contract Capacity shall never be deemed to exceed 238.5 MW.

A. Purpose of Test. Each SCT shall:

(1) Determine an updated Storage Contract Capacity;

(2) Determine the amount of Energy required to fully charge the Storage Facility;

(3) Determine the Storage Facility charge Ramp Rate;

(4) Determine the Storage Facility discharge Ramp Rate; and

(5) Determine an updated Efficiency Rate.

B. Test Elements. Each SCT shall include the following test elements:

- The measurement of Charging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is required to charge the Storage Facility up to the Maximum Stored Energy Level not to exceed the Storage Contract Output (MWh) ("**Energy In**");
- The measurement of Discharging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is discharged from the Storage Facility to the Delivery Point until the Stored Energy Level reaches zero MWh as indicated by the battery management system ("**Energy Out**");
- Electrical output at maximum discharging capacity at the Storage Facility Meter (MW);
- Electrical input at maximum charging capacity at the Storage Facility Meter (MW);
- Amount of time between the Storage Facility's electrical output going from 0 to maximum discharging capacity;
- Amount of time between the Storage Facility's electrical input going from 0 to maximum charging capacity;

- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level.

C. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at ten (10) minute intervals:

(1) discharge time (minutes);

(2) charging energy (MWh);

(3) discharging energy (MWh);

(4) Stored Energy Level (MWh).

D. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and

(3) Ambient air Temperature (°F).

E. Test Conditions.

(i) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit Q).

(ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.G below.

(iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

F. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the

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

G. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

(1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;

(3) the level of Storage Contract Capacity, Energy In, Energy Out, Efficiency Rate, charging capacity, the current charge and discharge Ramp Rate, and Stored Energy Level determined by the SCT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

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

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

H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) an updated supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("**Supplementary Storage Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Storage Contract Capacity. 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) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under Section 5 of Exhibit B, multiplied by (ii) four (4) hours), shall be divided by four (4) hours to determine the Storage Contract Capacity, which shall be expressed in MW AC, and

shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.

J. Adjustment to Efficiency Rate.

The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above), and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

Part III. INITIAL SUPPLEMENTARY STORAGE CAPACITY TEST PROTOCOL

A. Initial Supplementary Storage Capacity Test Protocol

The initial Supplementary Storage Capacity Test Protocol outlined below shall not be binding on the Parties until delivery of the Supplementary Storage Capacity Test Protocol in accordance with Part II.I above and is included for the convenience of the Parties.

- Procedure:

(1) System Starting State: The Storage Facility shall be balanced using OEM procedures as appropriate and will be in the on-line state at the Minimum Stored Energy Level.

(2) Record the initial value of the Storage Facility State-of-Charge ("SOC").

(3) Charge the Storage Facility at the Maximum Charging Capacity until the battery reaches the maximum SOC allowed at that rate. Continue charging the Storage Facility at the fixed maximum battery voltage (CV charging). Stop the Storage Facility charge routine when the battery has reached the desired SOC, not to exceed six hours of charging.

(4) Record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter at the Storage Facility Metering Point associated with Charging Energy ("**Energy In**"). All separately metered Storage Facility Station Use shall be excluded from the measurement of Energy In.

(5) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's Maximum Discharging Capacity and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached the Minimum Stored Energy Level, or (c) the sustained discharging level is at least 2% less than the Maximum Discharging Capacity.

(6) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation of the Storage Capacity.

(7) Record and store the AC Energy charged (in MWh) as measured at the Storage Facility Metering Point associated with Charging Energy. Such data point shall be used for purposes of calculation of the Efficiency Rate.

(8) If the Storage Facility has not reached the Minimum Stored Energy Level pursuant to Part III.A.5, continue discharging the Storage Facility until it reaches the Minimum Stored Energy Level.

(9) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Metering Points. "Energy Out" means that total AC Energy discharged (in MWh) as measured at the Storage Facility Metering Point associated with Charging Energy from the commencement of discharging pursuant to Part III.A.5 until the Storage Facility has reached the Minimum Stored Energy Level pursuant to either Part III.A.5 or Part III.A.8, as applicable. All separately metered Storage Facility Station Use shall be excluded from the measurement of Energy Out.

- Test Results:

(1) The resulting Efficiency Rate is calculated as Energy Out/Energy In.

(2) The resulting Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

EXHIBIT P

ANNUAL STORAGE AVAILABILITY CALCULATION

Seller shall calculate the "**Annual Storage Availability**" for a given Contract Year of the Delivery Term using the formula set forth below:

$$\text{Annual Storage Availability (\%)} = \frac{[AVAILHRS_y + EXCUSEDHRS_m]}{[YRTHRS_y]}$$

Where:

y = relevant Contract Year "y" in which Annual Storage Availability is calculated;

$YRHRS_m$ is the total number of hours for the relevant Contract Year;

$AVAILHRS_m$ is the total number of hours, or partial hours, in the Contract Year during which the Storage Facility was available to charge and discharge Energy between the Storage 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 Storage Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the Storage Contract 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 Storage Capacity amount reported as available by Seller's real-time EMS data feed to Buyer for the Storage Facility for such hours, or partial hours, and (ii) Seller's most recent Storage Facility availability Notice, and (b) is the Storage Contract Capacity; and

$EXCUSEDHRS_m$ is the total number of hours, or partial hours, in the Contract Year that are not included as $AVAILHRS_m$ due to Force Majeure Events (excluding Insurable Force Majeure Events), Curtailment Orders, Buyer Curtailment Orders, System Emergencies, 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 Storage Contract Capacity for the Storage 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 (i) such Storage Contract Capacity amount that is not reported as available by Seller's real-time EMS data feed to Buyer for the Storage Facility for such hours, or partial hours, and (ii) Seller's most recent Storage Facility availability Notice, and (b) is the Storage Contract Capacity. For avoidance of doubt, the total of $AVAILHRS_m$ plus $EXCUSEDHRS_m$ for 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.

Availability Adjustment. If the Annual Storage Availability during any Contract Year of the Delivery Term is less than the Guaranteed Storage Availability, then Seller shall owe Buyer an Availability Adjustment Payment for such Contract Year, where "**Availability Adjustment Payment**" means an amount equal to the product of (a) the sum of the Storage Payments for the months in such Contract Year, multiplied by (b) the Availability Adjustment for such Contract Year.



EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions [redacted] *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 Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Storage Facility in the absence of Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include facility scheduling, operating restrictions and Communications Protocols.

File Update Date:	
Technology:	**Photovoltaic and Lithium-ion Battery Energy Storage**
Storage Unit Name:	**Pelicans Jaw**
A. Contract Capacity	
Initial Storage Contract Capacity (MW):	238.5 MW
Current Storage Contract Capacity (MW):	As determined by most recent Storage Capacity Test
B. Total Unit Dispatchable Range Information	
Interconnect Voltage (kV)	230 kV
Maximum State of Charge (SOC) during Charging	100%
Minimum State of Charge (SOC) during Discharging	0%
Maximum Stored Energy Level (MWh):	954 MWh [redacted]
Minimum Stored Energy Level (MWh):	0 MWh
Maximum Charging Capacity (MW):	238.5 MW [redacted]
Maximum Discharging Capacity (MW):	238.5 MW [redacted]
C. Maximum Throughput	
Maximum Daily Throughput:	954 MWh [redacted]
Maximum Annual Throughput:	348,210 MWh [redacted]
D. Charge and Discharge Rates	
	Ramp Rate (MW/minute) Description
Energy	20 MW/minute
E. Ancillary Services	
Spinning reserve is included:	Yes
Non-spinning reserve is included:	Yes

Regulation up is included:	Yes
Regulation down is included:	Yes
Black start is included:	No
Voltage support is included:	No
F. Other Restrictions	
YTD Charging Energy Source Limitations	[redacted]

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

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

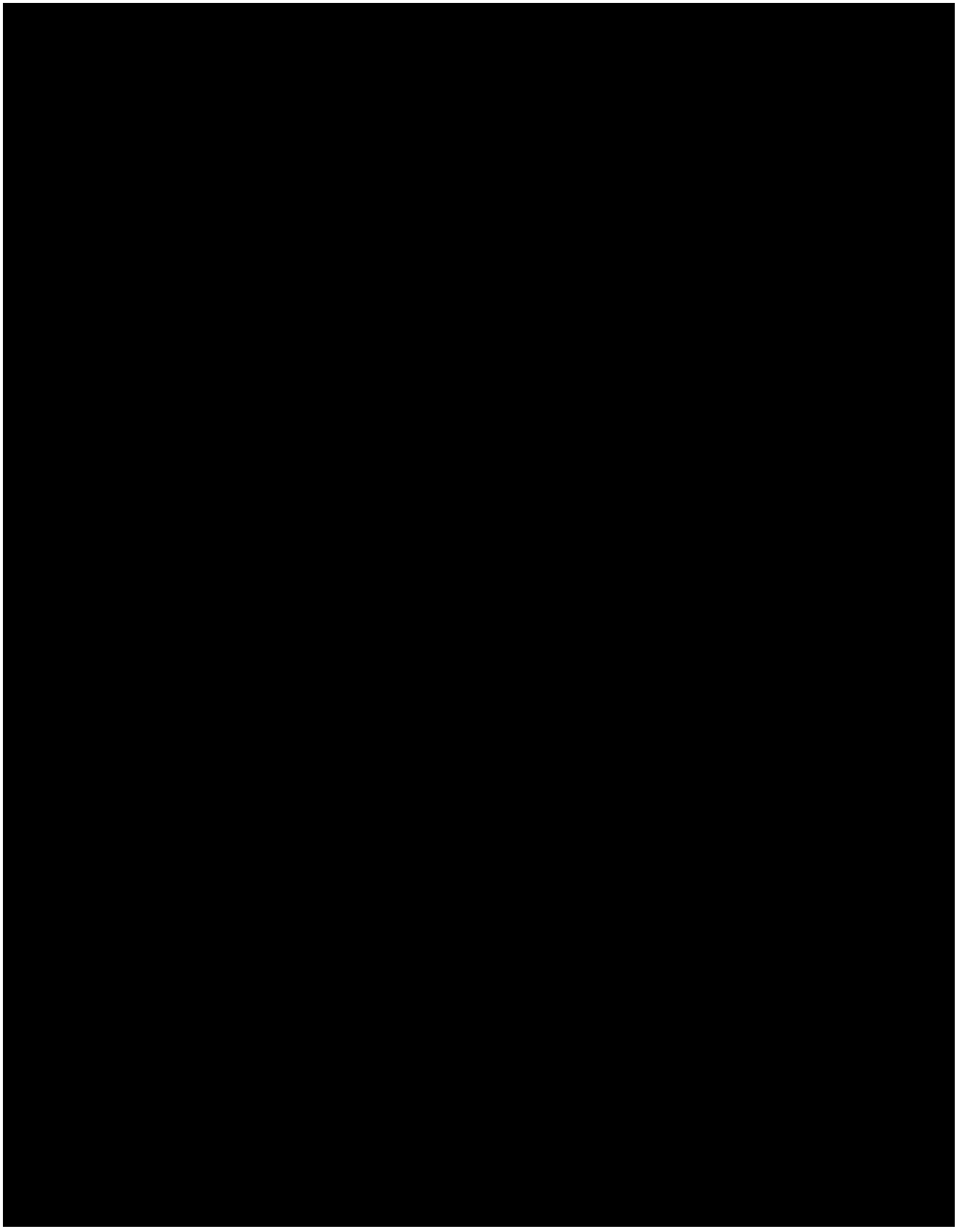




EXHIBIT U

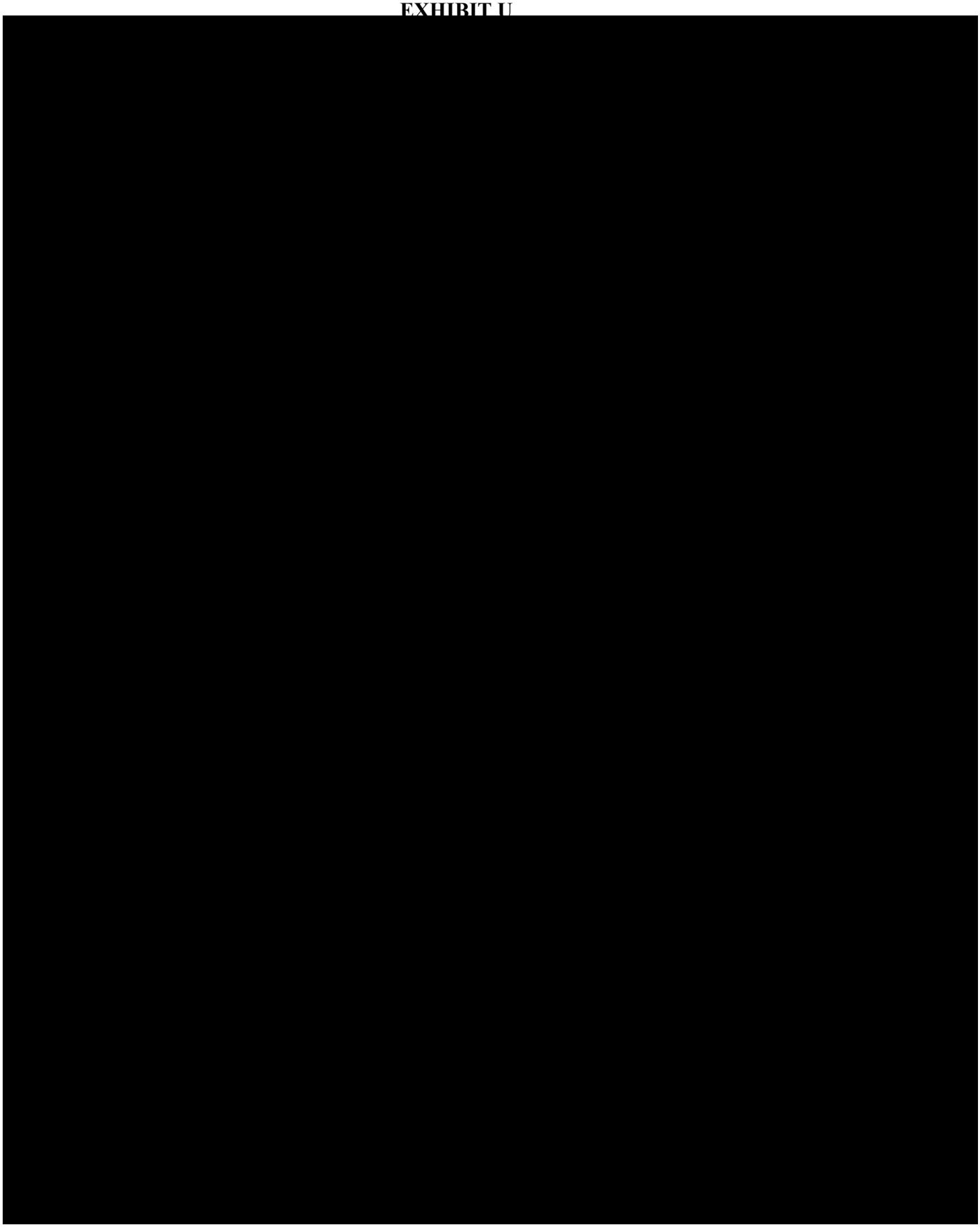
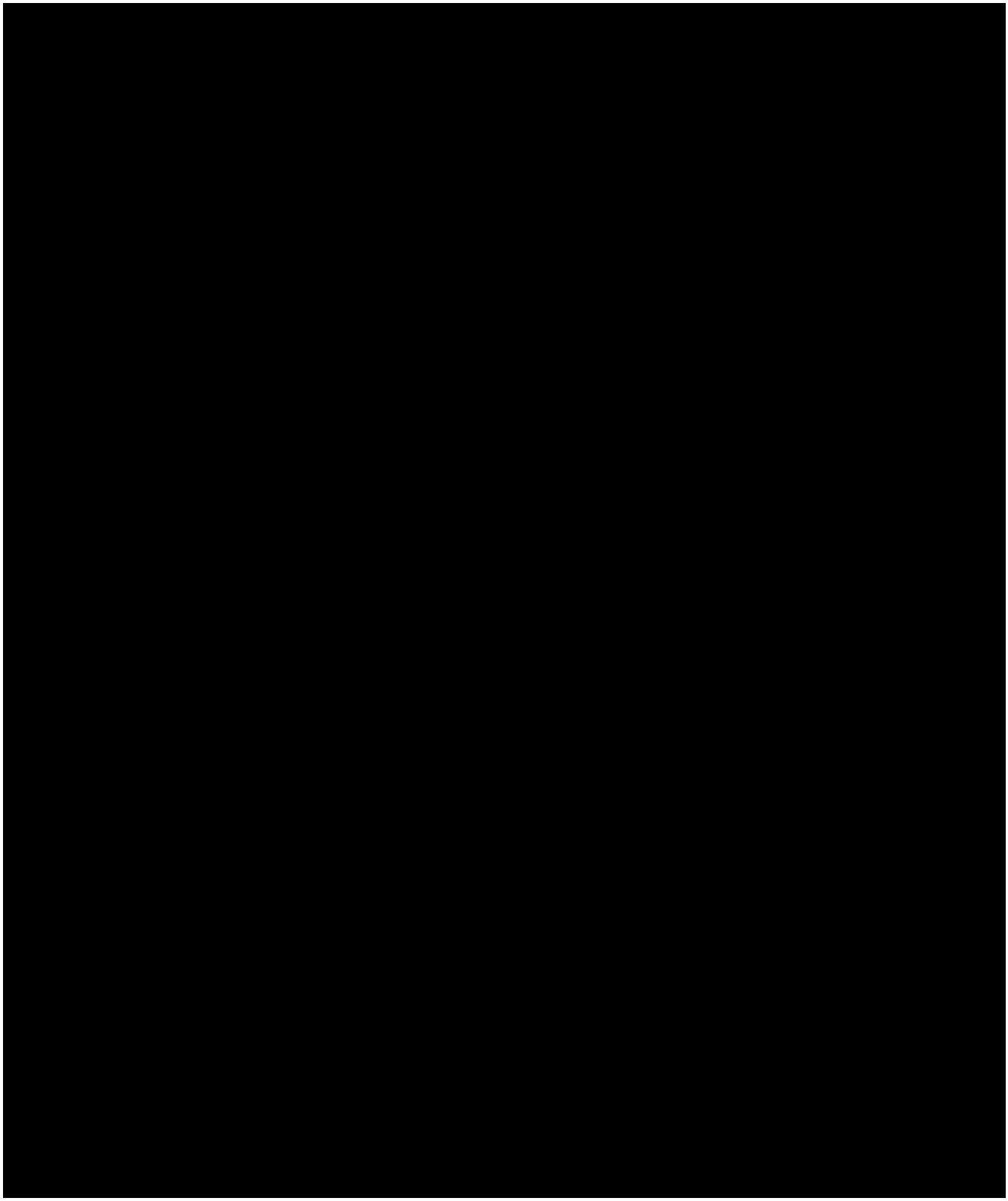


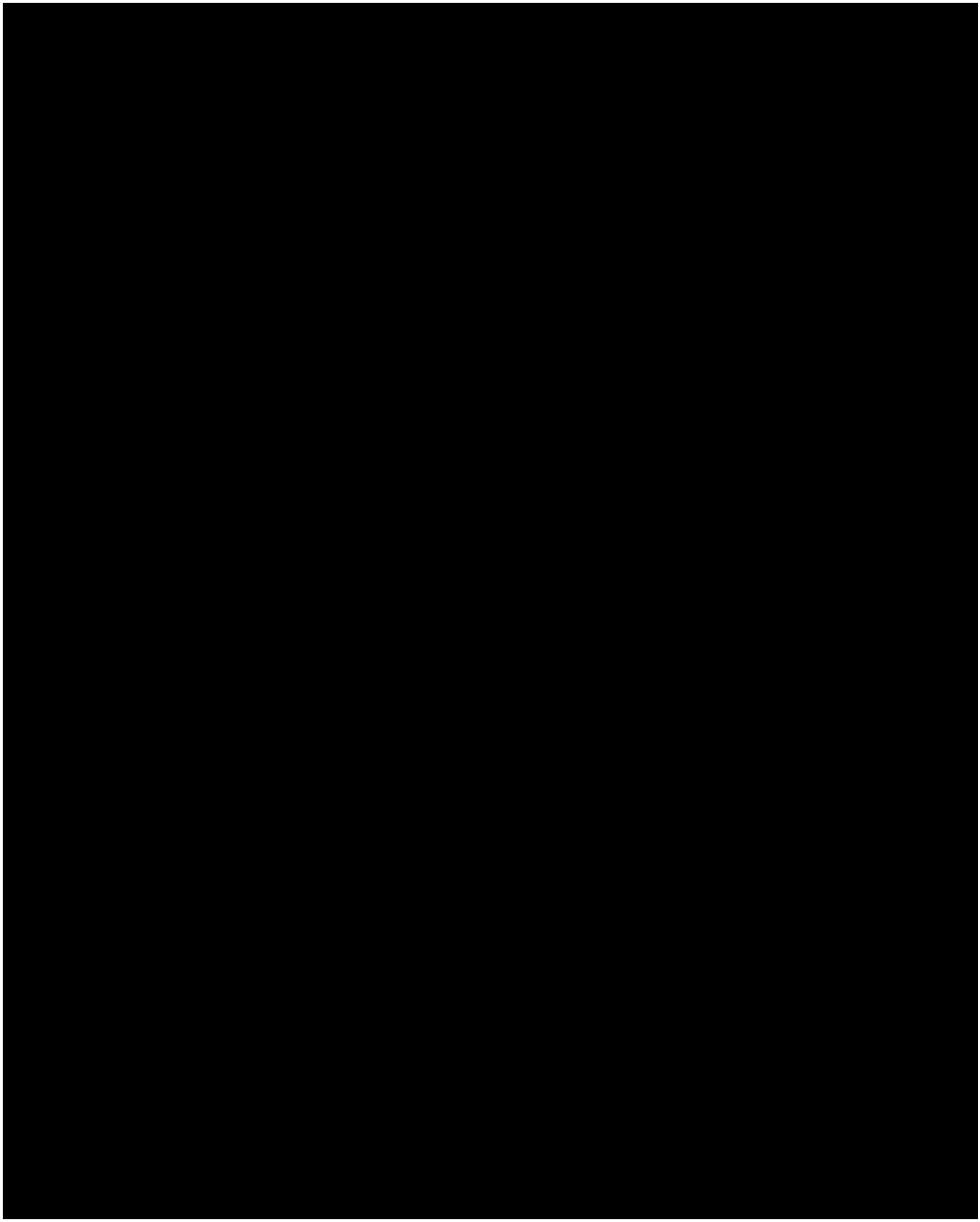


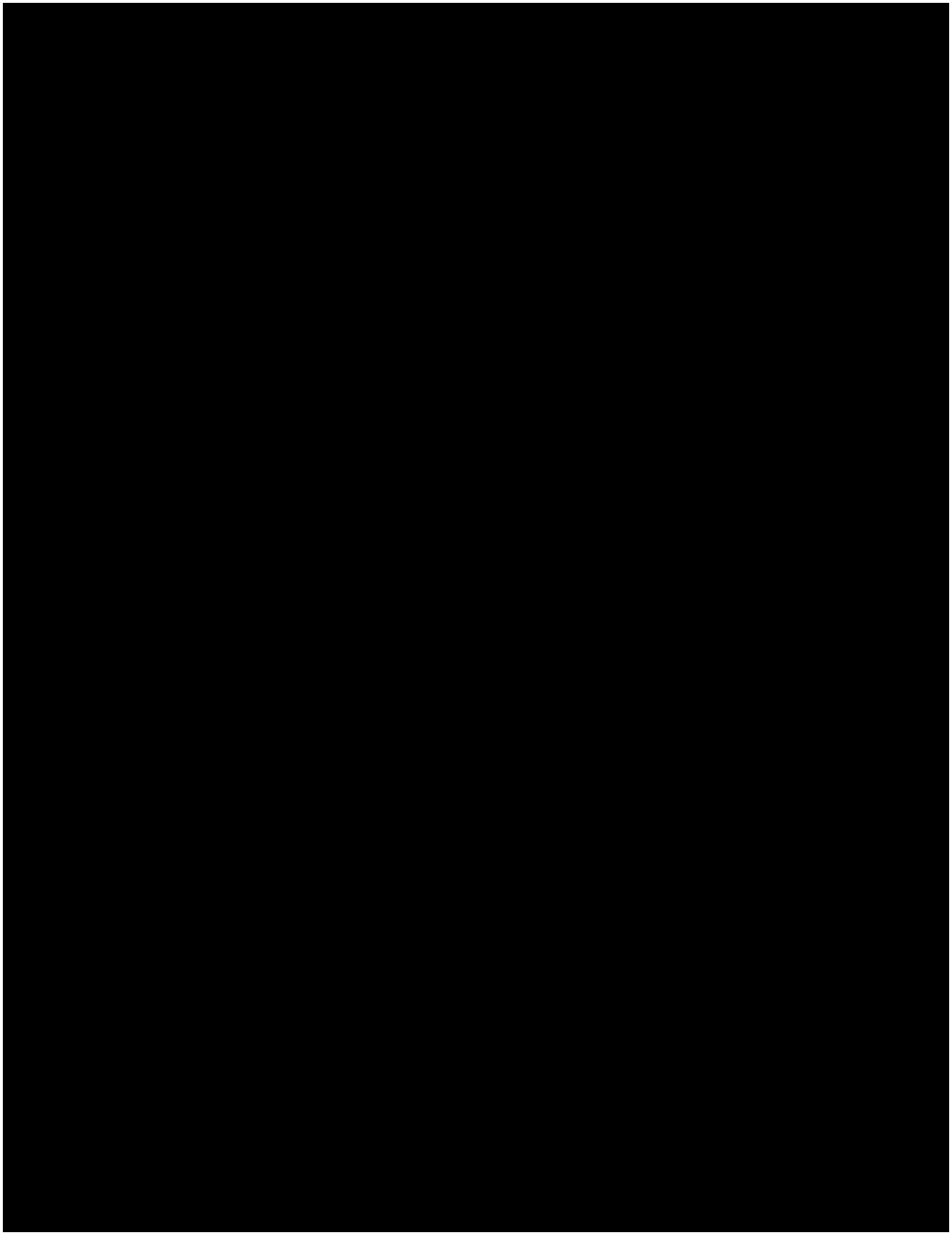
EXHIBIT V

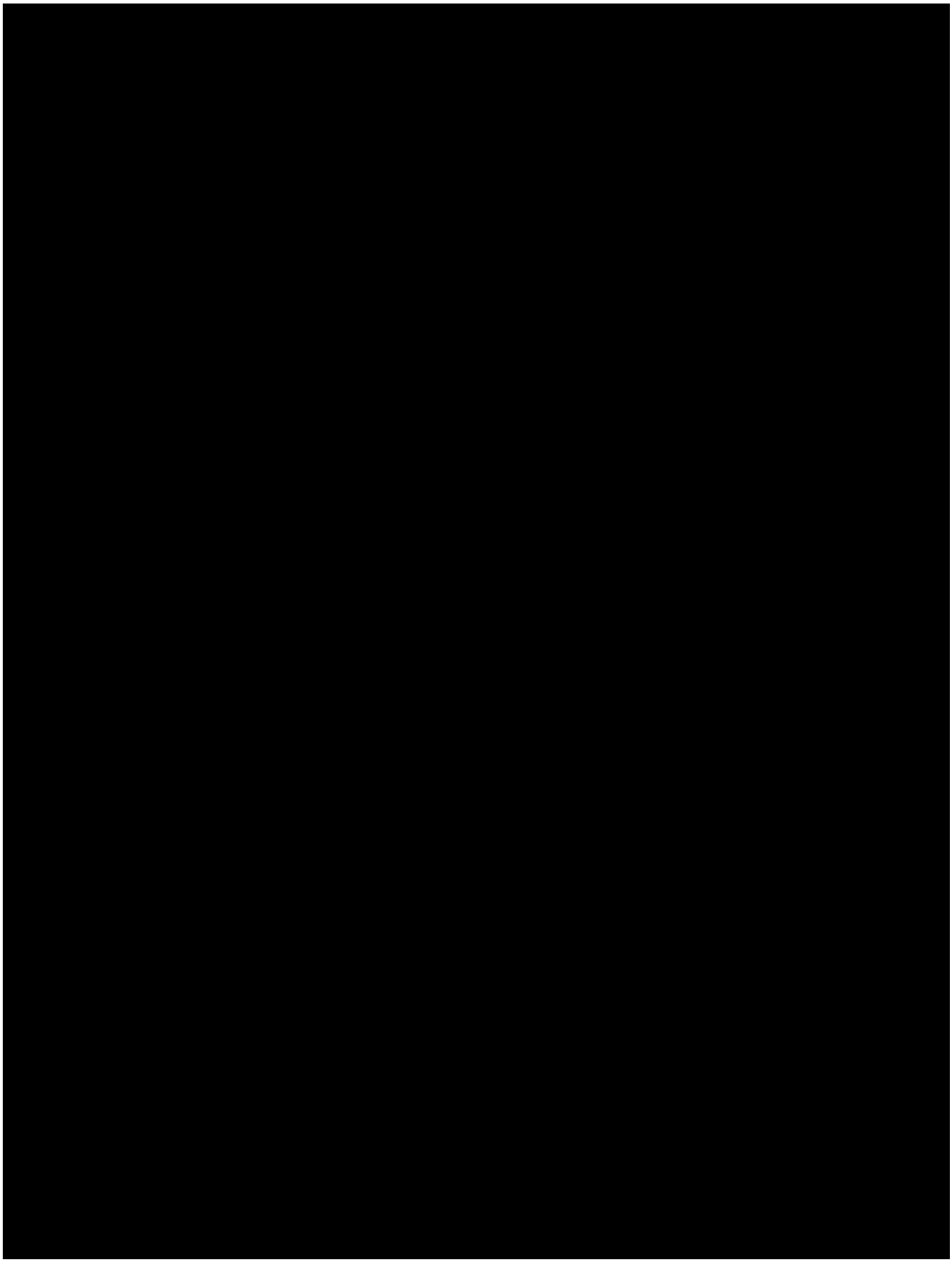
FORM OF LIMITED ASSIGNMENT AGREEMENT

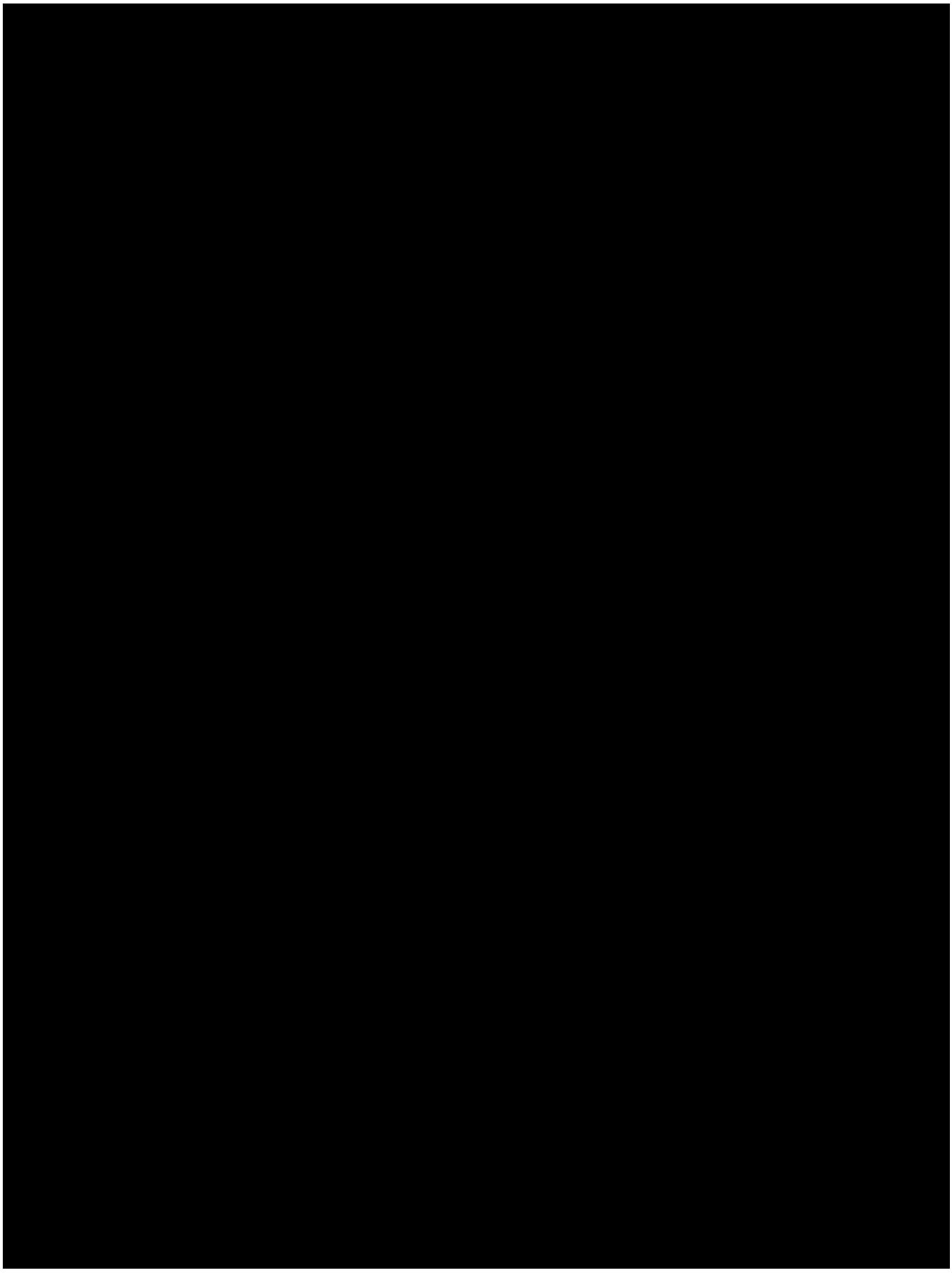
LIMITED ASSIGNMENT AGREEMENT

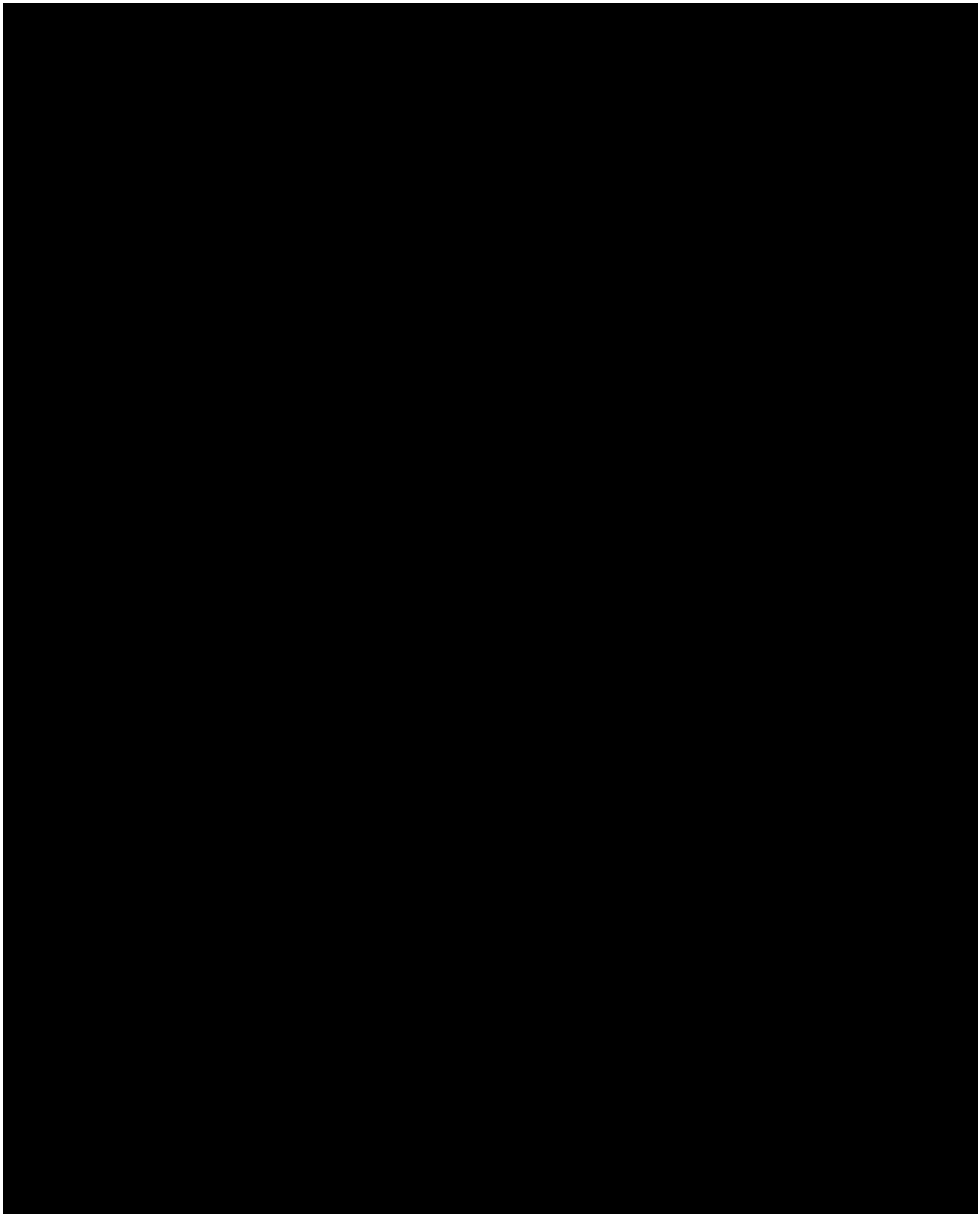


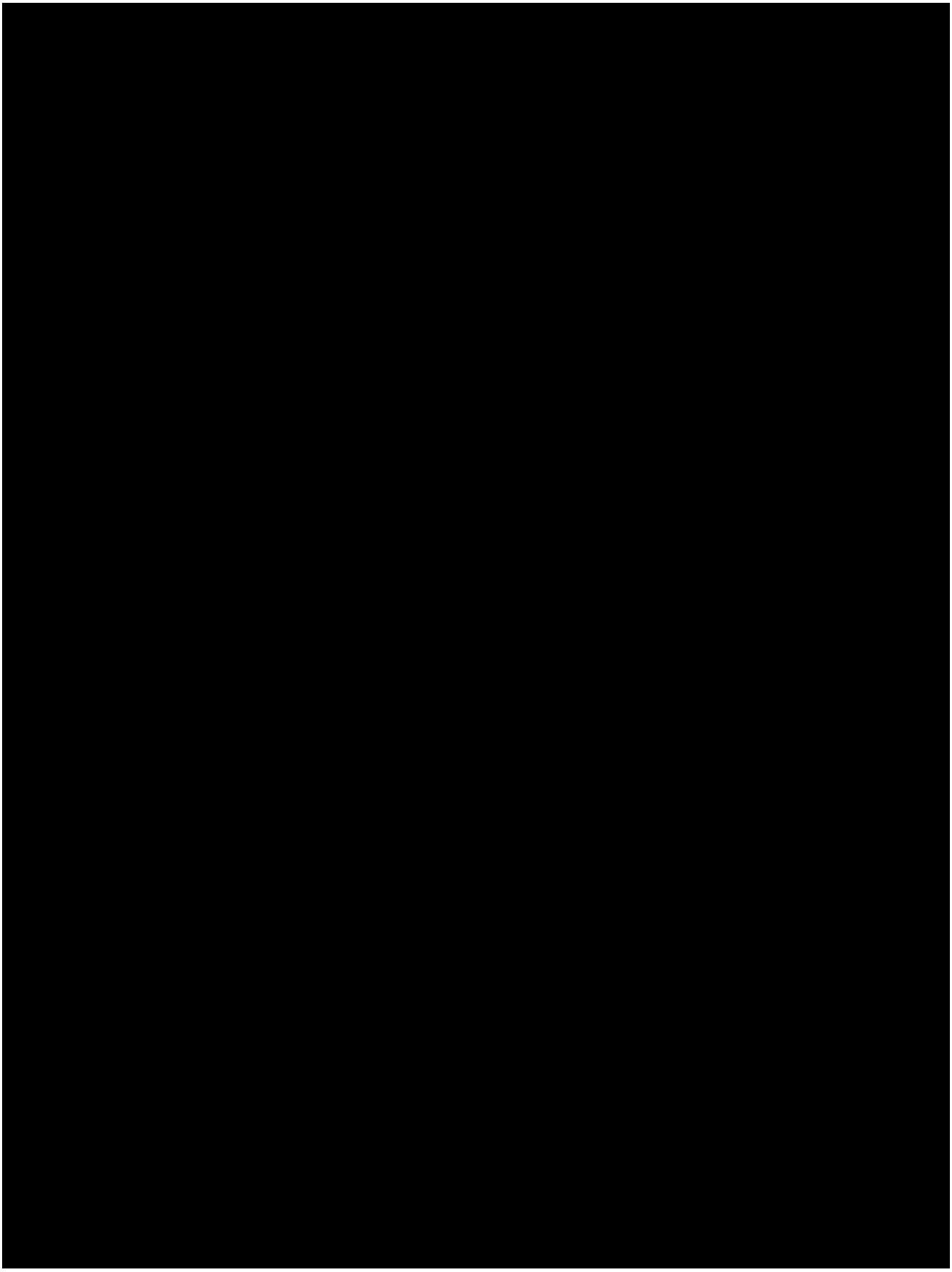


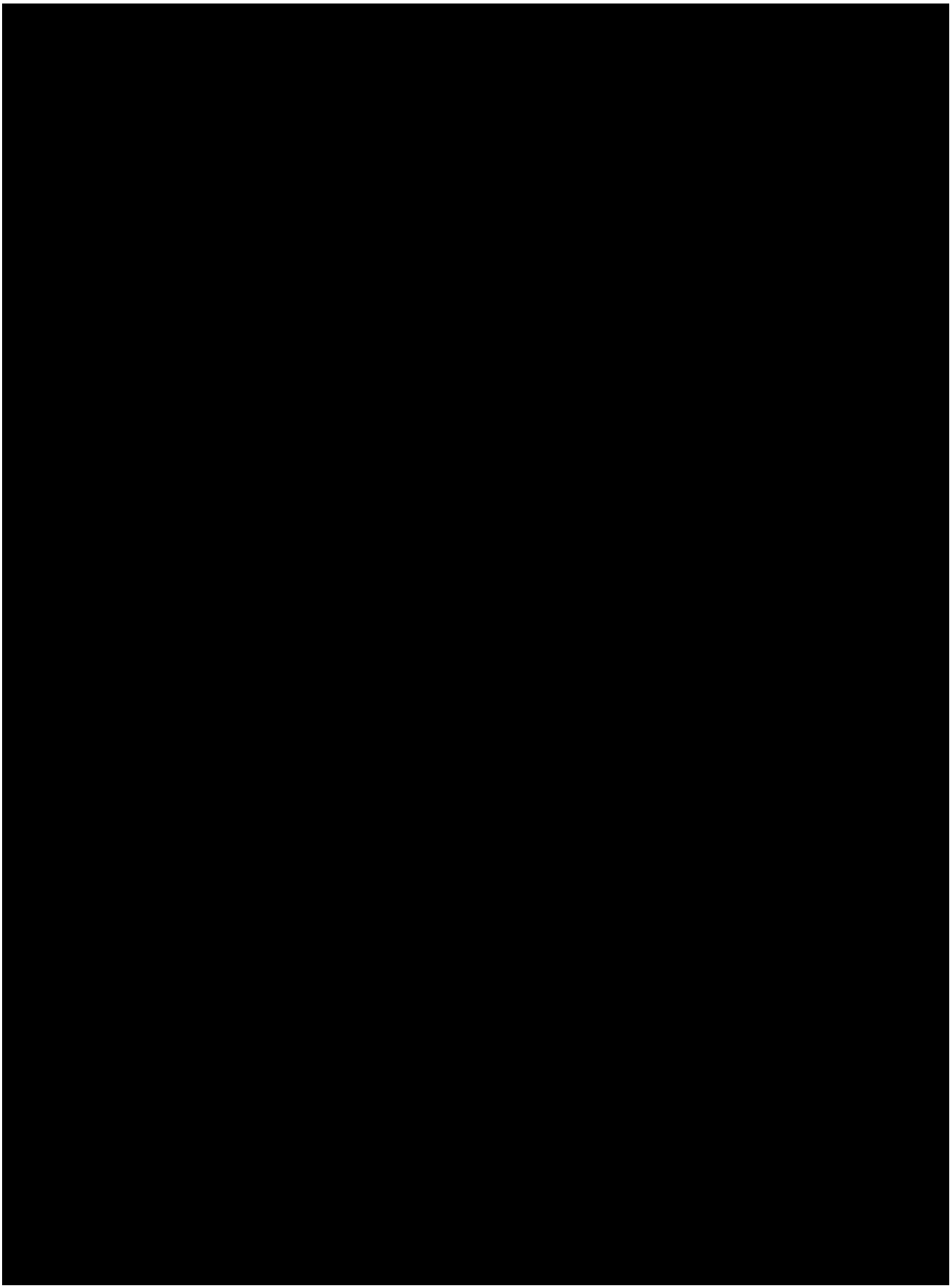


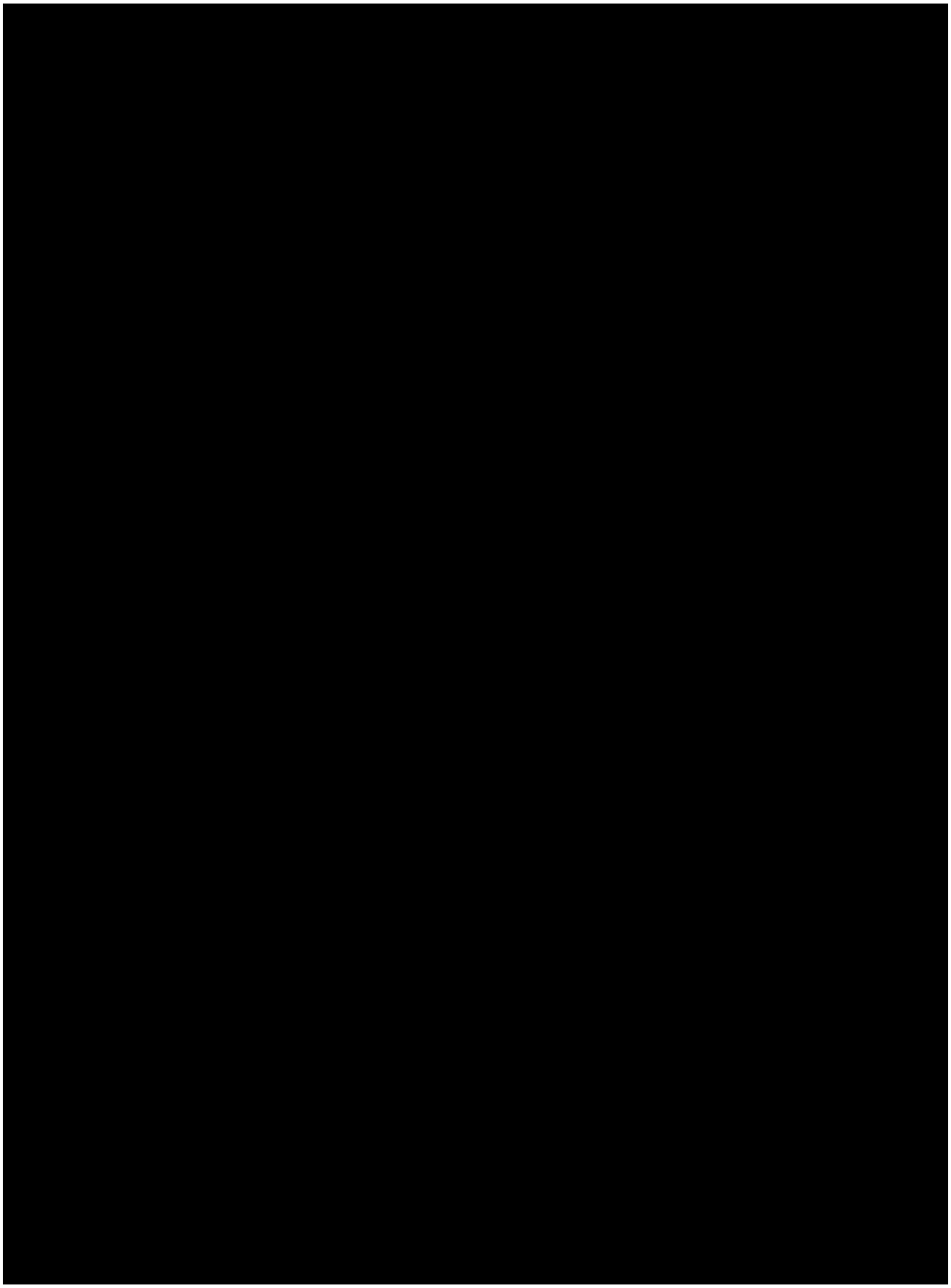


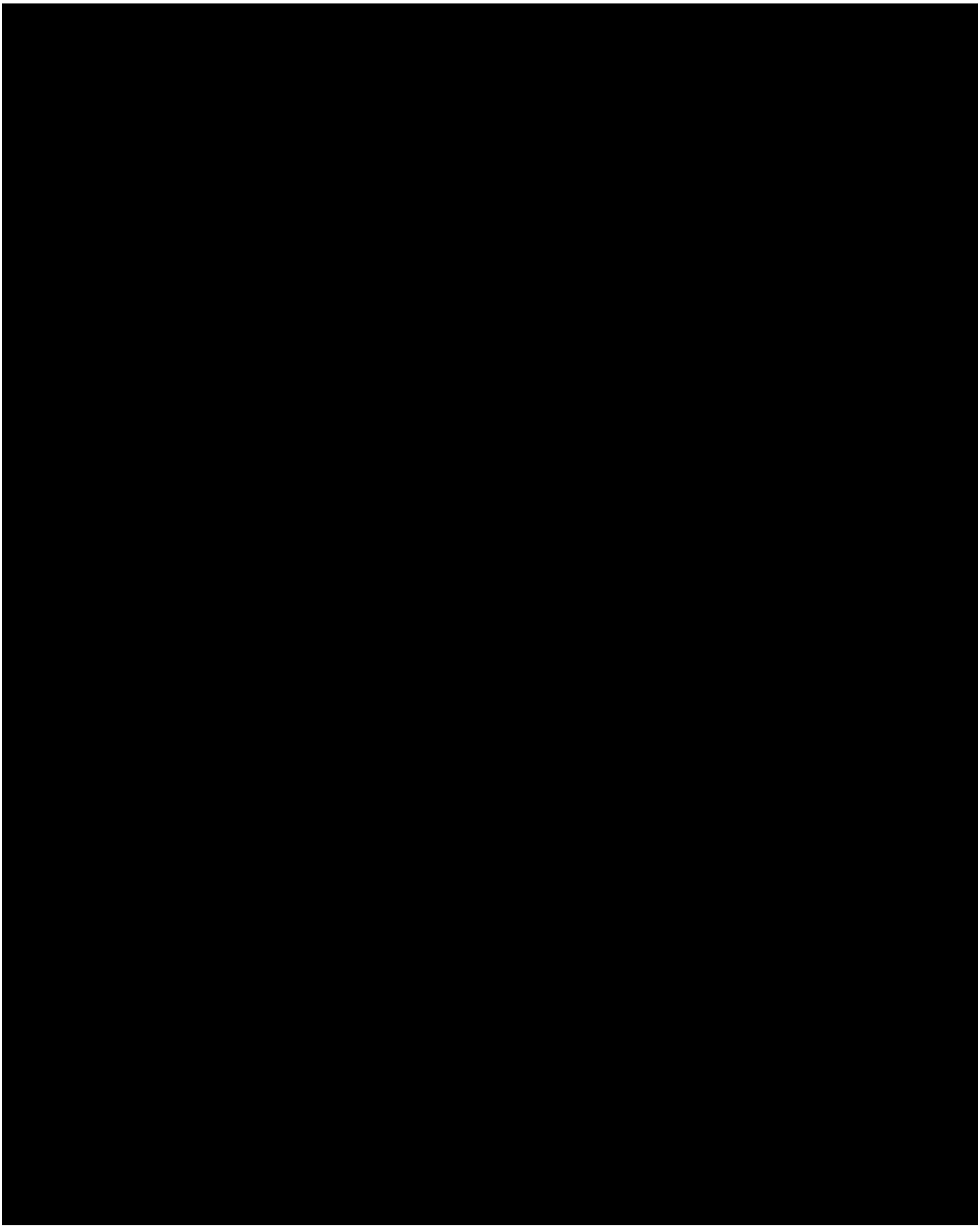


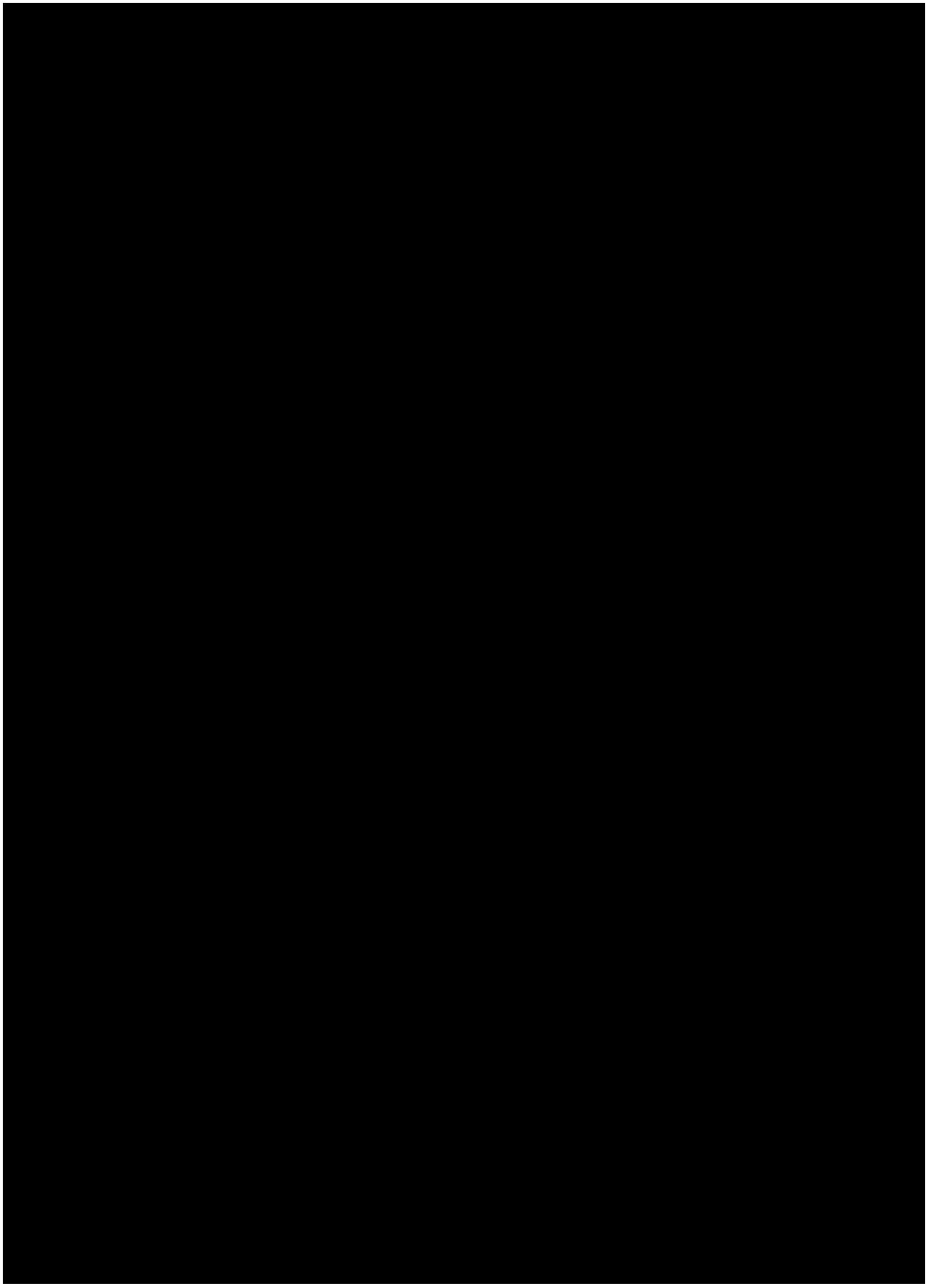




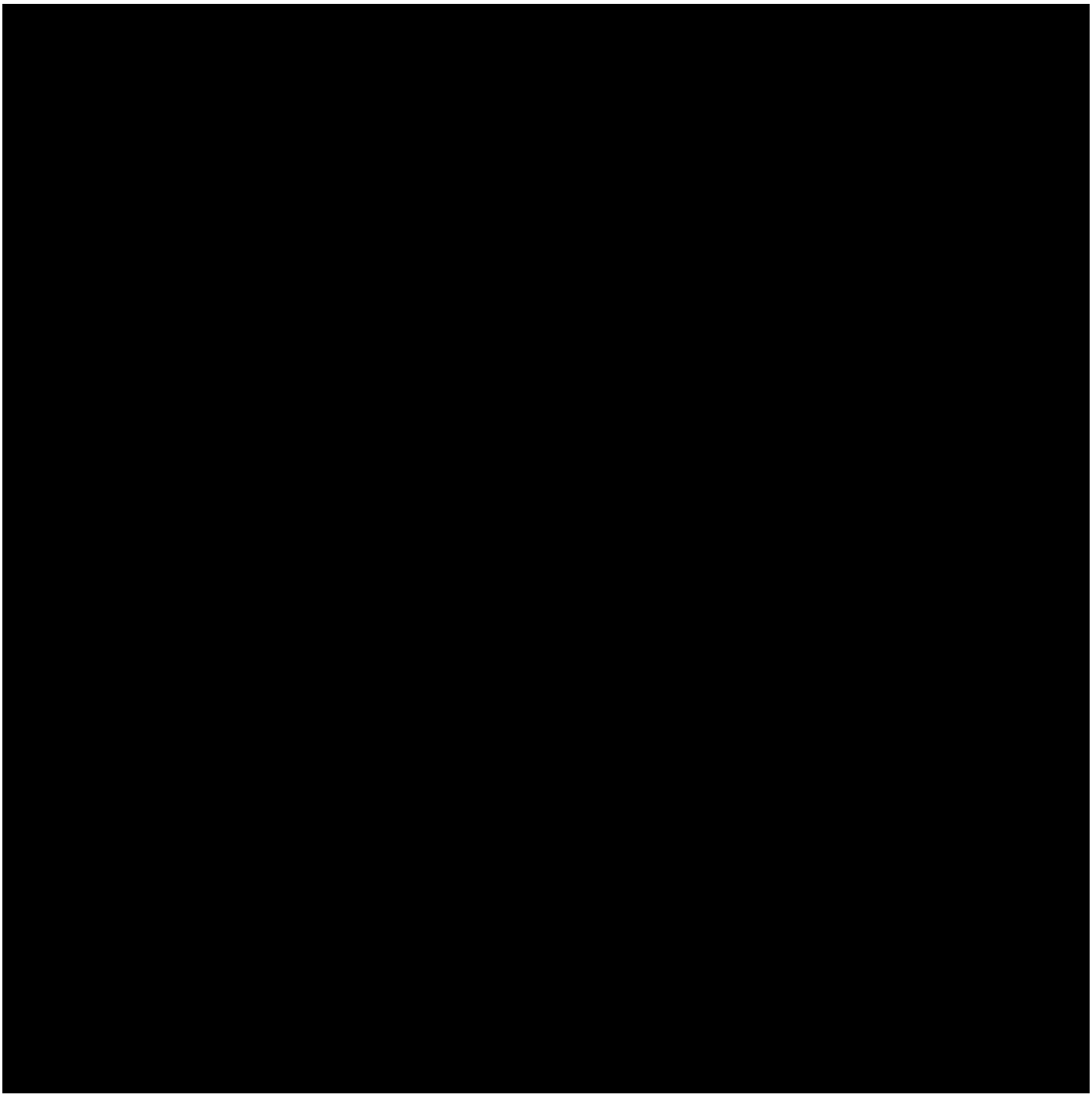


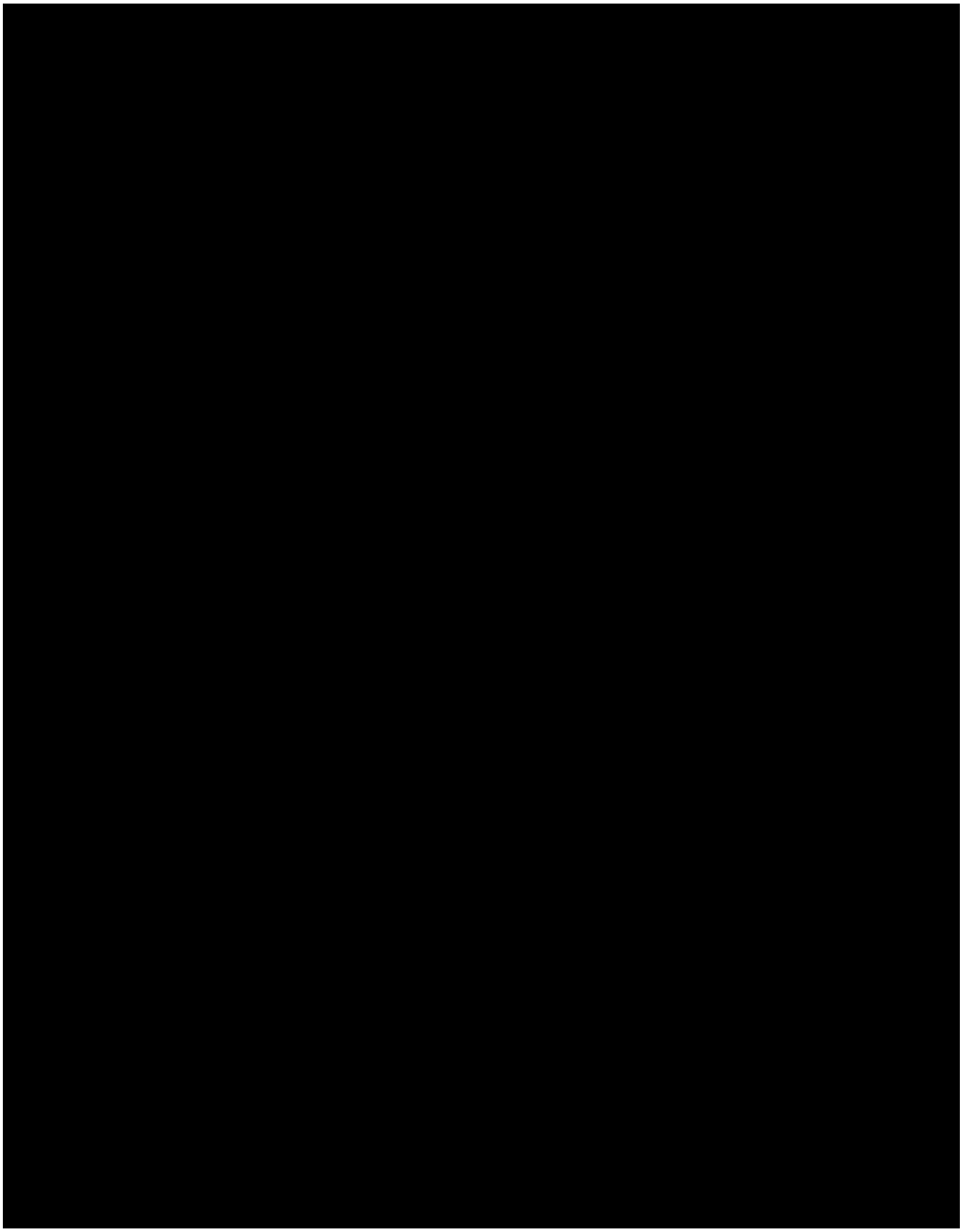
















SAN DIEGO COMMUNITY POWER
Staff Report – Item 13

TO: **Board of Directors**

FROM: **Kenny Key, Director of Power Contracts**

VIA: **Karin Burns, Chief Executive Officer**

SUBJECT: **Approve Amended and Restated Power Purchase Agreement with Noble Solar, LLC**

DATE: **May 22, 2025**

RECOMMENDATION:

Approve the proposed Second Amended and Restated Power Purchase Agreement ("A&R PPA") with Noble Solar, LLC to amend the Commercial Operation Date ("COD"), increase the security and pre-COD liabilities, and make additional minor amendments, and authorize the Chief Executive Officer 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 power purchase agreements (PPAs) of at least 10 years in duration are integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that Community Power 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 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.

Moreover, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that Community Power provide 65% of its RPS-required renewable energy from contracts of at least ten years in length. 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. Further, as adopted March 23, 2023, Community Power has established a procurement target of 100% renewable by 2035.

In February 2024, Community Power's Board of Directors approved a PPA for capacity and renewable energy benefits from a 400 MW solar and 400 MW (1,600 MWh) storage project ("Purple Sage Energy Center") with Noble Solar, LLC. Primergy Solar, LLC ("Primergy") is the developer for Noble Solar, LLC. The PPA originated from request for proposals Community Power issued in October 2022.

Recently, the project was impacted by federal legislation and impacts on BLM permitting. Community Power and Primergy worked together to evaluate options to keep the project viable and agreed to the term of the A&R PPA.

ANALYSIS AND DISCUSSION:

Staff negotiated the attached A&R PPA for the purchase of renewable energy and capacity attributes from a 400 MW solar photovoltaic electricity generating facility, along with a 400 MWAC 4-hour (1,600 MWh) battery energy storage facility in Clark County, Nevada.

Renewable energy produced by the facility will provide approximately 1,192,000 MWh annually of long-term renewable energy deliveries for Community Power's power supply. Further, while Community Power is increasing efforts to target and encourage local project development for Community Power's generation portfolio, Community Power expects a certain amount of geographic diversity among its power supply to help mitigate risks that might be experienced locally or regionally from weather, project site, or wholesale market conditions.

Below is additional information regarding Primergy Solar, LLC and the proposed Purple Sage Energy Center PPA.

Background on Primergy Solar:

- Primergy was formed in 2020 and has a leadership team with a combined experience of developing, contracting, constructing and operating over 50 GW of clean energy projects in North America.
- Primergy has a 19,500-MW development pipeline consisting of solar and solar+storage projects across the U.S. Primergy owns and directly manages over 2,000 MW of contracted solar and storage projects with near-term delivery timelines.
- Primergy is also developing Gemini Solar + Storage ("Gemini") and started construction on this project in Clark County, Nevada, in April 2022. Gemini is a 690 MW Solar + 380 MW Battery Storage Project that supports approximately 1,300 construction jobs, covers 5,000 acres of public land, will provide electricity to power approximately 400,000 homes, and provides Primergy with extensive experience permitting and constructing a project of this scale in this location.
- Primergy is a wholly owned subsidiary of Quinbrook Infrastructure Partners ("Quinbrook"), which was founded in 2015 to be an ESG-focused investment manager and has since made substantial investments in the U.S. renewable energy sector.

Contract Overview – Purple Sage Energy Center

- Project: 400 MW solar photovoltaic electricity generating facility, along with a 400 MWAC 4-hour (1,600 MWh) battery energy storage facility
- Project location: Clark County, Nevada
- Original Guaranteed Commercial Operation date: June 30, 2027
- Contract term: 20 years
- Expected annual energy production: approximately 1,192,000 MWh
- 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 the guaranteed energy production.
- Battery safety:
    - UL1973 (Battery safety)
    - UL9540A (Thermal runaway and fire propagation test)
    - IEC62619 (Safety for secondary lithium cells)
    - UN38.3 (Transportation safety)
    - EMC Compliance: EN61000-6-4, EN61000-6-2
    - Ingress Protection: IP55 for the container

Community Benefits and Workforce Development:

- The project is estimated to create approximately 520 temporary construction jobs, 340 jobs to be local to the project's community, and 6 permanent jobs to support operations and maintenance.
- There will be Labor Agreements in the form of Work Site Agreements with the following -
    - International Brotherhood of Electrical Workers (IBEW)
    - Laborers International Union of North America (LiUNA)
    - International Union of Operating Engineers (IUOE)
- Primergy developed an apprenticeship scholarship for the Moapa Band of Paiutes (MBOP). Primergy managed coordination between the MBOP and IBEW to develop training programs and provide valuable experience at prevailing wage plus a 10% bonus for MBOP Members. This program has been successful and Primergy will look to replicate it at other projects whenever possible.
- The project is planning to provide $15,000 annually to the local Nevada community for their use and benefit.
- The project has committed to contribute $2,000,000 to a community benefit fund to benefit Community Power customers.

Scope of Amendment:

- Adjust Guaranteed Commercial Operations Date from 6/30/27 to 6/1/2028
- Increase security requirements and pre-COD liabilities
- Update resource adequacy terms to account for slice of day regulations
- Update several commercial terms for clarity and consistency with Community Power's current pro-forma

COMMITTEE REVIEW:

In Q4 2024 the ECWG reviewed the A&R PPA for the project and recommended staff to move forward with the execution of this A&R PPA.

FISCAL IMPACT:

The competitive energy and capacity pricing of the PPA are confidential, but the long-term purchase of renewable energy and capacity will provide Community Power with significant value and cost certainty over the term of this PPA.

ATTACHMENTS:

A: Amended and Restated Power Purchase Agreement with Noble Solar, LLC

ITEM 13
ATTACHMENT A

AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Noble Solar LLC, a California limited liability company ("**Seller**")

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

Description of Facility: A 400 MW_{AC} solar photovoltaic electricity generating facility, along with a co-located 400 MW 4-hour battery (1,600 MWh) energy storage facility, all located in Clark County, in the State of Nevada, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	[redacted]
CEC Precertification Obtained	[redacted]
Documentation of Special Use Permit received	[redacted]
[redacted]	[redacted]
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	[redacted]
Executed Interconnection Agreement	[redacted]
Financial Close	[redacted]
Guaranteed Construction Start Date	[redacted]
Expected Delivery Network Upgrade Completion Date	[redacted]
Completion of Interconnection Upgrades Deadline	[redacted]
Expected Commercial Operation Date	[redacted]
Guaranteed Commercial Operation Date	06/01/2028

Delivery Term: Twenty (20) Contract Years

Expected Energy:

Contract Year	Expected Energy (MWh)
1	[redacted]
2	[redacted]
3	[redacted]

4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

Guaranteed Capacity: 400 MW_{AC} of Generating Facility capacity

Storage Contract Capacity: 400 MW_{AC} for four (4) hour discharge

Storage Contract Output: 1,600 MWh (based on four (4) hour discharge)

Dedicated Interconnection Capacity: 400 MW_{AC}

Guaranteed Storage Availability:

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate (%)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	

12		[redacted]	
13			
14			
15			
16			
17			
18			
19			
20			

Minimum Efficiency Rate: [redacted]

Contract Price

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 20	[redacted]

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	[redacted]

Product:

- ☒ Generating Facility Energy
- ☒ Discharging Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Storage Capacity
- ☒ Capacity Attributes (select options below as applicable)
  - ☐ Energy Only Status
  - ☒ Full Capacity Deliverability Status
- ☒ Ancillary Services

Scheduling Coordinator: Buyer/Buyer Third Party

Security:

Development Security: [redacted]

Performance Security: [redacted]

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[redacted]	
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AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT

This Amended and Restated Renewable Power Purchase Agreement ("**Agreement**") is entered into as of _____, 2025 (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Buyer and Seller entered into that certain Renewable Power Purchase Agreement, dated as of March 15, 2024 (the "**Original Agreement**");

WHEREAS, the Parties hereby agree to amend, restate, replace and supersede the terms of the Original Agreement as provided herein;

WHEREAS, Seller intends to develop, design, permit, 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 **Contract Definitions**. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.12(d).

"**Adjusted Energy Production**" has the meaning set forth in Exhibit G.

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transferee", "control" (including, with correlative meanings, the terms "controlled by", and "under common control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

"**Agreement**" has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

"**Alternating Current**" or "**AC**" means alternating current.

"**Ancillary Services**" means those Ancillary Services, as defined in the CAISO Tariff, that can be produced from the Storage Facility at any relevant time consistent with the terms and conditions of this Agreement, including the Operating Restrictions, as set forth in Exhibit Q. For clarity, "Ancillary Services" as used herein does not include, at any relevant time, any ancillary services that the Facility is not actually physically capable of providing consistent with the terms and conditions of this Agreement, including the Operating Restrictions.

"**Annual Storage Availability**" has the meaning set forth in Exhibit P.

"**Approved Forecast Vendor**" means any of (a) the CAISO or (b) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

"**Approved Maintenance Hours**" [redacted]

"**Attestation**" has the meaning set forth in Section 4.12.

"**Automated Dispatch System**" or "**ADS**" has the meaning set forth in the CAISO Tariff.

"**Automatic Generation Control**" or "**AGC**" has the meaning set forth in the CAISO Tariff.

"**Availability Adjustment**" or "**AA**" has the meaning set forth in Exhibit P.

"**Availability Backcast Amount**" means an amount of energy (in MWh) determined by a backcasting analysis that takes into account both resource conditions and availability of the Generating Facility where availability, in this context, refers to the status of the Generating Facility's mechanical and electrical systems and equipment (e.g. operational capability of inverters, converters, transformers, etc.), as further described in Exhibit T.

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

"**Available Generating Capacity**" means the capacity of the Generating Facility, expressed in whole MWs, that is mechanically available to generate Energy.

"**Bankrupt(cy)**" 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.

"**Bid**" has the meaning as set forth in the CAISO Tariff.

[redacted]

"**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 (PPT) for the Party sending a Notice, or payment, or performing a specified action.

"**Buyer**" means San Diego Community Power, a California joint powers authority.

"**Buyer Bid Curtailment**" means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Generating Facility, requiring the Party to deliver less Generating Facility Energy than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Generating Facility for a period of time;

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Generating Facility or Generating Facility Energy, including where Buyer or the SC for the Generating Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Generating Facility Energy forecasted to be generated by or delivered from the Generating Facility.

[redacted] If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Generating Facility Energy that was not generated due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

"**Buyer Curtailment Order**" means the instruction from Buyer to Seller to reduce Generating Facility Energy by the amount, and for the period of time set forth in such instruction,

for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

"**Buyer Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces Generating Facility Energy pursuant to or as a result of (a) Buyer Bid Curtailment, or (b) a Buyer Curtailment Order; *provided*, the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"**Buyer Dispatched Test**" has the meaning in Section 4.9(b).

[redacted]

"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.10(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 Generating Facility Energy, Charging Energy, and Discharging Energy delivered to or from the Delivery Point.

"**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 Storage 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 Operating Order**" means the "operating order" defined in Section 37.2.1.1 of the CAISO Tariff.

"**CAISO Resource ID**" means the number or name assigned by the CAISO to the CAISO Approved Meter.

"**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.

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

"**Capacity Damages**" has the meaning set forth in Exhibit B.

[redacted]

"**CEC**" means the California Energy Commission, or any successor agency performing similar statutory functions.

"**CEC Certification and Verification**" means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Generating Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

"**CEC Precertification**" means that the CEC has issued a precertification for the Generating Facility indicating that the planned operations of the Generating Facility would comply with applicable CEC requirements for CEC Certification and Verification.

"**CEQA**" means the California Environmental Quality Act.

[redacted]

"**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 cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

"**Charging Energy**" means the Energy delivered to the Storage Facility pursuant to a Charging Notice, as measured at the Storage Facility Metering Point by the Storage 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 Storage Facility. [redacted]

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO to the Storage Facility, directing the Storage 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 Procedures and the CAISO Tariff. For the avoidance of doubt, (i) any instruction to charge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

[redacted]

"**Collateral Assignment Agreement**" has the meaning set forth in Section 14.2.

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

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

"**Commercial Operation Delay Damages**" or "**COD Delay Damages**" [redacted]

"**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 Storage Facility pursuant to this Agreement.

[redacted]

"**Compliance Action**" has the meaning set forth in Section 3.12(b).

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.12(b).

"**Confidential Information**" has the meaning set forth in Section 18.1.

"**Construction Delay Damages**" means an amount equal to (a) the Development Security amount [redacted]

"**Construction Start**" has the meaning set forth in Exhibit B.

"**Construction Start Date**" has the meaning set forth in Exhibit B.

"**Contract Capacity**" means the sum of the Guaranteed Capacity and the Storage Contract Capacity.

"**Contract Price**" has the meaning set forth on the Cover Sheet. To be clear, the Contract Price is each of the Renewable Rate and the Storage Rate.

"**Contract Term**" has the meaning set forth in Section 2.1.

"**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, [redacted] and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating [redacted] any arrangement pursuant to which it has hedged [redacted] its obligations or entering into new arrangements which replace the Agreement [redacted] 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 Section 43A.4.1.1 of the CAISO Tariff.

"**CPUC**" means the California Public Utilities Commission or any successor agency performing similar statutory functions.

"**CPUC System RA Penalty Price**" 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 (RA) 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; [redacted]

"**Credit Rating**" means, with respect to any entity, the publicly available or private 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.

"**CRS**" has the meaning set forth in Section 4.12.

"**Cure Plan**" means a plan developed by Seller and delivered to Buyer within thirty (30) days of Seller's receipt of notice from Buyer of the occurrence of the Event of Default for which a Cure Plan can be provided, which plan shall specify in reasonable detail the cause of such performance failure and the actions Seller is taking or proposes to take in order to cure such performance failure, together with written confirmation from a Licensed Professional Engineer that such failure is capable of being cured within a reasonable period of time.

"**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 Generating Facility 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 Participating Transmission Owner 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 Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner 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 Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Generating Facility Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations or limitations under its Interconnection Agreement with CAISO, the Participating Transmission Owner or distribution operator, including limitations on transfer capability under the Interconnection Agreement.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which generation from the Facility is reduced pursuant to a Curtailment Order;

provided, the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"**Damage Payment**" [redacted]

"**Day-Ahead Forecast**" has the meaning set forth in Section 4.3(c).

"**Day-Ahead Market**" has the meaning set forth in the CAISO Tariff.

"**Day-Ahead Schedule**" has the meaning set forth in the CAISO Tariff.

"**Dedicated Interconnection Capacity**" means the maximum instantaneous amount of Energy that is permitted to be delivered by the Facility to the Delivery Point under Seller's Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

"**Deemed Delivered Energy**" means the amount of Generating Facility Energy, expressed in MWh, that the Generating Facility would have produced and delivered to the Generating Facility Metering Point (accounting for losses to the Delivery Point), but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be calculated [redacted] using an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Buyer Curtailment Period, less the amount of Generating Facility Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

"**Defaulting Party**" has the meaning set forth in Section 11.1(a).

"**Deficient Month**" has the meaning set forth in Section 4.10(e).

"**Delay Damages**" means Construction Delay Damages and COD Delay Damages.

[redacted]

"**Delivery Point**" has the meaning set forth in Exhibit A with the location shown on Exhibit R.

"**Delivery Term**" 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.

"**Development Security**" means (i) cash [redacted] and/or (ii) a Letter of Credit, in the amount set forth on the Cover Sheet; [redacted]

[redacted]

"**Discharging Energy**" means all Energy that is delivered from the Storage Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for Station Use and Electrical Losses to the Delivery Point.

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO to the Facility, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to a specified Stored Energy Level; *provided*, (a) any such operating instruction or updates shall be in accordance with the Operating Procedures and the CAISO Tariff, [redacted]

"**Disclosing Party**" has the meaning set forth in Section 18.2.

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

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

"**Efficiency Rate**" means the measured round-trip efficiency rate of the Storage Facility, as measured at the Delivery Point net of Electrical Losses and Station Use, expressed as a percentage, calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

"**Electrical Losses**" means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of Generating Facility Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, (c) between the Generating Facility and the Storage Facility Metering Point associated with delivery of Charging Energy. [redacted]

"**Eligible Intermittent Resource Protocol**" has the meaning set forth in the CAISO Tariff or the successor CAISO program for intermittent resources.

"**Eligible Renewable Energy Resource**" has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

"**Energy**" means alternating current electrical energy measured in MWh.

"**Energy In**" has the meaning set forth in Part II.B of Exhibit O.

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

"**Energy Out**" has the meaning set forth in Part II.B of Exhibit O.

"**Energy Supply Bid**" has the meaning set forth in the CAISO Tariff.

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

"**Excess MWh**" has the meaning set forth in Exhibit C.

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

"**Exercise Period**" has the meaning set forth in Section 14.5(c).

"**Expansion Project**" has the meaning set forth in Section 14.5(a).

"**Expected Commercial Operation Date**" means the date set forth on the Cover Sheet.

"**Expected Delivery Network Upgrade Completion Date**" means the date set forth on the Cover Sheet.

"**Expected Energy**" means the quantity of Generating Facility Energy that Seller expects to be able to deliver to Buyer [redacted], which amount shall be adjusted proportionately to the reduction from Guaranteed Capacity to Installed Generating Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

[redacted]

"**Facility**" means the Generating Facility and the Storage Facility.

"**Facility Energy**" means the sum of Generating Facility Energy and Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use.

[redacted]

"**FERC**" means the Federal Energy Regulatory Commission or any successor government agency.

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

"**Flexible Capacity**" means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy 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.

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

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

"**Forced Facility Outage**" means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

"**Forecasting Penalty**" means for each hour in which Seller does not provide the forecast required in Section 4.3(c) and Buyer incurs a loss or penalty resulting from its scheduling activities in such hour with respect to Generating Facility Energy, the product of (A) the absolute difference (if any) between (i) the expected Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Day-Ahead Forecast (or the Monthly Delivery Forecast to the extent no Day-Ahead Forecast was delivered to Buyer, or the annual delivery forecast to the extent no Day-Ahead Forecast or Monthly Delivery Forecast was delivered to Buyer) and (ii) the actual Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour.

"**Forward Certificate Transfers**" has the meaning set forth in Section 4.10(a).

"**Full Capacity Deliverability Status**" has the meaning set forth in the CAISO Tariff.

"**Full Network Model**" has the meaning set forth in the CAISO Tariff.

"**Future Environmental Attributes**" shall mean any and all generation attributes that become recognized under applicable Law after the Effective Date other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Generating Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, or (ii) Renewable Energy Incentives, investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

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

"**Generating Facility**" means the renewable energy electricity generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Generating Facility Energy to the Delivery Point; *provided*, the "Generating Facility" does not include the Storage Facility or the Shared Facilities.

"**Generating Facility Energy**" means all Energy that is delivered from the Generating Facility to the Generating Facility Metering Point, as measured at the Generating Facility Metering Point by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for Station Use and Electrical Losses to the Delivery Point. For the avoidance of doubt, the Parties agree that the Generating Facility Energy includes all Energy generated by the Generating Facility, whether such Energy is delivered directly to the Delivery Point or such Energy is used to charge the Storage Facility.

"**Generating Facility Meter**" means the 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 Generating Facility Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. The Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise

indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"**Generating Facility Metering Point**" means the location or locations of the Generating Facility Meter shown on Exhibit R.

"**GEP Damages**" has the meaning set forth in Section 4.7.

"**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*, *however*, that "Governmental Authority" shall not in any event include any Party.

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green tags are accumulated on a MWh basis and one green tag represents the Green Attributes associated with one (1) MWh of Generating Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or any Renewable Energy Incentives, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

"**Green Tag Reporting Rights**" means the right of a purchaser of renewable energy to report ownership of accumulated "green tags" in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

"**Guaranteed Capacity**" means the amount of generating capacity of the Generating Facility, as measured in MW at the Delivery Point, 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 Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

"**Guaranteed Energy Production**" means an amount of Adjusted Energy Production, as measured in MWh, equal to [redacted] of the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement Period.

"**Guaranteed RA Amount**" means, at any point in time, the maximum Net Qualifying Capacity (in MWs) for which a co-located solar and storage facility, with a common Interconnection Point, a solar generating capacity equivalent to the Guaranteed Capacity at the Delivery Point and a storage capacity equivalent to the Installed Battery Capacity and the Resource Duration, having achieved Full Capacity Deliverability Status, and performing with operational characteristics equal to those required by the Guaranteed Storage Availability, Guaranteed Efficiency Rate, and the Operating Restrictions which may be counted in any given Showing Month pursuant to the then applicable Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources, and the implementation of CPUC decisions and CAISO tariff changes and CAISO business practice manuals where any such changes to counting conventions may be reflected.

"**Guaranteed Storage Availability**" means the minimum guaranteed [redacted] Storage Availability of the Facility, as set forth on the Cover Sheet.

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

[redacted]

"**Indemnifiable Losses**" 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).

"**Initial Synchronization**" means the initial delivery of Facility Energy to the Delivery Point.

"**Installed Battery Capacity**" means the maximum dependable operating capability of the Storage Facility to discharge Energy for the Resource Duration at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation (up to but not in excess of the Storage Contract Capacity), as measured in MW(ac) at the Delivery Point and adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

"**Installed Capacity**" means the sum of (i) the Installed Generating Capacity and (ii) the Installed Battery Capacity.

"**Installed Generating Capacity**" means the actual generating capacity of the Generating Facility, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation (up to but not in excess of the Guaranteed Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

"**Insurable Force Majeure Event**" means any Force Majeure Event which (a) results in direct, physical loss to, and unavailability of, the Facility, and (b) occurs prior to the Delivery Point; [redacted]

"**Inter-SC Trade**" or "**IST**" 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 [redacted] 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 Transmission System in accordance with the Interconnection Agreement.

"**Interconnection Point**" means the point at which Seller's Interconnection Facilities interconnect with the Transmission System pursuant to the Interconnection Agreement, which point is identified in Exhibit A.

[redacted]

"**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 of the United States Internal Revenue Code of 1986, as amended.

[redacted]

"**Joint Powers Act**" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"**kW**" means a kilowatt.

"**Law**" means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit, guidance or directive having the force of law, or any interpretation or implementation thereof, promulgated or issued by a Governmental Authority, all the tariffs (including the CAISO Tariff), and the WREGIS Operating Rules.

"**Lender**" means, collectively, any Person (i) 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 or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) 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 a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- from S&P or A3 from Moody's in a form substantially similar to the letter of credit set forth in Exhibit K.

"**Licensed Professional Engineer**" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California or the State of Nevada.

"**Limited Assignee**" has the meaning set forth in Section 14.4.

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

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

[redacted]

"**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 reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including 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 Green Attributes, Capacity Attributes, and Renewable Energy Incentives [redacted]

"**Lost Output**" means the amount of Generating Facility Energy expressed in MWh that the Generating Facility would have produced and delivered to the Delivery Point, as measured at the Generating Facility Metering Point, but that is not produced by the Generating Facility during Force Majeure Events, Curtailment Periods, System Emergencies, [redacted]ure, which amount shall be calculated using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Force Majeure Events, Curtailment Periods, System Emergencies, or Buyer Failure, less the amount of Generating Facility Energy delivered to the Delivery Point or the Storage Facility Metering Point during such period of time (or other relevant period); *provided*, if the applicable difference is negative, the Lost Output shall be zero (0).

[redacted]

"**Material Terms**" has the meaning set forth in Section 14.5(b).

"**Maximum Charging Capacity**" means the maximum power output level, in MW, at which the Storage Facility can be charged, as specified in Exhibit Q.

"**Maximum Discharging Capacity**" means the maximum power output level, in MW, at which the Storage Facility can be discharged, as specified in Exhibit Q.

"**Maximum State of Charge**" means the maximum State of Charge to which the Storage Facility may be charged, as set forth in Exhibit Q.

"**Maximum Stored Energy Level**" means the maximum Stored Energy Level the Storage Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.

"**Meter Service Agreement**" has the meaning forth in the CAISO Tariff.

"**Milestones**" means the development activities for significant permitting, interconnection, financing 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 Storage Facility may be discharged, as set forth in Exhibit Q.

"**Minimum Stored Energy Level**" means the minimum Stored Energy Level the Storage Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.

"**Monthly Delivery Forecast**" has the meaning set forth in Section 4.3(b).

"**Monthly Storage Availability**" has the meaning set forth in Exhibit P.

"**Moody's**" means Moody's Investors Service, Inc., or its successors.

"**MW**" means megawatts in alternating current, unless expressly stated in terms of direct current.

"**MWh**" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, the LMP at the Facility's PNode is less than Zero dollars ($0).

"**NERC**" 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**" has the meaning set forth in the CAISO Tariff.

"**Non-Curable Default**" has the meaning set forth in Section 14.2(c).

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

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

"**Operating Procedures**" or "**Operating Restrictions**" means those rules, requirements, and procedures set forth on Exhibit Q.

"**Original Agreement**" has the meaning set forth in the Recitals.

"**Participating Generator Agreement**" has the meaning set forth in the CAISO Tariff.

"**Participating Transmission Owner**" or "**PTO**" means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

"**Party**" or "**Parties**" has the meaning set forth in the Preamble.

"**Performance Measurement Period**" means each two (2) consecutive Contract Year period during the Delivery Term so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on.

"**Performance Security**" means (i) cash [redacted] and/or (ii) a Letter of Credit, in the amount set forth on the Cover Sheet; [redacted]

"**Permitted Transferee**" means:

(i) any entity that satisfies, or is controlled by another Person that satisfies the following requirements (a) and (b):

(a) A tangible net worth [redacted] of not less than [redacted] and

(b) At least three (3) years of experience in the ownership and operations of power generation facilities or [redacted] similar to the Facility, or has retained a third-party with such experience to operate the Facility;

[redacted]

[redacted]

"**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, subject to and as further described in the CAISO Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Facility that is conducted for the purposes of carrying out routine repair or maintenance of such Facility, or for the purposes of new construction work for such Facility.

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

"**Portfolio Content Category 1**" or "**PCC1**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

[redacted]

"**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.

"**Project PPA**" has the meaning set forth in Section 14.5(b).

"**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 utility industry and independent power producer during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States, or (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 generating facilities with integrated storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the 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.

"**PTC**" means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986, as amended.

"**PTC Amount**" means the amount, on a dollar per MWh basis, equal to the PTC that Seller would have earned in respect of Generating Facility Energy at the time, grossed up on an after tax basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of Buyer Bid Curtailment, or Buyer Curtailment Order, which amount will be calculated by reference to the amount of Deemed Delivered Energy and the portion of the Generating Facility eligible to receive PTCs at the time of determination.

[redacted]

"**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 3.8(b).

"**RA Guarantee Date**" [redacted]

"**RA Shortfall**" has the meaning set forth in Section 3.8(b).

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month, commencing with the Showing Month that contains the RA Guarantee Date, during which there is an RA Shortfall.

"**Ramp Rate**" means the ability of the Storage Facility to change between power output levels, expressed in MWAC/min.

"**Real-Time Forecast**" means any Notice of any change to the Available Generating Capacity, Storage Capacity, or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

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

"**Real-Time Price**" means the Resource-Specific Settlement Interval LMP, as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

"**Receiving Party**" shall have the meaning set forth in Section 18.2.

[redacted]

"**Remedial Action Plan**" has the meaning set forth in Section 2.4.

"**Renewable Energy Credit**" has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"**Renewable Energy Incentives**" means: (a) all federal, state, or local Tax Credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46, 48, 45Y and 48E of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of benefit or incentive, including any transfers of certain credits pursuant to Section 6418 of the Internal Revenue Code of 1986, as amended, relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

"**Renewable Rate**" has the meaning set forth on the Cover Sheet.

"**Replacement Energy**" means Energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

"**Replacement Green Attributes**" means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Generating Facility, in addition to Green-e Listing.

"**Replacement Product**" means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount [redacted]

"**Replacement RA**" means Resource Adequacy Benefits, if any, (a) equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, including the same Slice-of-Day (as that term is defined in the Resource Adequacy Rulings) generation profile and related characteristics, and as applicable, Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, and (b) located within the CAISO Balancing Authority Area.

"**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 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 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.

[redacted]

"**Resource Category**" means the categories for established by the CPUC in the Resource Adequacy Rulings and subsequently incorporated into the annual Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings that is issued by the CPUC Energy Division, or any replacement or successor documentation established by the CPUC Energy Division.

"**Resource Duration**" means four (4) continuous hours of discharge as 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).

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.), or its successors.

"**Schedule**" has the meaning set forth in the CAISO Tariff, and "**Scheduled**" has a corollary meaning.

"**Scheduled Energy**" means the Charging Energy, Discharging Energy, or Generating Facility 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), 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.

[redacted]

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

"**Self-Schedule**" has the meaning set forth in the CAISO Tariff.

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

"**Seller Initiated Test**" has the meaning set forth in Section 4.9(b).

[redacted]

"**Seller's WREGIS Account**" has the meaning set forth in Section 4.10(a).

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

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

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

"**Shared Facilities**" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the Interconnection Point, 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 or its Affiliates other than the Facility.

"**Showing Month**" shall be the 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.

"**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.

"**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.

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

[redacted]

"**SQMD Plan**" has the meaning set forth in the CAISO Tariff.

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

"**Station Use**" means the Energy that is used within the Facility to power certain lights, motors, 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 Storage Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice; *provided*, Station Use shall not include Electrical Losses (including transformation losses in the transformer) that exist (a) between the Generating Facility Meter and the Delivery Point, (b) between the Storage Facility Meter and the Delivery Point, and (c) between the Generating Facility Meter and the Storage Facility Meter.

"**Storage Capacity**" means the maximum dependable operating capability of the Storage Facility to discharge Energy that can be sustained for four (4) consecutive hours.

"**Storage Capacity Damages**" has the meaning set forth in Exhibit B.

"**Storage Capacity Test**" or "**SCT**" means any test or retest of the capacity of the Storage Facility and/or Efficiency Rate conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

"**Storage Contract Capacity**" means the total Storage Capacity (in MW) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(b) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

"**Storage Contract Output**" means the product of the Storage Contract Capacity multiplied by four (4) hours, represented in MWh, initially deemed to be equal to the amount set forth on the Cover Sheet.

[redacted]

"**Storage 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 Storage Product (but excluding any Shared Facilities or the Interconnection Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

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

"**Storage Facility Metering Point**" means the location or locations of the Storage Facility Meter shown on Exhibit R.

"**Storage Product**" means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Storage Facility.

"**Storage Rate**" has the meaning set forth on the Cover Sheet.

"**Stored Energy Level**" means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh.

"**Supplementary Storage 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 PTO, 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.

"**Tax**" or "**Taxes**" 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.

"**Tax Credits**" means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

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

"**Termination Payment**" has the meaning set forth in Section 11.3.

"**Test Energy**" means Generating Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Generating Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

"**Test Energy Rate**" has the meaning set forth in Section 3.6.

"**Throughput**" means, any time during any day or Contract Year, as applicable, the total cumulative amount of Discharging Energy from the Storage Facility for such period during such day or Contract Year, as applicable (expressed in MWh).

"**Transmission Provider**" means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

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

[redacted]

[redacted]

"**Ultimate Parent**" means Valley of Fire Solar, LLC, a Delaware limited liability company.

"**Variable Energy Resource**" or "**VER**" has the meaning set forth in the CAISO Tariff.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.10(e).

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of October 2022, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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 means 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 term "including" or similar terms means "including 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*, *however*, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes [redacted] each of the following conditions:

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) 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;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (90) days) 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;

(e) Seller has received CEC Precertification of the Generating Facility (and reasonably expects to receive final CEC Certification and Verification for the Generating Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation;

(g) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;

(h) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;

(i) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(j) Seller has paid Buyer for all undisputed amounts owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages.

2.3 **Development; Construction; Progress Reports**. 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 Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to and necessary to evidence the achievement of Milestones within ten (10) Business Days of receipt of such request by Buyer. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan**. If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event [redacted] Seller shall submit to Buyer, within ten (10) Business Days of the end of such ninety (90) 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. So long as Seller complies with its obligations under this Section 2.4 with respect to a Milestone, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any such Milestone.

ARTICLE 3
PURCHASE AND SALE

3.1 **Purchase and Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility (net of applicable losses). 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 shall relieve Buyer of any obligations hereunder. 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 resale in the market, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Capacity Attributes and Storage Product in accordance with this Section 3.1 and Exhibit C and the terms and conditions of this Agreement, Buyer has no obligation to purchase from Seller any other Product for which the associated Generating Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Sale of Green Attributes**. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all Green Attributes attributable to the Generating Facility Energy.

3.3 **Imbalance Energy**. Buyer and Seller recognize that in any given Settlement Period the amount of Generating Facility Energy, Charging Energy, and/or Discharging Energy delivered from the Generating Facility and/or received or delivered by the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. To the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely allocated to the Party that is acting as Scheduling Coordinator for the Facility.

3.4 **Ownership of Renewable Energy Incentives**. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and Section 3.5(b), in such event, Buyer shall bear all costs and risks incurred in connection with such Future Environmental Attributes, including costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller's decision not to take action or incur costs to allow for such Future Environmental Attributes shall not be considered an Event of Default or otherwise give rise to any Seller liability. Seller shall have no obligation to take any action or incur any costs or liabilities or alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such costs, liabilities, or alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with or arising therefrom on terms acceptable to Seller.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, losses and liabilities to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy**. [redacted]

3.7 **Capacity Attributes**. Seller shall request Full Capacity Deliverability Status for the Facility 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, Seller shall maintain eligibility for 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 available Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term, Seller shall take all commercially reasonable administrative actions, including complying with all applicable registration and reporting requirements and executing all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, as set forth in Section 3.8(b), in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. [redacted]

(c) Seller may, as an alternative to paying RA Deficiency Amounts, deliver Replacement RA in the amount of the RA Shortfall, provided that notice of such Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the RA Compliance Showing deadline for the applicable Showing Month. [redacted]

3.9 **CEC Certification and Verification**. In accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Generating Facility throughout the Delivery Term, including compliance with all requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor) that are applicable to the Generating Facility. Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial

Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any material changes to the information included in Seller's application for CEC Certification and Verification for the Generating Facility.

3.10 **[Reserved]**.

3.11 **California Renewables Portfolio Standard**.

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6].

(b) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].

(c) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2].

(d) The term "commercially reasonable efforts" as used in this Section 3.11 means efforts consistent with and subject to Section 3.12.

3.12 **Compliance Expenditure Cap**.

(a) Subject to other provisions of this Section 3.12, the Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Seller agrees 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 a Change in Law to maximize benefits to Buyer, including: (i) the modification of the description of Green Attributes and/or Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental

Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other commercially reasonable actions that may be required to assure that this Agreement or the Facility is eligible as an Eligible Renewable Energy Resource and for other benefits under the California Renewables Portfolio Standard; *provided,* Seller shall have no obligation to modify this Agreement or the Facility or incur any costs or liabilities, or take other actions not expressly required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in an adverse effect on, any of Seller's rights, benefits, costs, liabilities, risks and/or obligations under or arising from this Agreement. [redacted]

(b) If a Change in Law has increased or is reasonably expected to increase Seller's known or reasonably expected costs [redacted] to (A) cause the Generating Facility, the Energy generated by the Generating Facility, or the associated Green Attributes to be RPS compliant or to obtain, maintain, convey or effectuate Buyer's use of any Green Attributes, (B) comply with its obligations under Section 4.10, (C) obtain, maintain, convey or effectuate Buyer's use of (as applicable) any Product as required hereunder or affects the Facility's CEC Certification and Verification, or (D) obtain, maintain, convey or effectuate Buyer's use of any Resource Adequacy Benefits (excluding any Change in Law otherwise addressed in the definition of "Guaranteed RA Amount" and Section 3.8(b)), then the Parties agree that the maximum aggregate amount of out-of-pocket costs, expenses and liabilities (any action required to be taken by Seller to comply with this Agreement and such Change in Law, a "**Compliance Action**"), that Seller shall be required to bear during (x) any Contract Year to comply with all such Compliance Actions shall be capped at [redacted]

(c) 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.

(d) 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 of the costs that exceed the Compliance

Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), 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.

(e) 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.

[redacted]

Any change in the value of any attributes provided by Seller to Buyer resulting from any Change in Law shall not affect the Contract Price or Buyer's obligation to pay Seller for any attributes delivered.

3.13 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties (and Seller's Lenders) in their sole discretion as set forth in a written agreement executed by the Parties.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and continuing 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 Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Generating Facility to the Storage Facility, and any operation and maintenance charges imposed 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 Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Generating Facility Energy, Charging Energy, and

Discharging Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Test Energy and Generating Facility Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility as they arise, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss**.

(a) Energy. Title to and risk of loss of the Generating Facility Energy shall pass and transfer from Seller to Buyer at the Generating Facility Metering Point; [redacted] Risk of loss of the Discharging Energy, excluding Generating Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting**. Seller shall provide the forecasts described below at its sole expense. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use commercially reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of Energy and Available Generating Capacity. 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 Buyer's SC (if applicable) a non-binding forecast of the hourly expected Energy, Available Generating Capacity and Storage Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of

(i) Available Generating Capacity, (ii) Storage Capacity and (iii) hourly expected Energy, in each case, for each hour of the immediately succeeding day, as updated by Seller from time to time thereafter in its discretion ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of (i) the Available Generating Capacity, (ii) the Storage Capacity and (iii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer's SC. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer and the SC (if applicable) of any changes from the Day-Ahead Forecast of [redacted] MW or more in (i) Available Generating Capacity, (ii) Storage Capacity or (iii) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity, Storage Capacity, or hourly expected Energy changes by at least [redacted] MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer and the SC (if applicable) as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Storage Capacity, or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer and the SC (if applicable) of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer and the SC (if applicable) of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer, provided that Buyer specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall use commercially reasonable efforts to notify Buyer's SC of Forced Facility Outages and Seller shall keep Buyer informed of any developments that are reasonably likely to affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. Subject to a Force Majeure Event, with respect to any given hour, in the event Seller has failed to provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Generating Facility Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each

such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.12, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Dispatch Down/Curtailment**.

(a) General. Seller agrees to reduce the amount of Generating Facility Energy produced by the Generating Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Generating Facility or the Operating Procedures.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Generating Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate and, if applicable, the PTC Amount, in accordance with Exhibit C. [redacted]

(c) Failure to Comply. Subject to Section 4.4(a), if Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Generating Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order. [redacted]

(d) Seller Equipment Required for Curtailment Instruction Communications. 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 Buyer Curtailment Order, Buyer Bid Curtailment or 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 pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or 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 Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 **Charging Energy Management**.

(a) Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all commercially reasonable action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Storage Facility. Except as otherwise expressly set forth in this Agreement, including Section 4.5(c) and Section 4.9(b), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility. The Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid whether or not such Charging Energy were grid energy, and that as a result the CAISO will have separate financial settlements (i) for deliveries of Generating Facility Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter and Discharging Energy to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) Charging Notices. During the Delivery Term, Buyer will have the right to instruct Seller to charge the Storage 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, the CAISO Tariff, the provisions of Section 4.5, and the availability of Charging Energy. 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) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice [redacted] or in connection with a Buyer Dispatched Test or Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the PTO,

Transmission Provider, or any other Governmental Authority; [redacted] If, during the Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all Energy costs associated with such charging of the Storage Facility specified in subsections (i) and (ii) in this sentence, (y) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such Energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Discharging Notices. During the Delivery Term, Buyer will have the right to direct Seller to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Procedures, the CAISO Tariff, and the existing level of charge of the Storage Facility. 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, Buyer's SC, or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice in order to maintain compliance with the Operating Restrictions), or in connection with a Buyer Dispatched Test or Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority; *provided*, if Seller receives a Discharging Notice that is not in compliance with the Operating Restrictions, Seller shall notify the SC as soon as reasonably practicable, but in no event later than one (1) hour following receipt of such non-compliant Discharging Notice, and Seller shall comply with the Discharging Notice to the fullest extent possible without violating the Operating Restrictions or suffering an adverse effect to Seller until such time as Seller receives a modified and compliant Discharging Notice. If, during the Contract Term, Seller (i) discharges the Storage Facility other than as provided for in the Discharging Notice or (ii) discharges the Storage Facility in violation of the first sentence of this Section 4.5(e), then (x) Seller shall be responsible for all Energy costs associated with such discharging of the Storage Facility specified in subsections of (i) and (ii) in this sentence, (y) Buyer shall not be required to pay for the discharging of such Energy (i.e., Discharging Energy), and (z) Buyer shall be entitled to all of the benefits (including Storage Product) associated with such discharge.

(f) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability

for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC or a Governmental Authority or the PTO or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with CAISO rules and the Operating Restrictions.

(g) 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 Storage Facility, and (iii) all CAISO costs, revenues, charges, penalties and other amounts owing to or paid by CAISO in respect of the Storage 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 and throughout the Delivery Term, (i) Buyer and CAISO shall have exclusive rights to issue, or cause to be issued, Charging Notices or Discharging Notices, and (ii) all CAISO costs, revenues, charges, penalties and other amounts owing to or paid by CAISO in respect of the Facility operations shall be for Buyer's account.

[redacted]

(i) Requirements for Charging and Discharging Notices. Buyer shall ensure that all Charging Notices and Discharging Notices are issued in a manner consistent with all requirements of this Agreement, including all Operating Restrictions and the CAISO Tariff. [redacted]

(j) Priority of CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, [redacted]

4.6 **Reduction in Energy Delivery Obligation**. Without limiting Section 3.1 or Exhibit G, or any rights expressly provided hereunder of Seller in relation to the operation of the Facility:

(a) Facility Maintenance. Subject to providing Buyer one-hundred twenty (120) days prior Notice, 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 the cost of any replacement Capacity Attributes as required by the CAISO). During the [redacted] period from [redacted] during the Delivery Term, Seller shall not schedule any non-emergency maintenance that reduces the energy generation capability of the Generating Facility by [redacted] unless (i) such outage is required to avoid an emergency or damage to the Facility or its Interconnection Facilities, (ii) such maintenance is necessary to maintain equipment warranties or is otherwise required by the equipment manufacturer and cannot be scheduled outside the months of June to October, (iii) such outage is in connection with Force Majeure Events, (iv) such outage is required by Law, or the requirements of CAISO or the interconnecting utility and/or each other applicable Governmental Authority, (v) such outage is required in accordance with Prudent Operating Practices or (vi) the Parties agree otherwise in writing.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

[redacted]

4.7 **Guaranteed Energy Production**. During each Performance Measurement Period, Seller shall deliver to the Generating Facility Metering Point an amount of Generating Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer all (a) Deemed Delivered Energy and (b) Lost Output for the Performance Measurement Period. If Seller fails to achieve the Guaranteed Energy

Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G ("**GEP Damages**");

4.8 **Storage Availability and Efficiency Rate**.

(a) During the Delivery Term, the Storage Facility shall maintain Storage Availability during each month of no less than the Guaranteed Storage Availability, which Storage Availability shall be calculated in accordance with Exhibit P. If the Annual Storage Availability for any month (calculated in accordance with Exhibit P) is less than the Guaranteed Storage Availability, then Buyer's exclusive remedies for Seller's failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Buyer's payment for the Storage Product which shall be calculated by reference to the Availability Adjustment (as determined in accordance with Exhibit P),

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate, calculated pursuant to a Storage Capacity Test, of no less than the Guaranteed Efficiency Rate. Buyer's sole remedy for Seller's failure to maintain an Efficiency Rate that is equal to or greater than the Guaranteed Efficiency Rate is the payment of liquidated damages by Seller in accordance with Exhibit C.

4.9 **Storage Capacity Tests**.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests, including retests, in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests, subject to applicable NERC requirements and other applicable Laws. Alternatively, to the extent that any Storage 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. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. For any Storage Capacity Tests initiated by Seller ("**Seller Initiated Test**"), including all tests conducted prior to Commercial Operation, any Storage Capacity Test, any Storage Capacity Test conducted if the Storage Contract Capacity immediately prior to such Storage Capacity Test is below of the Installed Battery Capacity, any test required by CAISO, and other Seller-requested discretionary tests or dispatches, (i) Seller shall not be entitled to the Renewable Rate for any Generating Facility Energy used as Charging Energy, (ii) Seller shall be liable for all CAISO costs and charges for associated Charging Energy only with respect to such Storage Capacity Test, and (iii) Seller shall be entitled to any CAISO revenues associated with

Discharging Energy. For any Storage Capacity Tests initiated by Buyer, including all required annual tests pursuant to Exhibit O ("**Buyer Dispatched Test**"), Buyer shall direct only Charging Energy to be used to charge the Storage Facility, and Buyer shall (x) be liable for all CAISO costs and charges for such associated Charging Energy, and (y) be entitled to any CAISO revenues associated with associated Discharging Energy during a Buyer Dispatched Test. Buyer shall be responsible for all costs, expenses, and fees payable or reimbursable to its representative(s) witnessing any Facility test. No Charging Notices or Discharging Notices shall be issued, and Buyer shall not dispatch or otherwise schedule the Storage Facility, during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. The Storage Facility shall be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test. Any Buyer Dispatched Tests shall be deemed an Excused Event for the purposes of calculating the Monthly Storage Availability.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then-current Storage Contract Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to such Storage Capacity Test (not to exceed the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

4.10 **WREGIS**. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Generating Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Buyer acknowledges that Seller may not be able under WREGIS rules to complete all WREGIS registration requirements prior to the Commercial Operation Date.

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Buyer shall be responsible for all expenses associated with establishing and maintaining Buyer's WREGIS Account. Seller shall be responsible for all expenses associated with registering the Generating Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Generating Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, subject to Section 4.10(b), ensure that the WREGIS Certificates for a given calendar month correspond with the Generating Facility Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month in accordance with this Section 4.10 as compared to the Generating Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Generating Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and damages, if any, under Exhibit G for the applicable Contract Year; *provided*, *however*, such adjustment shall not apply to the extent that Seller (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) Subject to Section 3.12, if (i) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, or (ii) the CEC modifies its *RPS Eligibility Guidebook* to enable the full amount of Generating Facility Energy to generate WREGIS Certificates, without reduction for Storage Facility efficiency losses, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the maximum quantity of WREGIS Certificates that can be transferred to Buyer from the Generating Facility in the same calendar month.

4.11 **Interconnection**. 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.

4.12 **Green-E Listing**. Upon request of Buyer, Seller shall submit a Green-e® Energy Tracking Attestation Form ("**Attestation**") for Product delivered under this Agreement to the Center for Resource Solutions ("**CRS**") at https://www.tfaforms.com/4652008 or its successor. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted within thirty (30) days of Buyer's request or the last day of the month in which the applicable Generating Facility Energy was generated, whichever is later.

ARTICLE 5
TAXES

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. 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), if any. 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 **Cooperation**. 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*, *however*, 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 OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and delivery of the Product and comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, and the generation and sale of Product.

6.2 **Maintenance of Health and Safety**. 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 Exhibit N of such condition. Such action may include, to the extent reasonably necessary,

disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility 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, including providing interconnection capacity for the Facility's sole use in an amount not less than the Dedicated Interconnection Capacity, (ii) shall provide for separate metering and a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility, (iii) 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 IDs; and (iv) shall provide that any curtailment of the full capacity of Shared Facilities that is ordered by Transmission Provider that 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 parties a share of the total interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement minus the Dedicated Interconnection Capacity.

ARTICLE 7
METERING

7.1 **Metering**.

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of Generating Facility Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. If Seller elects to submit a SQMD Plan for the Facility, or only the Storage Facility, as applicable, then all Generating Facility Meters, or all Storage Facility Meters, as applicable, will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, or only the Storage Facility, as applicable, 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 Generating Facility Meter and Storage Facility Meter shall be programmed to adjust for all 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. Each Generating Facility Meter and Storage Facility Meter shall be kept under seal, such seals to be broken (i) when the meters are to be tested, adjusted, modified or relocated or (ii) by Seller when required for maintenance purposes per Exhibit R, in which event, Seller will not tamper with the Generating Facility meter. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all 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, or only the Storage Facility, as applicable. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) 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, or only the Storage Facility, as applicable.



7.2 **Meter Verification**. Seller shall make commercially reasonable efforts to request permission from CAISO to test the Generating Facility Meter and Storage 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 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 meter inaccuracy

commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; *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 within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) reflect records of metered data, including 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 Generating Facility Energy produced by the Generating Facility as read by the Generating Facility Meter, the amount of Charging Energy charged by the Storage Facility, the amount of Discharging Energy delivered from the Storage Facility, in each case, as read by the Storage Facility Meter, the amount of Replacement Green Attributes delivered to Buyer (if any), the amount of Replacement RA delivered to Buyer (if any), the Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy, Lost Output, and Adjusted Energy Production; the LMP prices at the Delivery Point for each Settlement Period; and the Contract Price applicable to such Product in accordance with Exhibit C; 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**. Payments due by either Party shall be made by wire transfer or ACH payment to the bank account provided on each monthly invoice. The applicable Party shall pay undisputed invoice amounts within thirty (30) days from the later of such Party's receipt of invoices or 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 the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) 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 [redacted] or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted 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**. Payment adjustments shall be made if (a) Buyer or Seller discovers there have been good faith inaccuracies in invoicing or payment 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, updated allocation or assignment of costs by the CAISO, or (c) there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within [redacted] days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

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

8.7 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date.

[redacted] Seller shall maintain the Development Security in full force and effect and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment; [redacted]. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to provide any other instrument that meets the requirements set forth in the definition of Development Security. [redacted]

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, [redacted] 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. 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 provide any other instrument that meets the requirements set forth in the definition of Performance Security. [redacted]

[redacted]

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 cash 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):

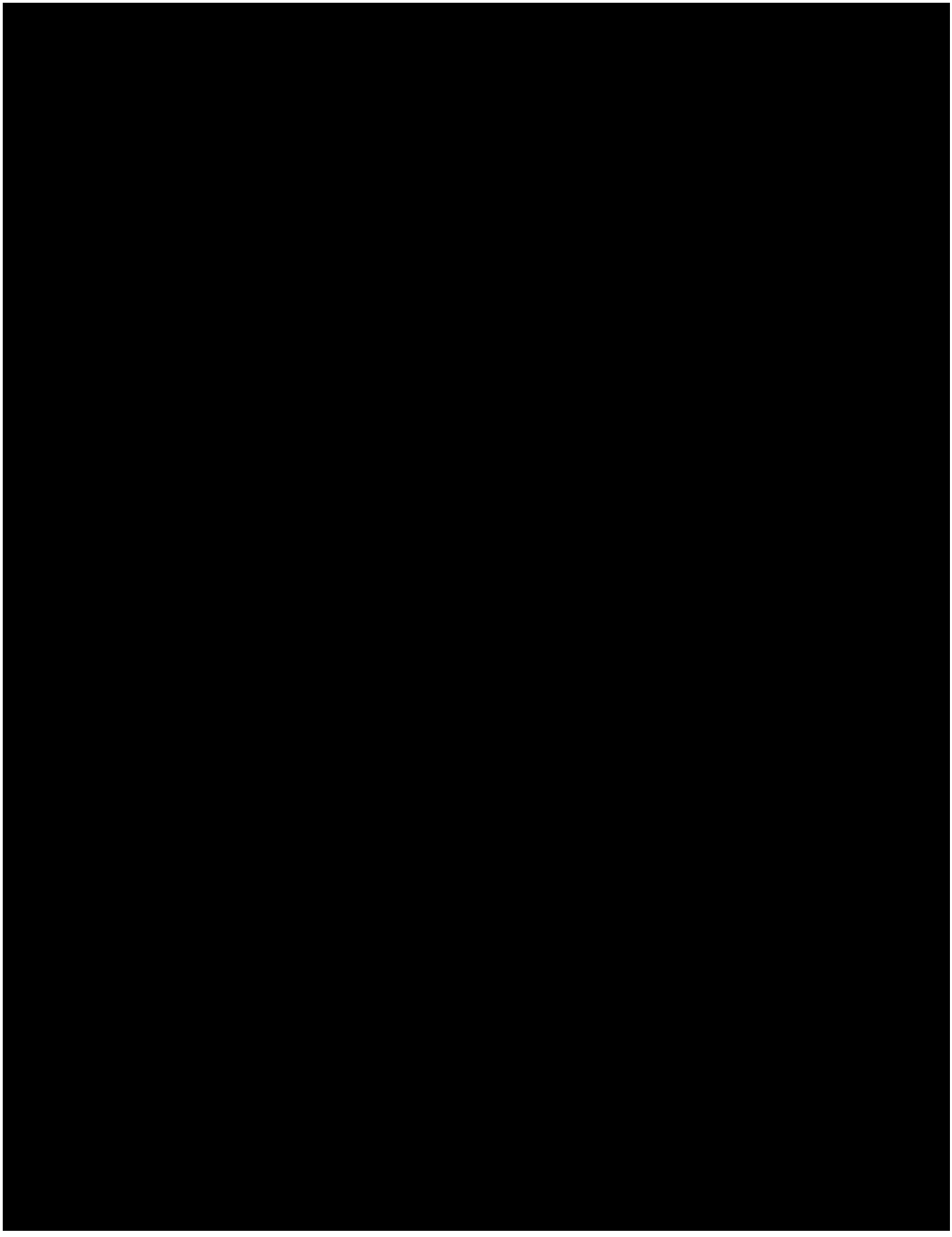
(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(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 these obligations are satisfied in full.

[redacted]





ARTICLE 9
NOTICES

9.1 **Notices**.

(a) **Addresses for the Delivery of Notices**. 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 on Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

(b) **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) to the email addresses listed on Exhibit N, upon receipt by the receiving Party if received during normal business hours, and if received after normal business hours, the following 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 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 of the type described in the foregoing clause may include an act of God or the elements, such as flooding, lightning, hail, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; epidemics and pandemics; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy the Product at a lower price, or Seller's ability to sell Product at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Generating Facility or the Storage 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 [redacted] (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Generating Facility, except to the extent such inability is caused by a Force Majeure Event; [redacted] (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Generating Facility, except to the extent expressly permitted as an extension pursuant to the Development Cure Period under Exhibit B.

[redacted]

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 electronic facilities necessary to transfer funds to the payee Party, (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 Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2 (subject to Seller's rights hereunder with respect to Force Majeure Events as part of the Development Cure Period).

10.3 **Notice for Force Majeure Event**. Within [redacted] Business Days of the non-performing Party's awareness of the impact of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the non-performing Party's awareness of the impact of the Force Majeure Event, the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim. Failure to provide timely Notice as described in the preceding sentence 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. The suspension of performance due to a claim of Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

10.4 **No Liability If a Force Majeure Event Occurs**. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented or delayed 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 commercially reasonable actions necessary to remove such inability or delay with commercially reasonable 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 commercially reasonable 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.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

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

(a) with respect to a Party (the "**Defaulting Party**") 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 [redacted] 2) failure to deliver Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (3) failures related to the Adjusted Energy Production that do not trigger the provisions of Sections 11.1(b)(vi) or (ix), the exclusive remedies for which are set forth in Section 4.7 and Exhibit G; (4) failures related to the Monthly Storage Availability that do not trigger the provisions of Section 11.1(b)(vii), [redacted] he exclusive remedies for which are set forth in Section 4.8 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 for sale under this Agreement that was not generated or discharged by the Facility [redacted]

(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(c) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) [reserved];

(iv) the failure by Seller to achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller's payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(v) 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;

[redacted]

[redacted]

provided, for the purposes of this clause (vii), Seller shall be deemed to be available during all Insurable Force Majeure Events;

(viii) [reserved];

[redacted]

(x) if Seller fails to maintain an average Efficiency Rate equal to or greater than the Minimum Efficiency Rate [redacted] and (y)

[redacted]

(xi) if Seller fails to maintain an average Storage Capacity equal to at least [redacted] of the Installed Battery Capacity for more than [redacted] consecutive [redacted];

(xii) 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 Development Security in accordance with the requirements of Section 8.7 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 a Termination Payment;

(xiii) 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 [redacted] 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) [reserved];

(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 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii) or

Section 11.1(b)(iv)), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(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.

(f) [redacted]

11.3 **Termination Payment**. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or 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 [redacted] 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 (a) 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, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (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** [redacted]. As soon as practicable after a Terminated Transaction, 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 [redacted] 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 [redacted] shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment** [redacted] If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment [redacted] 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 [redacted] provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable shall be determined in accordance with Article 15.

11.6 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date**. If this Agreement is terminated by either Party prior to the Commercial Operation Date for any reason except due to Buyer's Event of Default, neither Seller nor Seller's Affiliates may sell or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years, [redacted] owing the Early Termination Date, unless prior to selling, marketing or delivering such Product (during such applicable time period) or entering into the agreement to sell, market or deliver such Product to a party other than Buyer (during such applicable time period), Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement [redacted] and Buyer fails to accept such offer within forty-five (45) days. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **Rights And Remedies Are Cumulative**. Except where liquidated damages or other express remedy or measure of damages are provided herein as the exclusive remedy, 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 **Mitigation**. 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.

[redacted]

[redacted]

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (E) CONSTITUTING LOST OR FOREGONE TAX CREDITS OR RENEWABLE ENERGY INCENTIVES, 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 OR OTHERWISE.

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 OR ANY OTHER EXCLUSIVE REMEDY IS SET FORTH HEREIN,

INCLUDING UNDER SECTIONS 3.8, 4.3(f), 4.4(c), 4.5(c), 4.5(e), 4.7, 4.8, 10.2, 11.2, 11.3 AND 11.9, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, 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; AUTHORITY

13.1 **Seller's Representations and Warranties**. 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 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 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 is located in the State of Nevada.

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any permitting documents.

13.2 **Buyer's Representations and Warranties**. 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 CPUC, 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. 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 shall not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is 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*, 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.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

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 California and 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 **Prevailing Wage**. 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 Nevada law, if any ("**Prevailing Wage Requirement**"). Buyer agrees that Seller's obligations under this Section 13.4 will be satisfied upon the execution of a community workforce agreement, work site, [redacted] related to construction of the Facility.

13.5 **Workforce Development and Supplier Diversity.** Seller acknowledges that Buyer will, from time to time, request voluntary disclosure of Seller's certification status, if any, 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.

13.6 **Community Benefits**. Seller pledges to deliver One Million Dollars ($1,000,000.00) 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 in two parts: (a) Five Hundred Thousand Dollars ($500,000.00) within sixty (60) days of the commencement of Contract Year 2, and (b) Five Hundred Thousand Dollars ($500,000.00) within sixty (60) days of the commencement of Contract Year 3. Notwithstanding anything to the contrary in this Section 13.6, 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 13.6 without the prior written consent of Seller.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided in Sections 14.2, 14.3, and 14.4, neither Party may voluntarily 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. Except as provided below, any Change of Control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of Buyer, which consent shall not be unreasonably withheld, [redacted] Any purported assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Except as provided below, a Party shall have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of such Party's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. Seller shall be responsible for Buyer's reasonable third party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller.

14.2 **Collateral Assignment**. 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. In connection with any financing or refinancing of the Facility by Seller, 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 ("**Collateral Assignment Agreement**") and one or more estoppels, opinions, and other related documents. Each Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender and shall include the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate [redacted] under this Agreement as a result of such Event of Default; p*rovided*, such Notice shall be provided to Lender at the time such Notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received written notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement plus any additional cure periods agreed in the Collateral Assignment Agreement, which shall be [redacted] Business Days for payment Events of Default and sixty (60) days for non-payment Events of Default (or one hundred twenty (120) days in the event that any foreclosure or similar proceeding [redacted] if required by Lender to cure any Event of Default); [redacted]

(d) Lender will have the right to consent before any termination of [redacted] this Agreement which does not arise out of an Event of Default and, if pursuant to an Event of Default, is not cured in accordance with Section 14.2(c);

(e) Lender will receive prior Notice of and the right to approve each amendment or modification to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's remaining obligations arising under this Agreemen [redacted] ; *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date [redacted] in order to avoid the exercise by Buyer (in

its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured within the time periods specified in Section 14.2(c), or

(ii) Not assume this Agreement.

[redacted]

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement [redacted] as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee [redacted]

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(c) and (f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith, Lender shall have the right to elect within [redacted] days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having the same terms as this Agreement for the remaining term thereof.

14.3 **Permitted Assignment by Seller**. Without limiting Section 14.2, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to:

(a) 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; or

(b) an Affiliate of Seller.

Except as provided in the preceding sentence, 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 accepted by Buyer.

14.4 **Permitted Assignment by Buyer**. Without limiting Section 14.2, Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has 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 (A) execution of a limited 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, and (B) being bound by any Collateral Assignment Agreement or any estoppel that any Lender may reasonably request, and Buyer and such assignee shall comply with any other reasonable request from any Lender, including delivery of estoppels and any other related documents, know-your-customer requirements and similar account opening information and customary documentation. Buyer shall pay Seller for any payments of amounts due under this Agreement that are not timely made by the Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under this Agreement notwithstanding the limited assignment. Subject to the foregoing, Buyer may make such assignment by delivering Notice after the form of limited assignment agreement has been mutually agreed upon and 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 customary 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. The form of limited assignment shall be substantially in the form of the attached Exhibit U.

14.5 **Right of First Refusal as to Future Phases, Additional Projects, Addition of Storage Capacity**.

(a) Seller hereby grants Buyer with the exclusive right (such right, the "**Right of First Refusal**" or "**ROFR**") to the purchase of (i) all of the output of any additional phases of the Facility and (ii) any separate renewable energy or energy storage projects that are currently under development at the Site 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 renewable energy or energy storage project, an "**Expansion Project**"). The requirements of this Section 14.5 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 a power purchase agreement for the Expansion Project (the "**Project PPA**") incorporating the Material Terms of such ROFR 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, [redacted] to the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 14.5, at any time following the expiration of the Exercise Period, Seller may enter into a Project PPA for the Expansion Project with a third party [redacted].

(d) Notwithstanding any of the above, if the sum of (i) the Facility Energy and (ii) the generating energy and/or storage energy from the Expansion Project for any Settlement Interval would exceed the Dedicated Interconnection Capacity for such Settlement Interval, then the generating energy and/or storage energy from the Expansion Project shall be curtailed first prior to curtailing the Facility Energy.

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 **Dispute Resolution**. In the event of any dispute arising under this Agreement, the Parties shall work together in good faith to resolve the dispute at the appropriate staff level. If the Parties are unable to resolve a dispute, then either Party will have the right to submit the dispute for informal resolution by executive management of the Parties. Within ten (10) Business Days of a Party giving notice to the other Party of such request, each Party (i) shall independently prepare a written summary of the dispute describing the issues and claims; (ii) shall exchange its summary with the summary of the dispute prepared by the other Party; and (iii) shall submit a copy of both summaries to a senior executive officer of the Party. For a period of ten (10) Business Days after receipt of the dispute summaries, the senior officers for both Parties shall meet and confer electronically or in person, as agreed by the Parties, negotiate and attempt in good faith to resolve the dispute. If the Parties have not resolved the dispute within such period, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnity**.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") 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 negligence or willful misconduct ("**Indemnifiable Losses**").

(b) Nothing in this Section 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 sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

16.2 **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 the 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 [redacted] per occurrence, and an annual aggregate of not less than [redacted] endorsed to provide contractual liability in said amount, specifically covering Seller's insurable obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance

policy in a minimum limit of liability of [redacted] in the annual aggregate. 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. Such coverage may be provided in any combination of primary or excess policies.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than [redacted] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [redacted] policy limit will apply to each employee.

(c) Workers Compensation Insurance. 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) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [redacted] 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 additional insured and contain standard cross-liability and severability of interest provisions.

(e) Construction All-Risk Insurance. 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.

(f) Contractor's Pollution Liability. 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 [redacted] per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than [redacted] (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 [redacted] 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) Property Insurance. 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 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 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

18.1 **Definition of Confidential Information**. The following constitutes "**Confidential 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 subject to the California Public Records Act.

18.2 **Duty to Maintain Confidentiality**. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made to comply with any requirements of Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to the Disclosing Party or any of its Affiliates, (b) pursuant to an order of a court or (c) in order to enforce this Agreement; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the Disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing

Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 7920.000 et seq.).

18.3 **Irreparable Injury; Remedies**. 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 **Disclosure to Lenders, Etc.**. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its or its Affiliates' agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)) or actual or potential investors or purchasers (including Tax Credits 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 **Press Releases**. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. 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 **Amendments**. 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) or, to the extent set forth herein [redacted], any Lender and/or Indemnified Party.

19.5 **Severability**. 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 **Mobile-Sierra**. 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.

19.8 **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

19.9 **Binding Effect**. 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. 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, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

[redacted]

19.12 **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.

19.13 **Further Assurances**. Each of the Parties hereto agree 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 assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

19.14 **Change in Electric Market Design**. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the 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, [redacted] or 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.

19.15 **Service Contract**. The Parties intend for the Agreement to be a service contract as described in Section 7701(e) of the Internal Revenue Code of 1986, as amended.

[Signatures on following page]

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

NOBLE SOLAR LLC, a California limited liability company

By: _____
Name: _____
Title: _____

SAN DIEGO COMMUNITY POWER, a California joint powers authority

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: **Purple Sage Energy Center**

Site includes all or some of the following APNs:

[redacted]		[redacted]		[redacted]	
				[redacted]	

County: **Clark County in the State of Nevada**

CEQA Lead Agency: N/A

Zip Code:

Latitude and Longitude: [redacted]

Facility Description:

Delivery Point: PNode

Generating Facility Meter and Metering Points: See Exhibit R.

Storage Facility Meter and Metering Points: See Exhibit R.

PNode: If not available at the Effective Date, the PNode shall be updated by mutual agreement of Buyer and Seller prior to the initial delivery of Test Energy hereunder to reflect the PNode corresponding to the Facility's Interconnection Point with the CAISO Grid.

Interconnection Point: The Facility shall interconnect to Trout Canyon 230 kV substation.

Participating Transmission Owner: GridLiance

Additional Information: Site Plan provided below.



EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. **Construction Start**

   a. "**Construction Start**" will occur when Seller has executed an engineering, procurement and construction contract or [redacted] 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 Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B.

   b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date by paying Construction Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of [redacted] days of extensions by such payment of Construction Delay Damages. If Seller elects to extend the Guaranteed Construction Start Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Construction Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. [redacted] If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Construction Delay Damages, Buyer shall refund to Seller the Construction Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Construction Delay Damages, not to exceed the total amount of Construction Delay Damages paid by Seller pursuant to this Section 1(b) of Exhibit B. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" 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 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 later of (x) the

Expected Commercial Operation Date, or (y) 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(c) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

b. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date, as may be extended by a Development Cure Period but not by the payment of Commercial Operation Delay Damages, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.

c. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [redacted] days of extensions by such payment of Commercial Operation Delay Damages. If Seller elects to extend the Guaranteed Commercial Operation Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. [redacted] f Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(c) of Exhibit B. [redacted]

3. **Termination for Failure to Achieve Construction Start by the Guaranteed Construction Start Date or Commercial Operation by the Guaranteed Commercial Operation Date**. If the Facility has not achieved 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(c) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2. If the Facility has not achieved Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller's payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(iv) and 11.2.

4. **Extension of the Guaranteed Dates**. Independent of Seller's extension rights under Section 1 and 2 of this Exhibit B above, the Guaranteed Construction Start Date and 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 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. a Force Majeure Event occurs;

[redacted]

   e. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date [redacted]

[redacted]

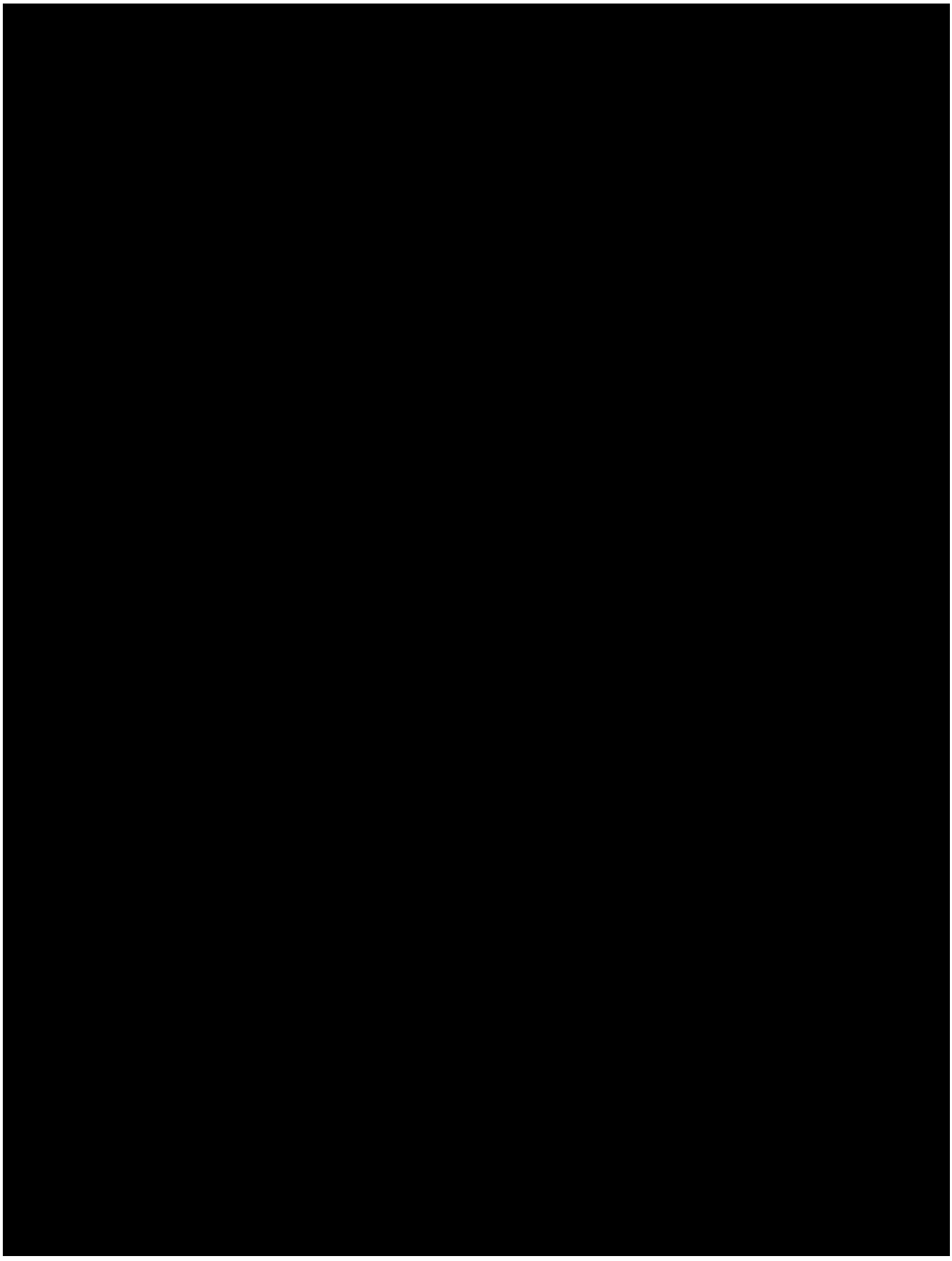




EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

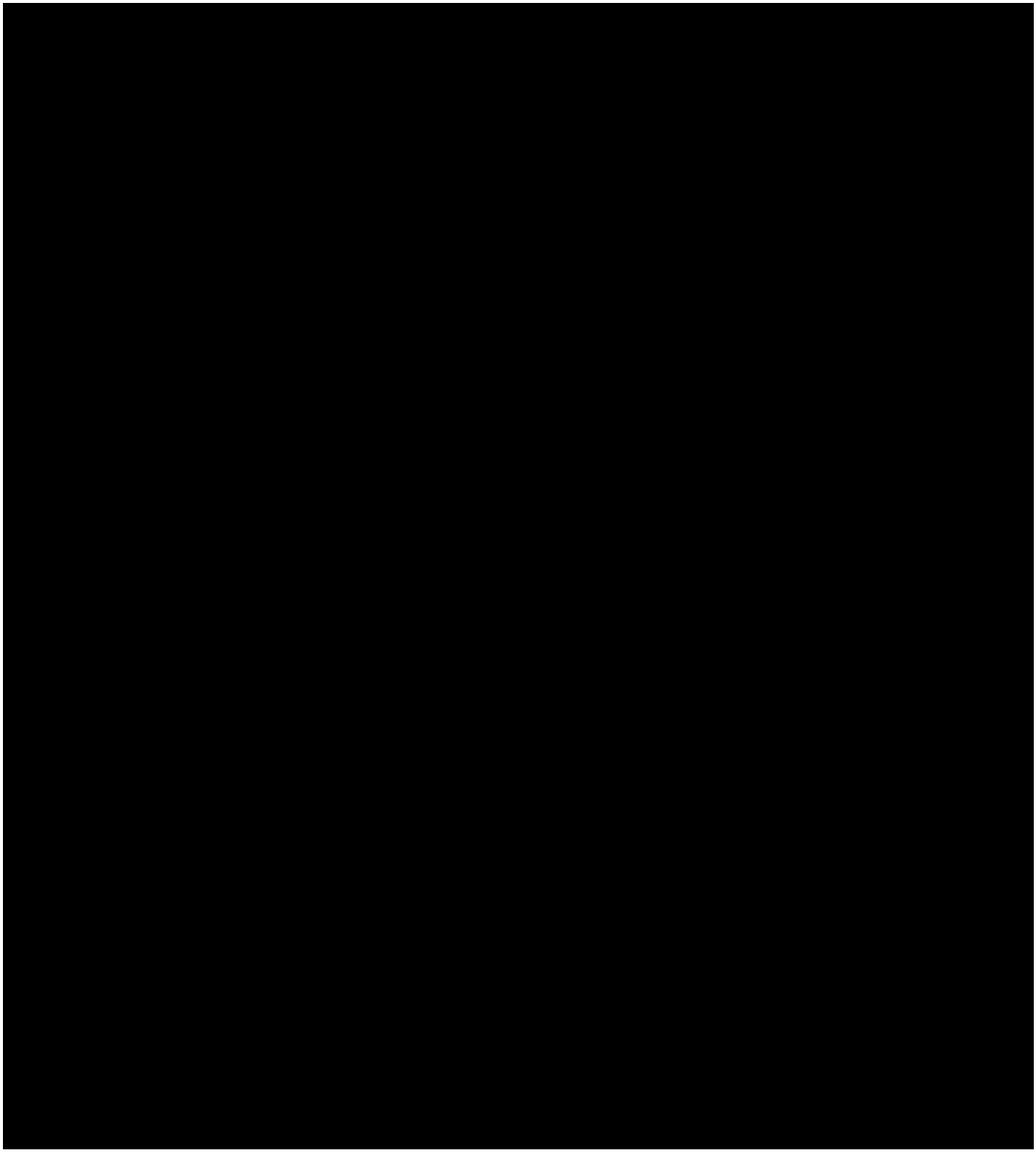




EXHIBIT D

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 of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all [redacted] 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 Initial Synchronization 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 Initial Synchronization of the Facility to the CAISO Grid through the termination or expiration of the Delivery Term. 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 or Buyer'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 or real time or other market basis that may develop after the Effective Date, as determined by Buyer consistent with the CAISO Tariff. Buyer as the Scheduling Coordinator shall cooperate with Seller to facilitate Seller's testing of the Facility, and shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as necessary for the delivery and receipt of Test Energy and the Product at the Delivery Point.

(b) Notices. Buyer or Buyer'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 will 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, transmission to the personnel designated to receive such information. Buyer or Buyer's SC shall provide Seller with read-only access to applicable real-time CAISO data to the extent Buyer has the authorization to do so.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs, charges, and penalties (including penalties, Imbalance Energy and Charging Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy and Discharging 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 Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff 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). 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. 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.

(d) 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 will 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 shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. 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) Terminating Buyer's Designation as Scheduling Coordinator. 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 or Buyer's designated SC as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. 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. 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) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

(h) 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 [redacted] 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, 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).

15. [redacted] any other documentation reasonably requested by Buyer.

EXHIBIT F-1

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	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
JAN																								
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SEP																								
OCT																								
NOV																								
DEC																								

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 F-2

AVAILABLE CAPACITY

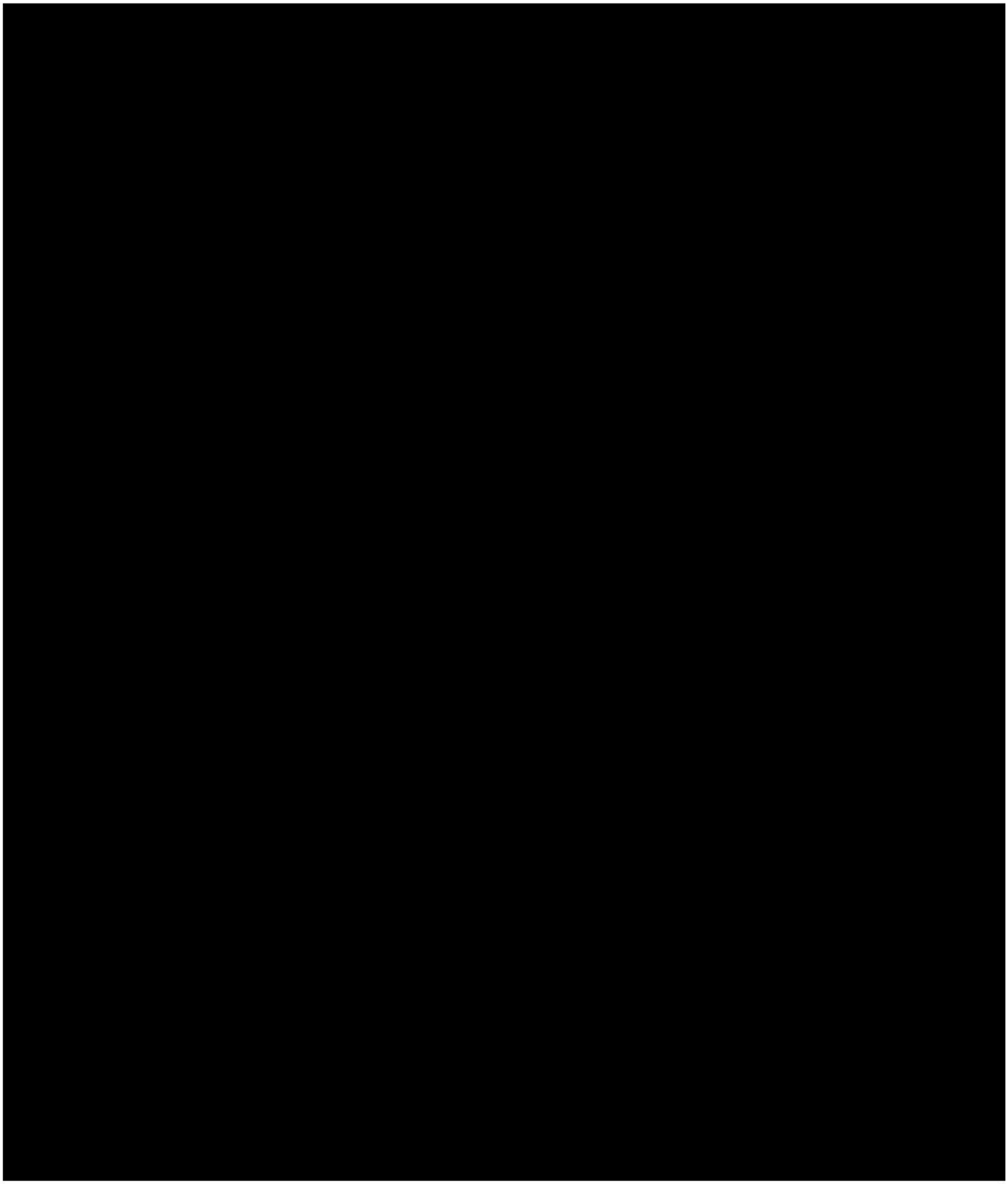
[Available Generating Capacity, MWh Per Hour] – [*Insert Month*]

	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 additional rows for each day in the month]																								
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

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION



[redacted]



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 Renewable Power Purchase Agreement dated [*DATE*] ("**Agreement**") by and between [*SELLER*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [*DATE*], Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility and the Storage Facility are fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.

3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.

4. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.

5. Seller has demonstrated functionality of the Facility's communication systems and 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.

6. The Generating Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.

7. The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable Operating Restrictions.

8. Authorization to parallel the Facility was obtained from the Participating Transmission Owner on___[DATE]____.

9. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation _____[DATE]_____.

10. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____[DATE]_____.

11. Seller shall have caused the Generating Facility and the Storage Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time Markets in respect of each of the Generating Facility and Storage Facility.

12. 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: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity 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 Renewable Power Purchase Agreement dated [*DATE*] ("**Agreement**") by and between [*SELLER*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The performance test for the Generating Facility demonstrated peak electrical output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Generating Capacity**");

(b) The Storage Capacity Test conducted on [DATE] demonstrated a maximum dependable operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of __ MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "**Installed Battery Capacity**"); and

(c) The sum of (a) and (b) is __ MW AC and shall be the "**Installed Capacity**".

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

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 ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*DATE*] ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer 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.

(2) the Construction Start Date occurred on _____ (the "**Construction Start Date**"); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:
_____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as this _____ day of _____, 20__.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]
Expiry Date:

Beneficiary:

San Diego Community Power
815 E. Street, Suite 12716
San Diego, CA 92112

Ladies and Gentlemen:

By the order of _____ ("Applicant"), we, [insert bank name and address] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the "Letter of Credit") in favor of San Diego Community Power, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall renew annually until terminated in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [*bank email address*] or (c) facsimile to [bank fax number [XXX-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.

[redacted]

Partial draws are permitted under this Letter of Credit; [redacted] this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least [sixty (60)] days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date; provided that, this Letter of Credit may in no event extend beyond [_____]. No presentation made under this Letter of Credit after such Expiration Date will be honored.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

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.

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.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: 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)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of San Diego Community Power, a California joint powers authority, 815 E. Street, Suite 12716, San Diego, CA 92112, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain 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 terms are 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 are hereby directed to make payment of the requested amount to San Diego Community 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

[RESERVED]

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [SELLER ENTITY] ("**Seller**") to San Diego Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(c) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information[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	
Run Hour Restrictions	
Delivery Period	

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

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

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT N

NOTICES

NOBLE SOLAR LLC ("Seller")	**SAN DIEGO COMMUNITY POWER** ("Buyer")
All Notices: Street: 1901 Harrison Street Suite 1600 City: Oakland, CA 94612 Attn: Vice President, Asset Management Phone: (713)-256-0801 Email: assetmanagement@primergysolar.com	**All Notices:** PO Box 12716 San Diego, CA 92112 Attn: Chief Commercial Officer Phone: (619) 657-0422 Email: PowerContracts@sdcommunitypower.org
Reference Numbers: Duns: [redacted] Federal Tax ID Number: [redacted]	**Reference Numbers:** Duns: [redacted] Federal Tax ID Number: [redacted]
Invoices: Attn: c/o Kenon Group Consultants Phone: 480-269-9222 Email: primergy-AP@kenongroup.com	**Invoices:** Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Scheduling: Primergy Solar Management LLC 1901 Harrison Street Suite 1600 Oakland, CA 94612 Attention: Vice President, Asset Management Phone: (713) 256-0801 Email: assetmanagement@primergysolar.com	**Scheduling:** Tenaska Power Services Co. Attn: Kara Whillock Phone: (972) 333-6122 Email: kwhillock@tnsk.com Day Ahead: (817) 303-1115 Real Time: (817) 303-1852 Facsimile: (817) 303-1104
Confirmations: Attn: c/o Kenon Group Consultants Phone: 480-269-9222 Email: primergy@kenongroup.com	**Confirmations:** Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: c/o Kenon Group Consultants Phone: 480-269-9222 Email: primergy@kenongroup.com	**Payments:** Attn: Michael Maher Phone: (415) 526-3020 Email: mmaher@mahercpa.com
Wire Transfer: BENEFICIARY: Noble Solar LLC BNK: [redacted] ABA: [redacted] ACCT: [redacted]	**Wire Transfer:** BNK: [redacted] ABA: [redacted] ACCT: [redacted]

NOBLE SOLAR LLC ("Seller")	**SAN DIEGO COMMUNITY POWER** ("Buyer")
With additional Notices of an Event of Default to: Attn: Noble Solar LLC Primergy Legal General Counsel 1901 Harrison Street Suite 1600 Oakland, CA 94612 Email: legal@primergysolar.com	**With additional Notices of an Event of Default to:** Attn: SDCP General Counsel PO Box 12716 San Diego, CA 92112 Email: legal@sdcommunitypower.org
Emergency Contact: Attn: Todd Lacoste, Vice President of Asset Management Phone: (713)-256-0801 Email: assetmanagement@primergysolar.com	**Emergency Contact:** Attn: Chief Commercial Officer Phone: (619) 657-0422 Email: PowerContracts@sdcommunitypower.org

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test (and any subsequent Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Storage Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, [redacted] upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Capacity and Efficiency Rate. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(c) of the Agreement, Part II.J and Part II.K below, the actual Efficiency Rate and Storage Capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Storage Rate and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

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

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Purpose of Test. Each SCT shall:

(1) Determine an updated Storage Contract Capacity;

(2) Determine the amount of Energy required to fully charge the Storage Facility;

(3) Determine the Storage Facility charge Ramp Rate;

(4) Determine the Storage Facility discharge Ramp Rate; and

(5) Determine an updated Efficiency Rate.

B. Test Elements. Each SCT shall include the following test elements:

- The measurement of Charging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is required to charge the Storage Facility up to the Maximum Stored Energy Level not to exceed the Storage Contract Output (MWh) ("**Energy In**");
- The measurement of Discharging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is discharged from the Storage Facility to the Delivery Point until the Storage Energy Level reaches zero MWh as indicated by the battery management system ("**Energy Out**");
- Electrical output at Maximum Discharging Capacity (as defined in Exhibit Q) at the Storage Facility Meter (MW);
- Electrical input at Maximum Charging Capacity (as defined in Exhibit Q) at the Storage Facility Meter (MW);
- Amount of time between the Storage Facility's electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Storage Facility's electrical input going from 0 to Maximum Charging Capacity;
- Amount of Energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

C. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at ten (10) minute intervals:

(1) discharge time (minutes);

(2) Charging Energy (MWh);

(3) Discharging Energy (MWh);

(4) Stored Energy Level (MWh).

D. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and

(3) Ambient air Temperature (°F).

E. Test Showing. Each SCT must demonstrate that the Storage Facility:

(1) successfully started;

(2) operated for at least four (4) consecutive hours at Maximum Discharging Capacity;

(3) operated for at least four (4) consecutive hours at Maximum Charging Capacity;

(4) has a Storage Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level (as defined in Exhibit Q); and

(5) is able to deliver Discharging Energy to the Delivery Point as measured by the Storage Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity.

F. Test Conditions.

(i) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit Q).

(ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such SCT in accordance with Part II.G below.

(iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The

instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

G. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

H. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

(1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;

(3) the level of Storage Contract Capacity, Energy In, Energy Out, Efficiency Rate, Maximum Charging Capacity, the current charge and discharge Ramp Rate, and Stored Energy Level determined by the SCT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

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

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

I. Supplementary Storage Capacity Test Protocol. 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) an updated supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("**Supplementary Storage Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol

(and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

J. Adjustment to Storage Contract Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first four (4) hours of discharge (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under this Agreement, multiplied by (ii) four (4) hours, shall be divided by four (4) hours to determine the Storage Contract Capacity, which shall be expressed in MW AC, and shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.

K. Adjustment to Efficiency Rate.

The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above), and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

Part III. INITIAL SUPPLEMENTARY STORAGE CAPACITY TEST PROTCOL

A. Initial Supplementary Storage Capacity Test Protocol

The initial Supplementary Storage Capacity Test Protocol outlined below shall not be binding on the Parties until delivery of the Supplementary Storage Capacity Test Protocol in accordance with Part II.I above and is included for the convenience of the Parties.

- Procedure:

(1) System Starting State: The Storage Facility shall be balanced using OEM procedures as appropriate and will be in the on-line state at the Minimum Stored Energy Level.

(2) Record the initial value of the SOC.

(3) Charge the Storage Facility at the Maximum Charging Capacity until the battery reaches the maximum SOC allowed at that rate. Stop the Storage Facility charge routine when the battery has reached the desired SOC, not to exceed six hours of charging.

(4) Record and store the Energy In (in MWh) as measured at the Storage Facility Metering Point associated with Charging Energy [redacted]. All separately metered Storage Facility Station Use shall be excluded from the

measurement of Energy In.

(5) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's Maximum Discharging Capacity and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached the Minimum Stored Energy Level, or (c) the sustained discharging level is at least 2% less than the Maximum Discharging Capacity.

(6) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation of the Storage Capacity.

(7) Record and store the AC Energy charged (in MWh) as measured at the Storage Facility Metering Point associated with Charging Energy. Such data point shall be used for purposes of calculation of the Efficiency Rate.

(8) If the Storage Facility has not reached the Minimum Stored Energy Level pursuant to Part III.A.5, continue discharging the Storage Facility until it reaches the Minimum Stored Energy Level.

(9) Record and store the Energy Out (in MWh) as measured at the Storage Facility Metering Point associated with Discharging Energy from the commencement of discharging pursuant to Part III.A.5 until the Storage Facility has reached the Minimum Stored Energy Level pursuant to either Part III.A.5 or Part III.A.8, as applicable. All separately metered Storage Facility Station Use shall be excluded from the measurement of Energy Out.

- Test Results:

(1) The resulting Efficiency Rate is calculated as Energy Out/Energy In.

(2) The resulting Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

EXHIBIT P

MONTHLY/[redacted] STORAGE AVAILABILITY CALCULATION

(a) **Monthly Storage Availability**. Seller shall calculate the "**Monthly Storage Availability**" for a given month of the Delivery Term using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{[\text{AVAILHRS}_m + \text{EXCUSEDHRS}_m]}{[\text{MONTHRS}_m]}$$

Where:

m = relevant month "m" in which Monthly Storage 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 Storage Facility was available to charge and discharge Energy between the Storage 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 Storage Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the Storage Contract 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 Storage Capacity amount reported as available by (i) Seller's real-time EMS data feed to Buyer for the Storage Facility for such hours, or partial hours, or (ii) Seller's most recent Availability Notice, and (b) is the Storage Contract Capacity; and

[redacted]

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.

[redacted]

(c) **Availability Adjustment**. The applicable "**Availability Adjustment**" or "**AA**" is calculated as follows:

[redacted]

EXHIBIT Q

OPERATING RESTRICTIONS

1. The Parties shall develop and finalize the Operating Restrictions prior to the Commercial Operation Date [redacted] *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) shall, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q a[redacted] (iii) shall include protocols and parameters for Seller's operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include facility scheduling, operating restrictions and Communications Protocols.

[redacted]

[redacted]



EXHIBIT R

METERING DIAGRAM, METHOD OF DATA DELIVERY, DATA POINTS

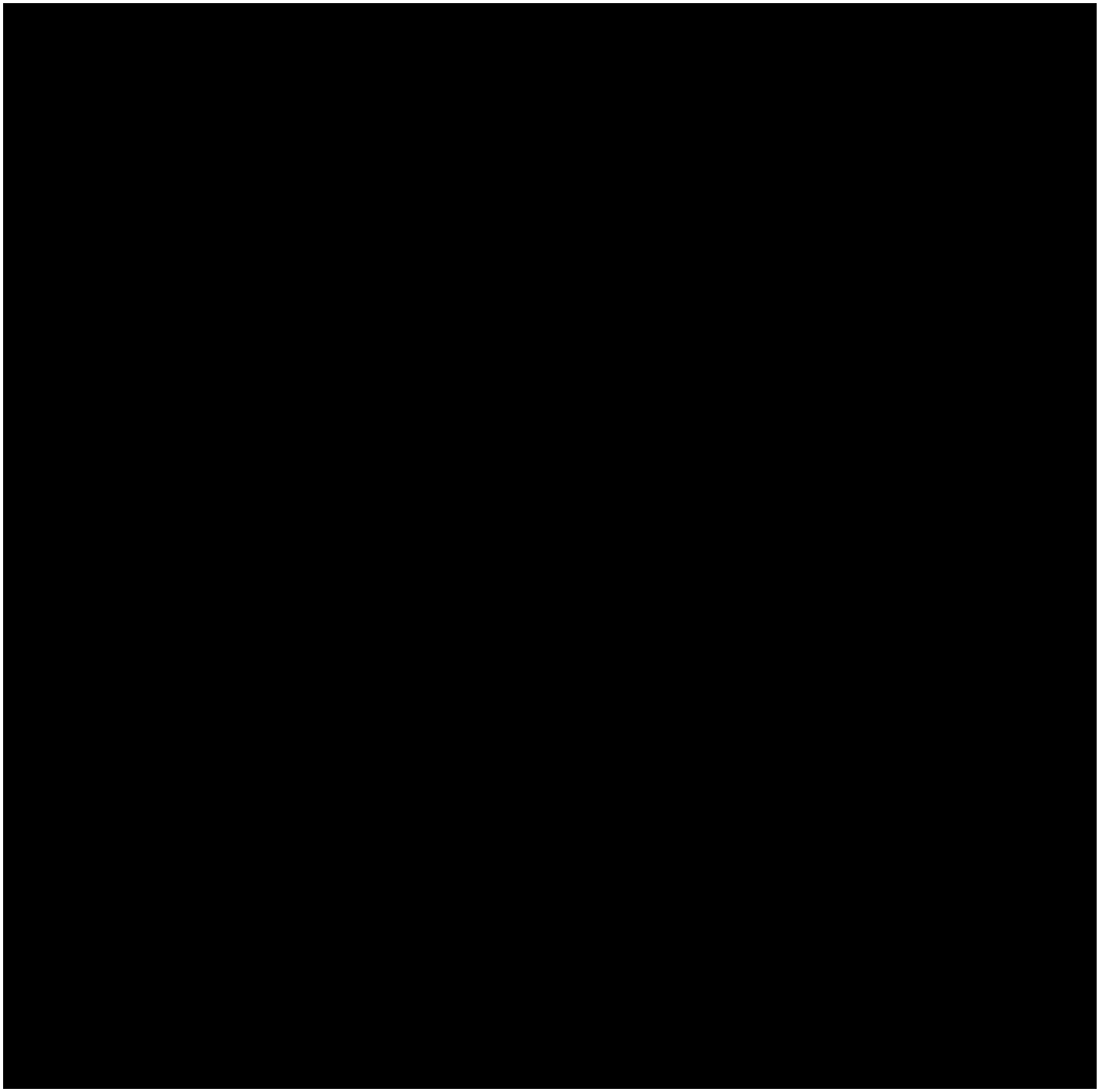


EXHIBIT S

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 CPUC 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

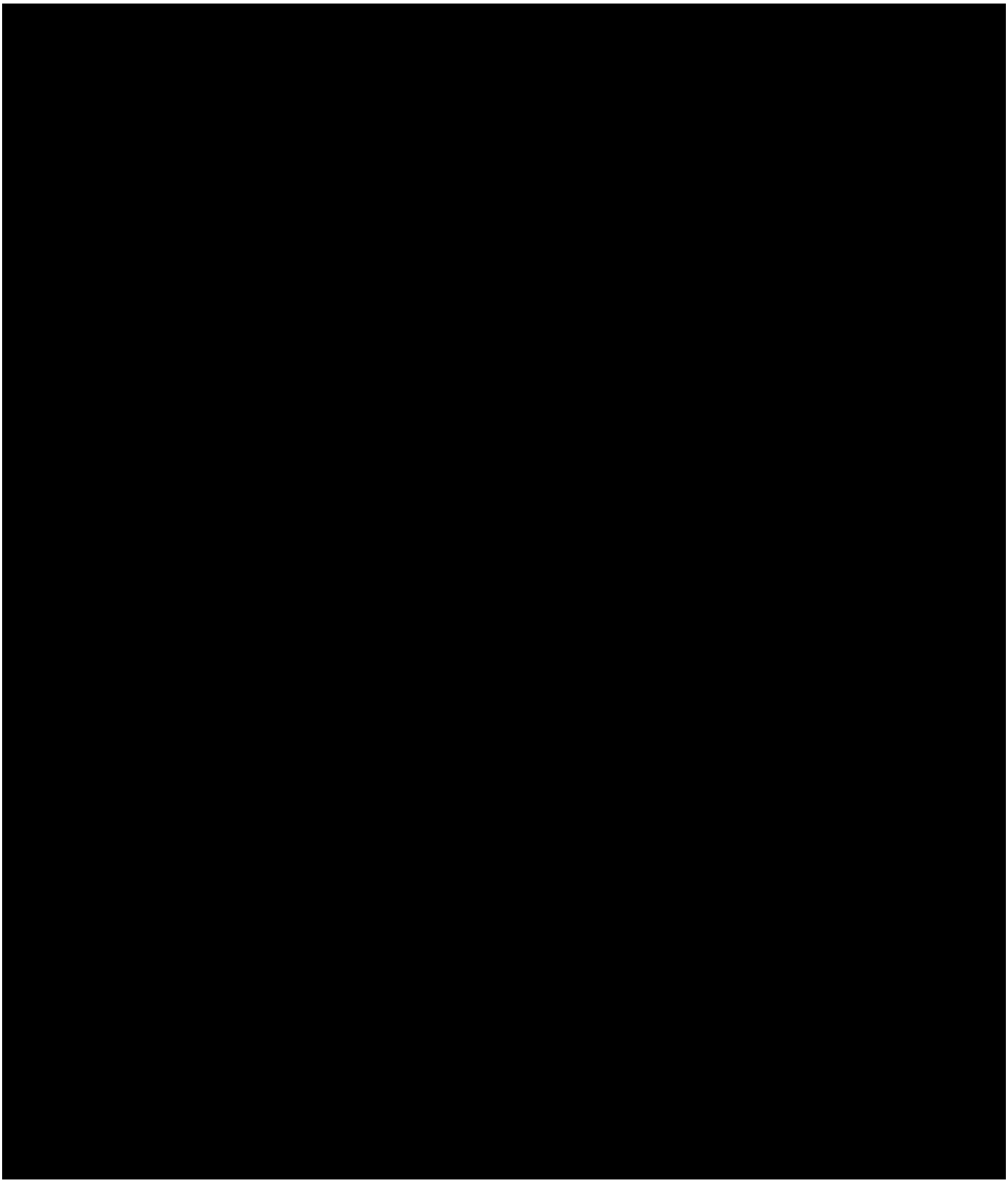
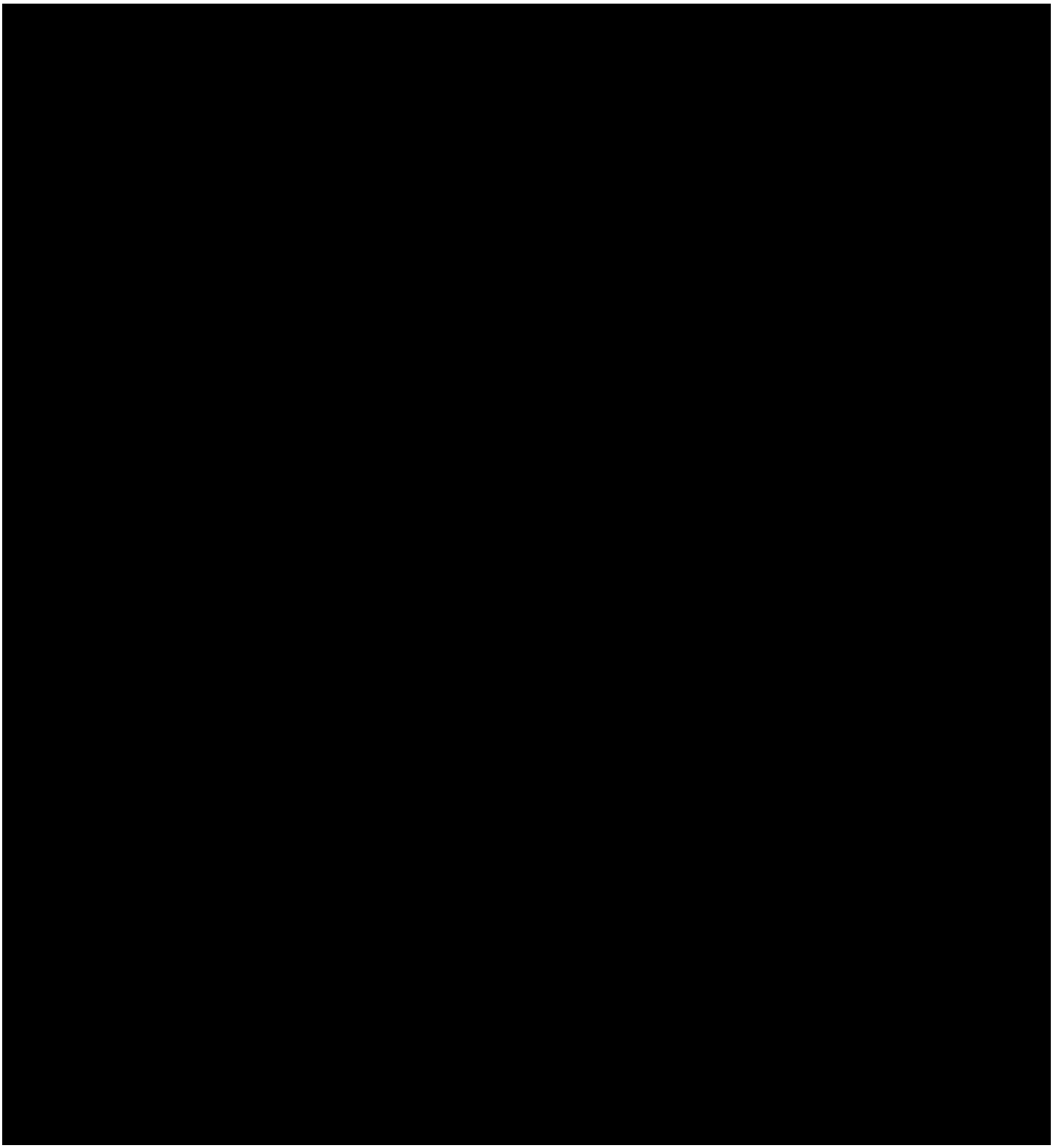
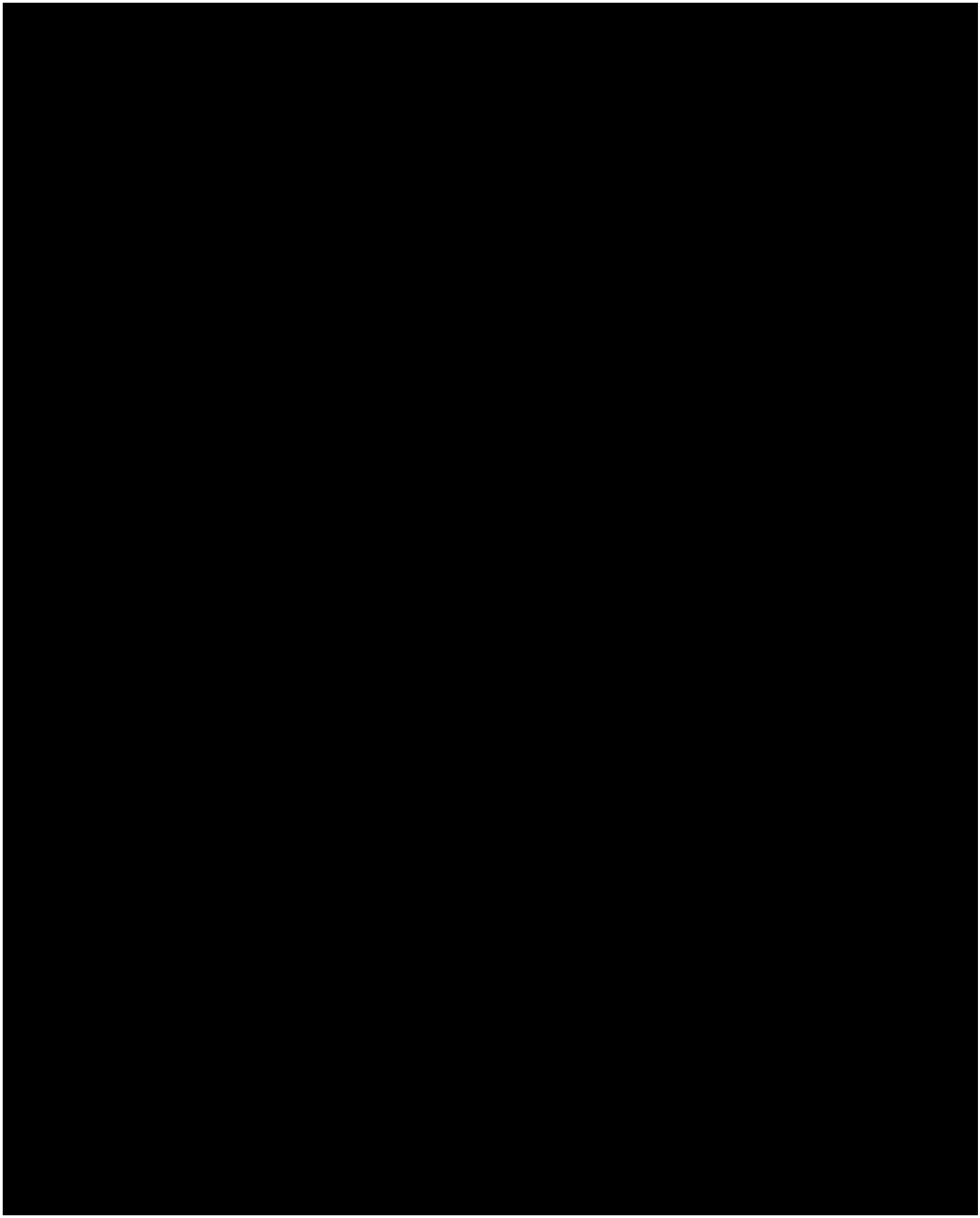


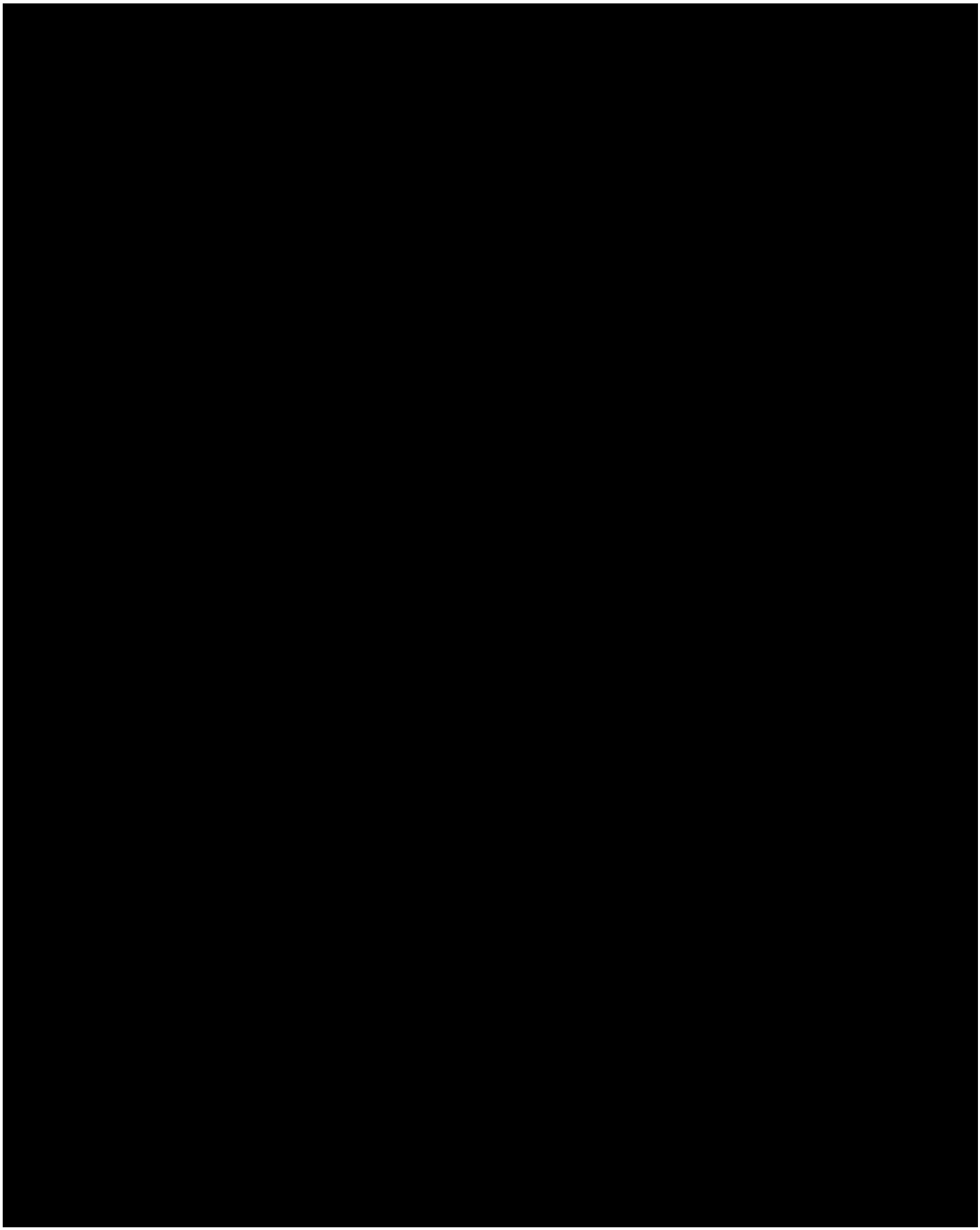


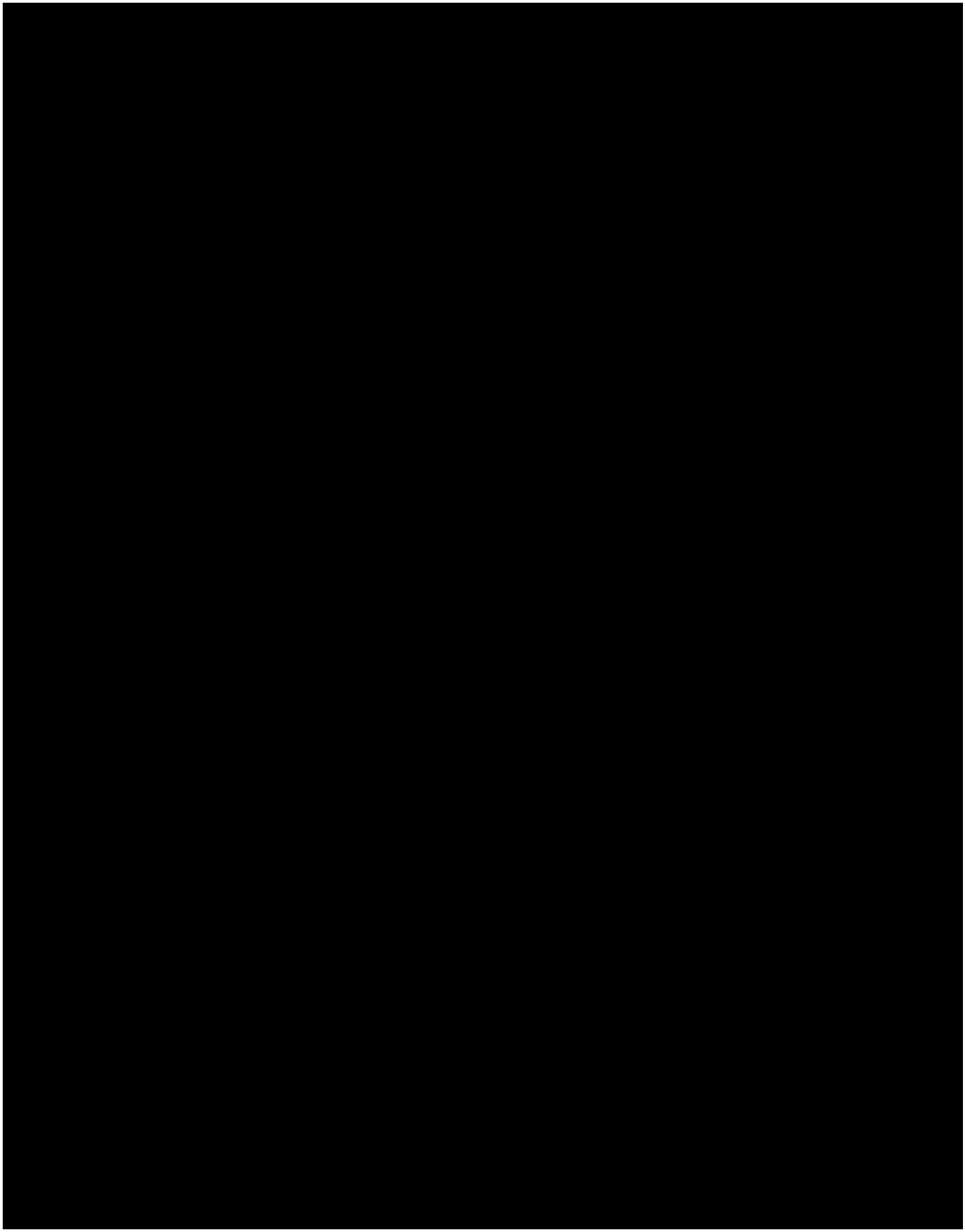
EXHIBIT U

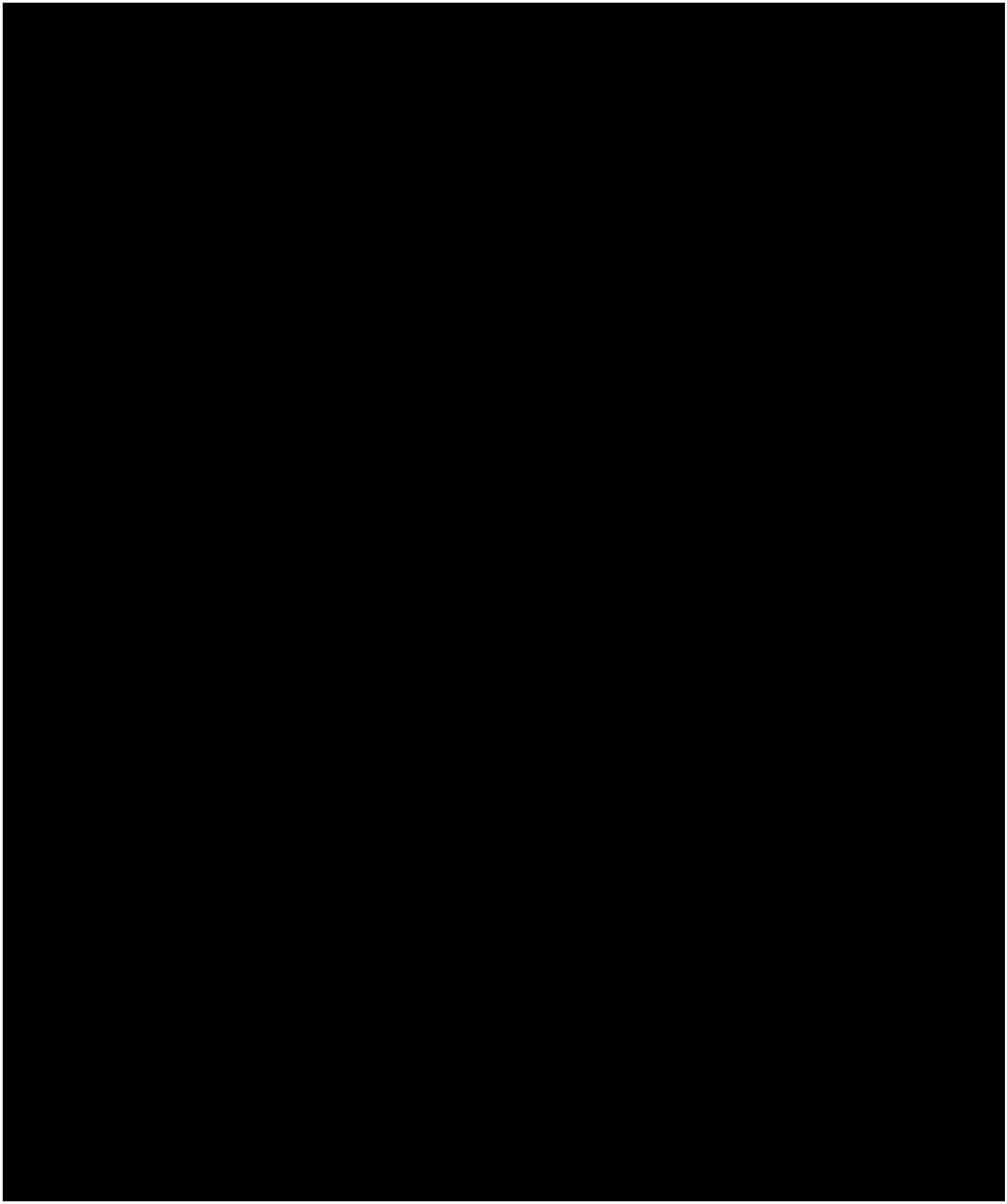
FORM OF LIMITED ASSIGNMENT AGREEMENT

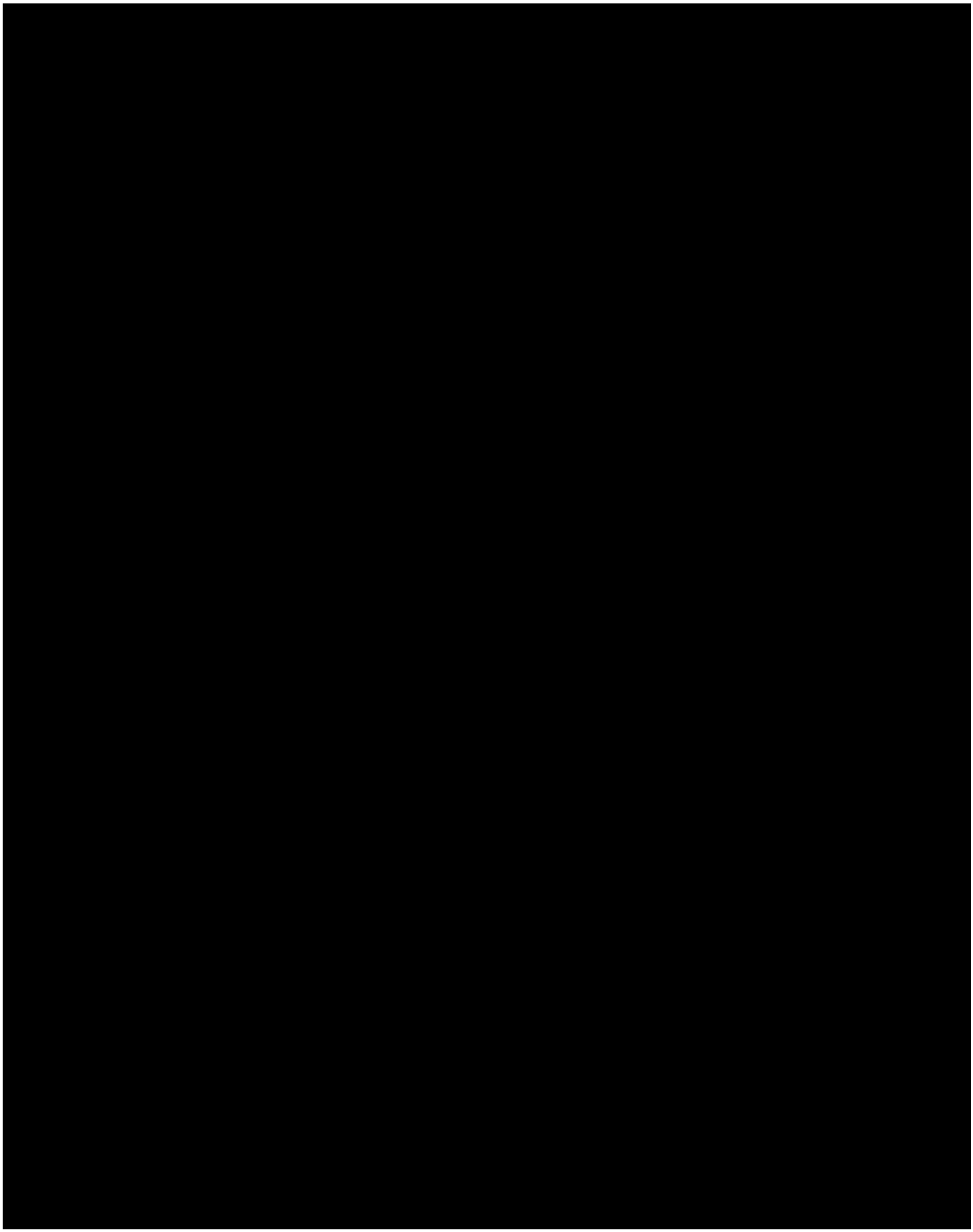


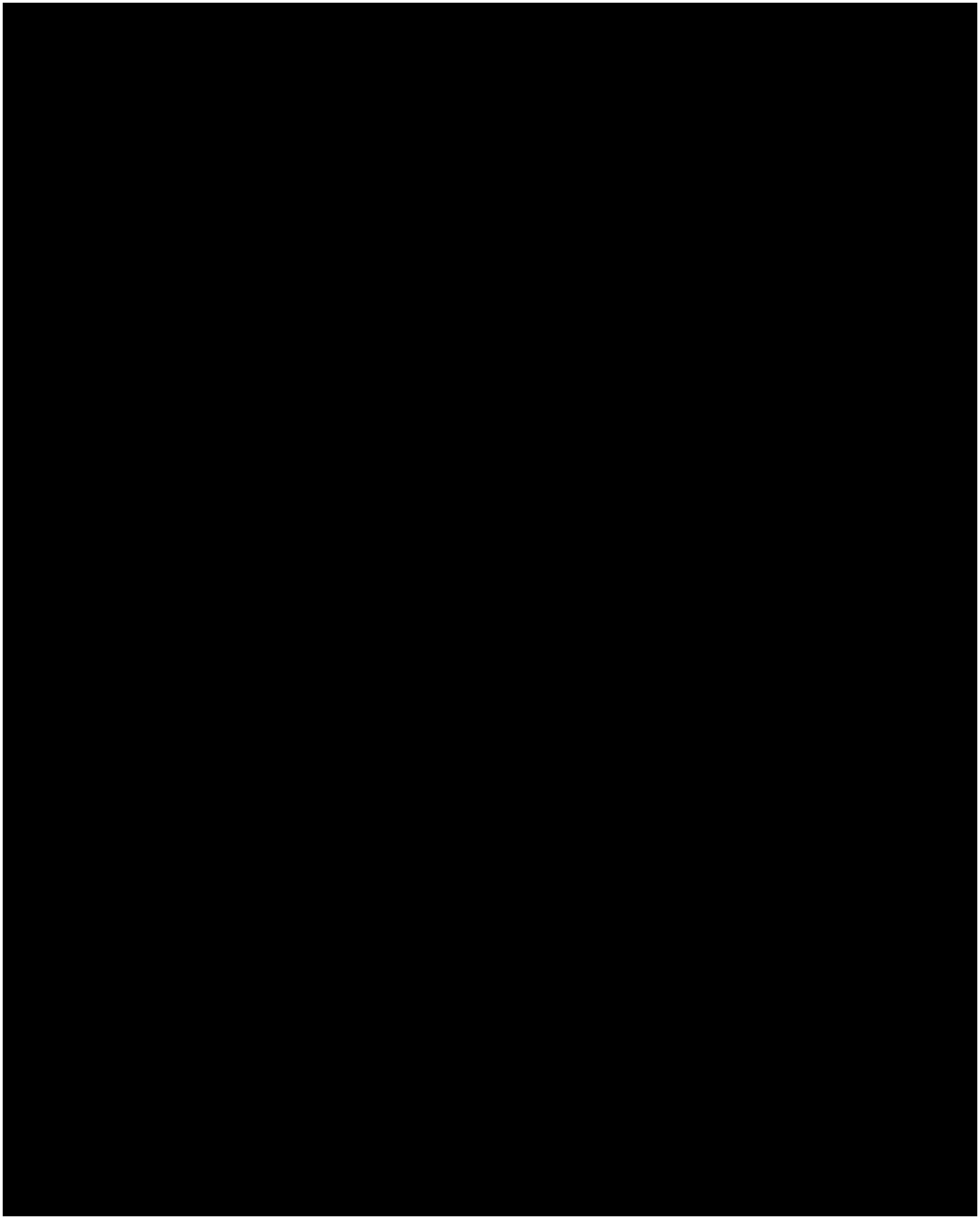


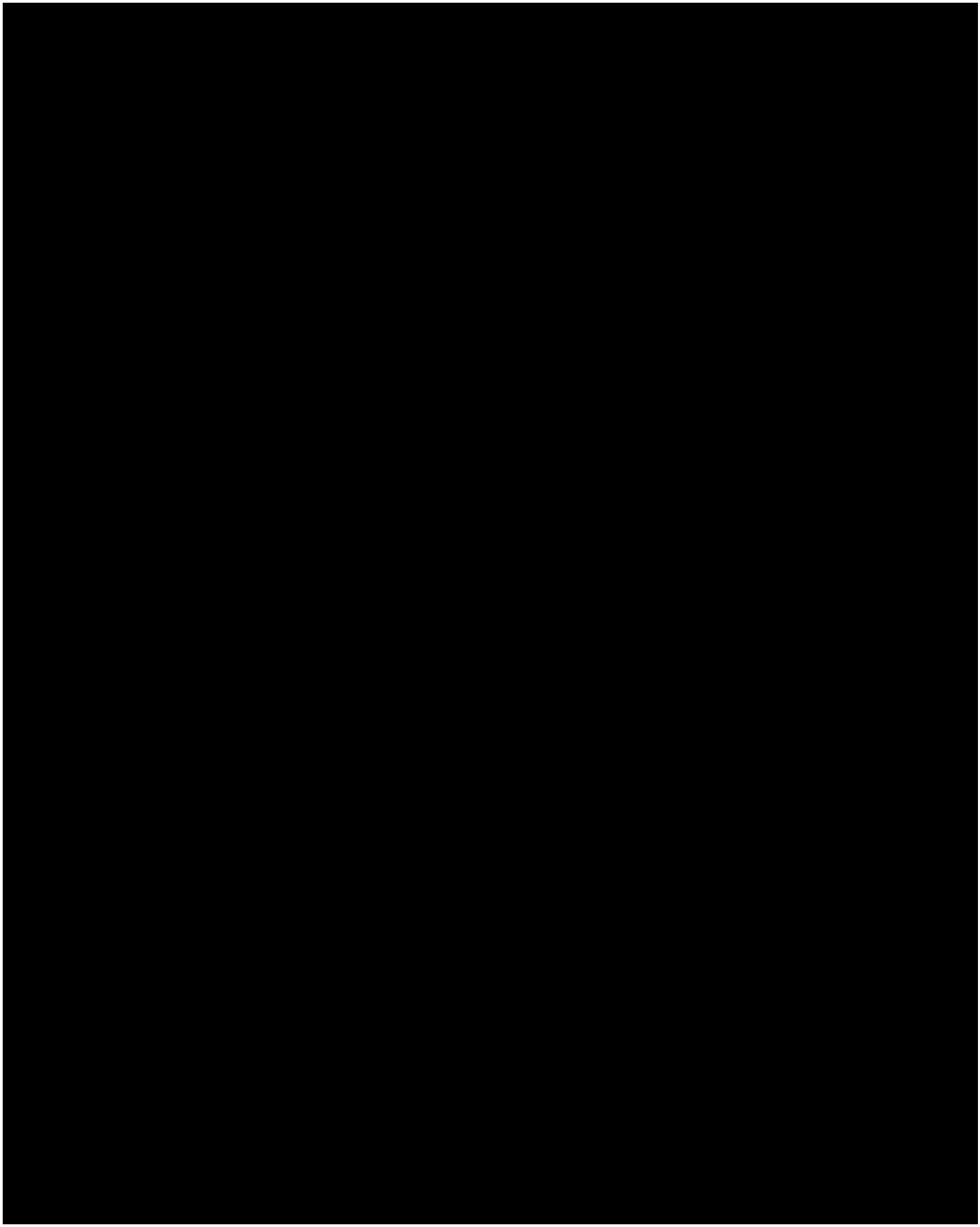


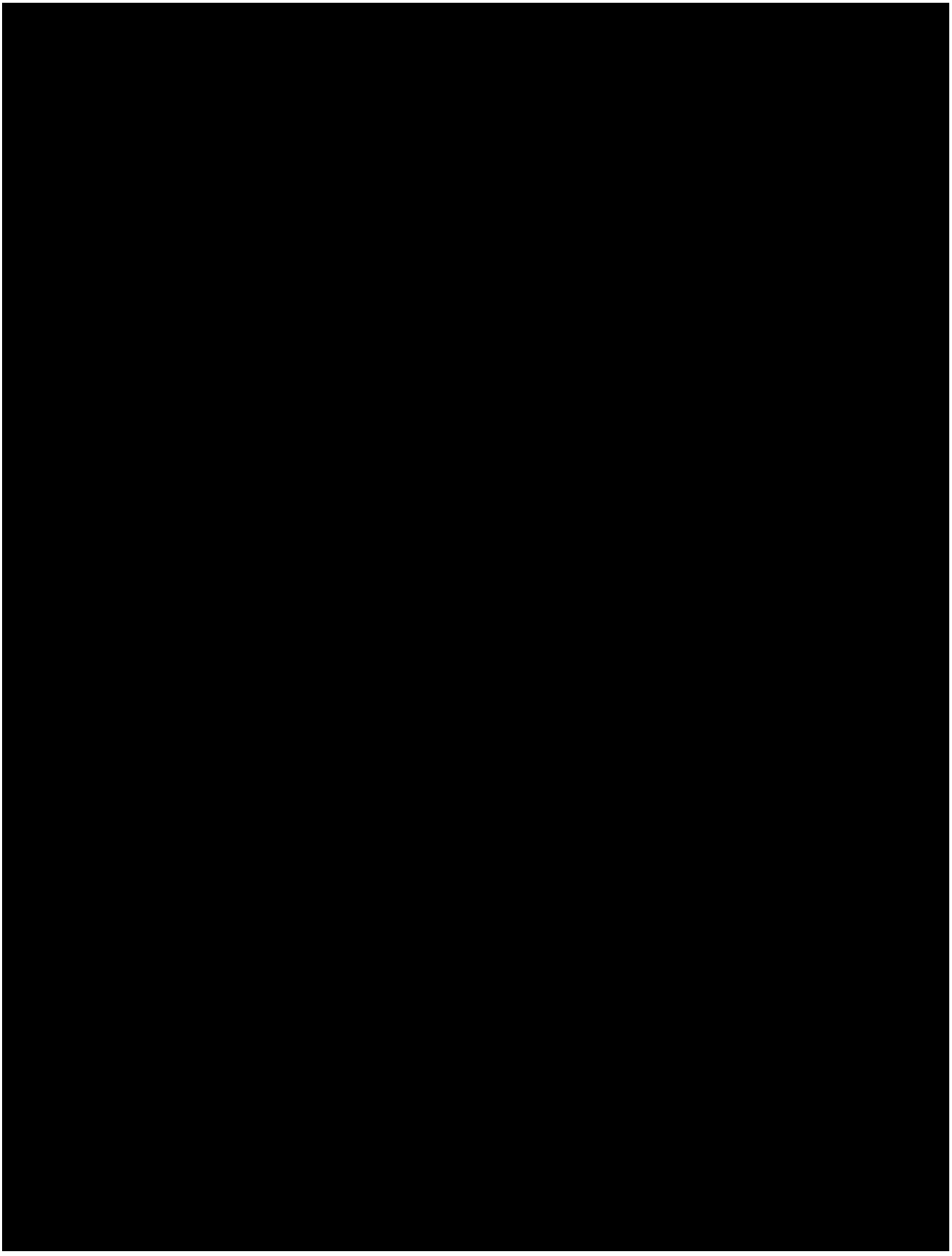


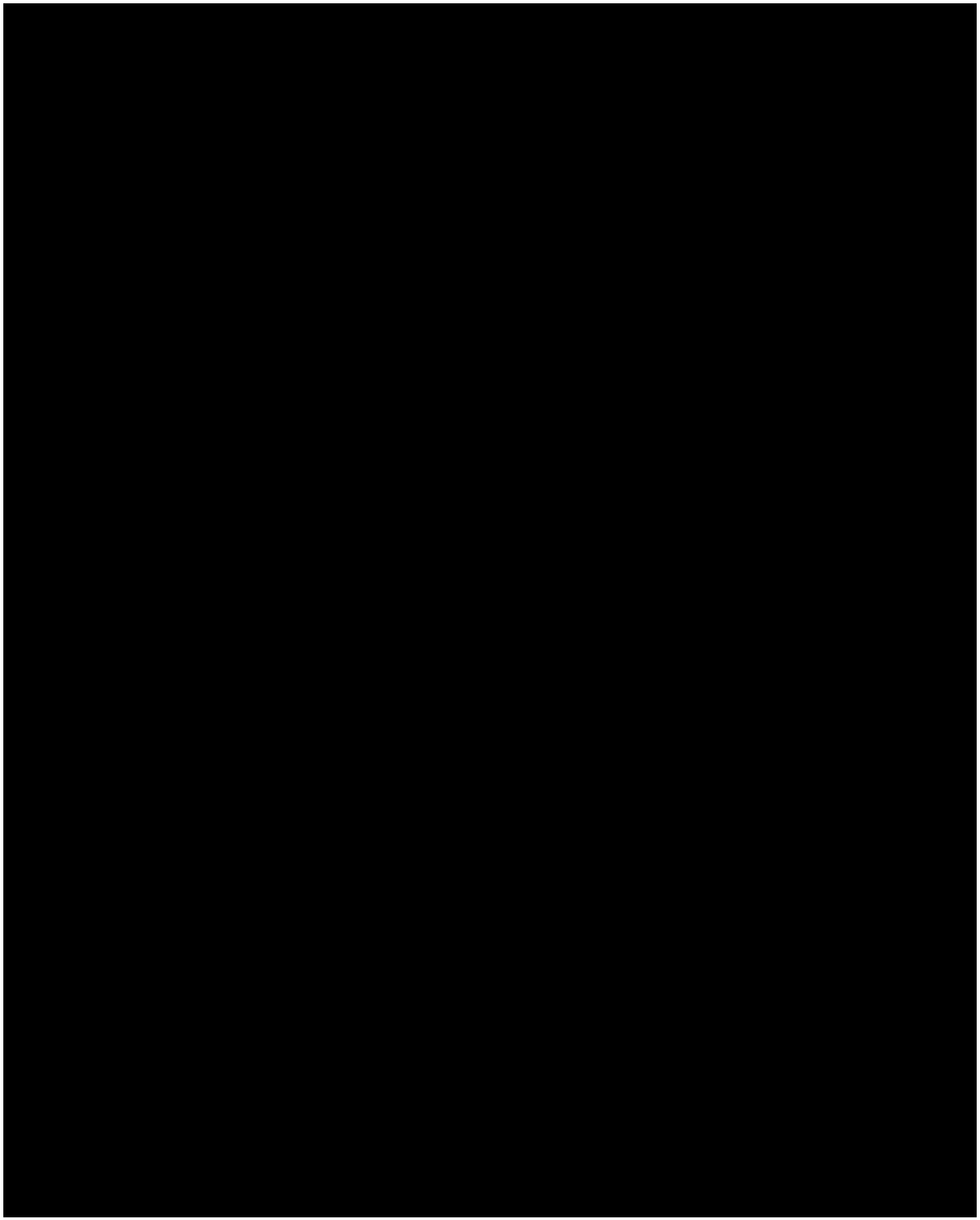


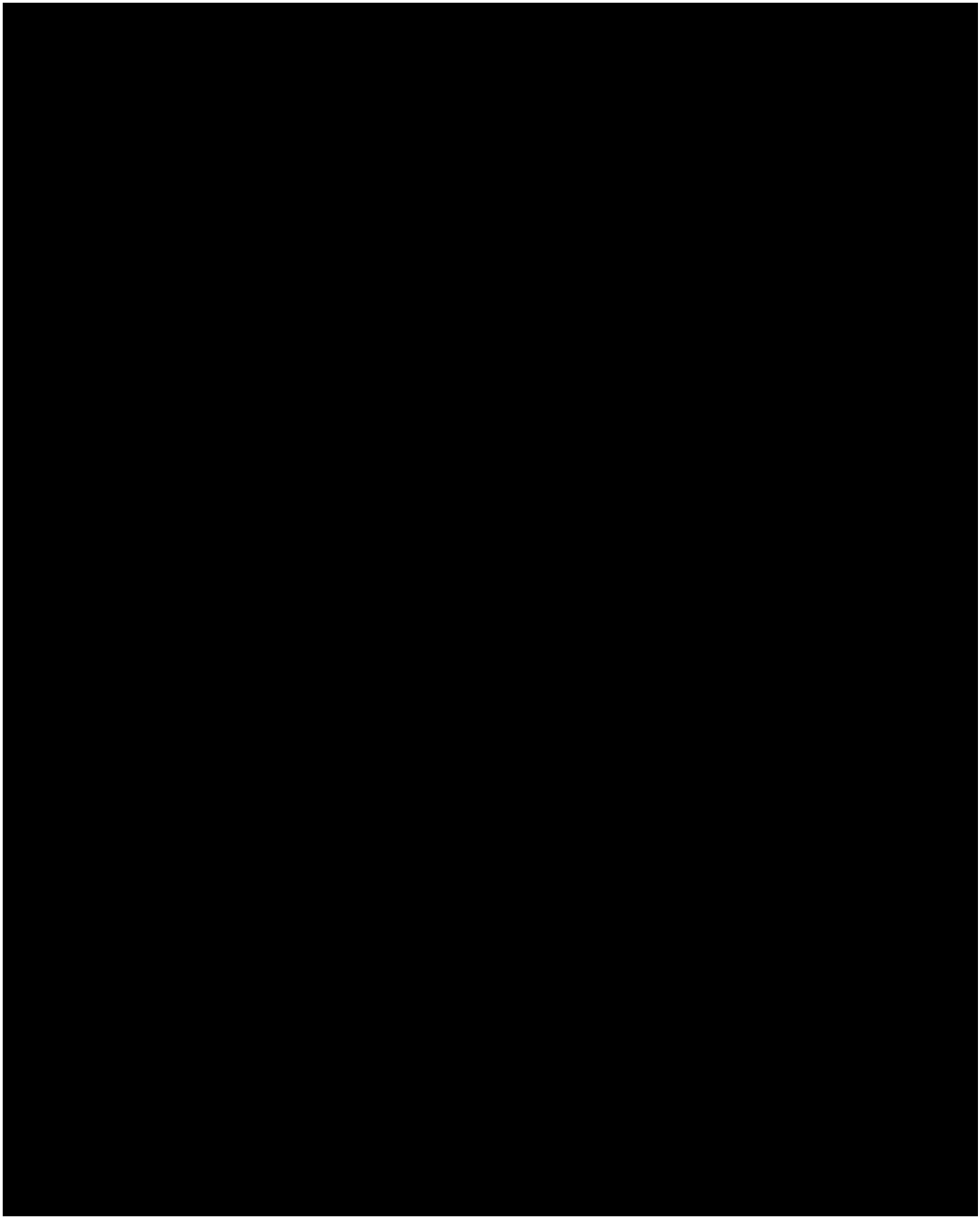


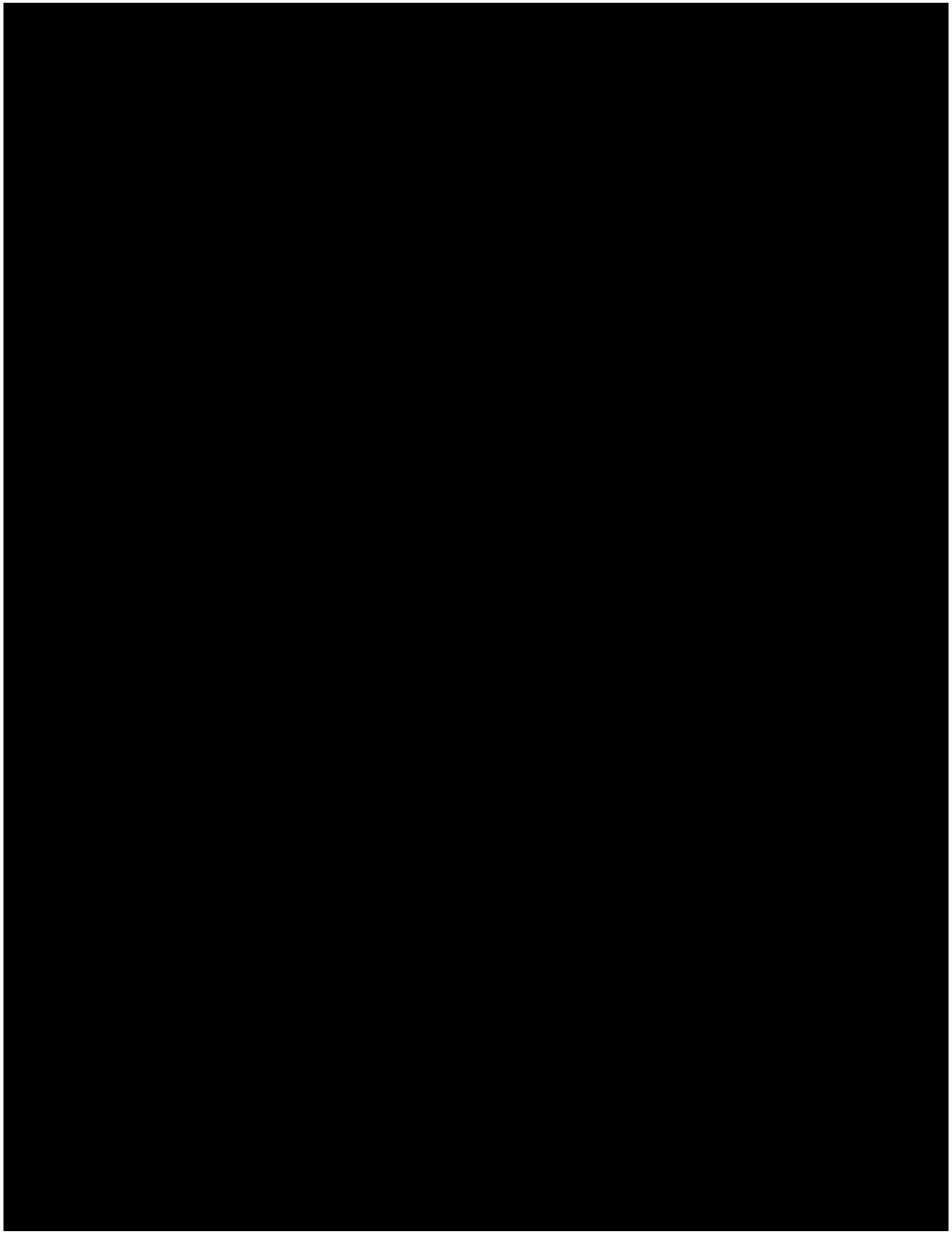


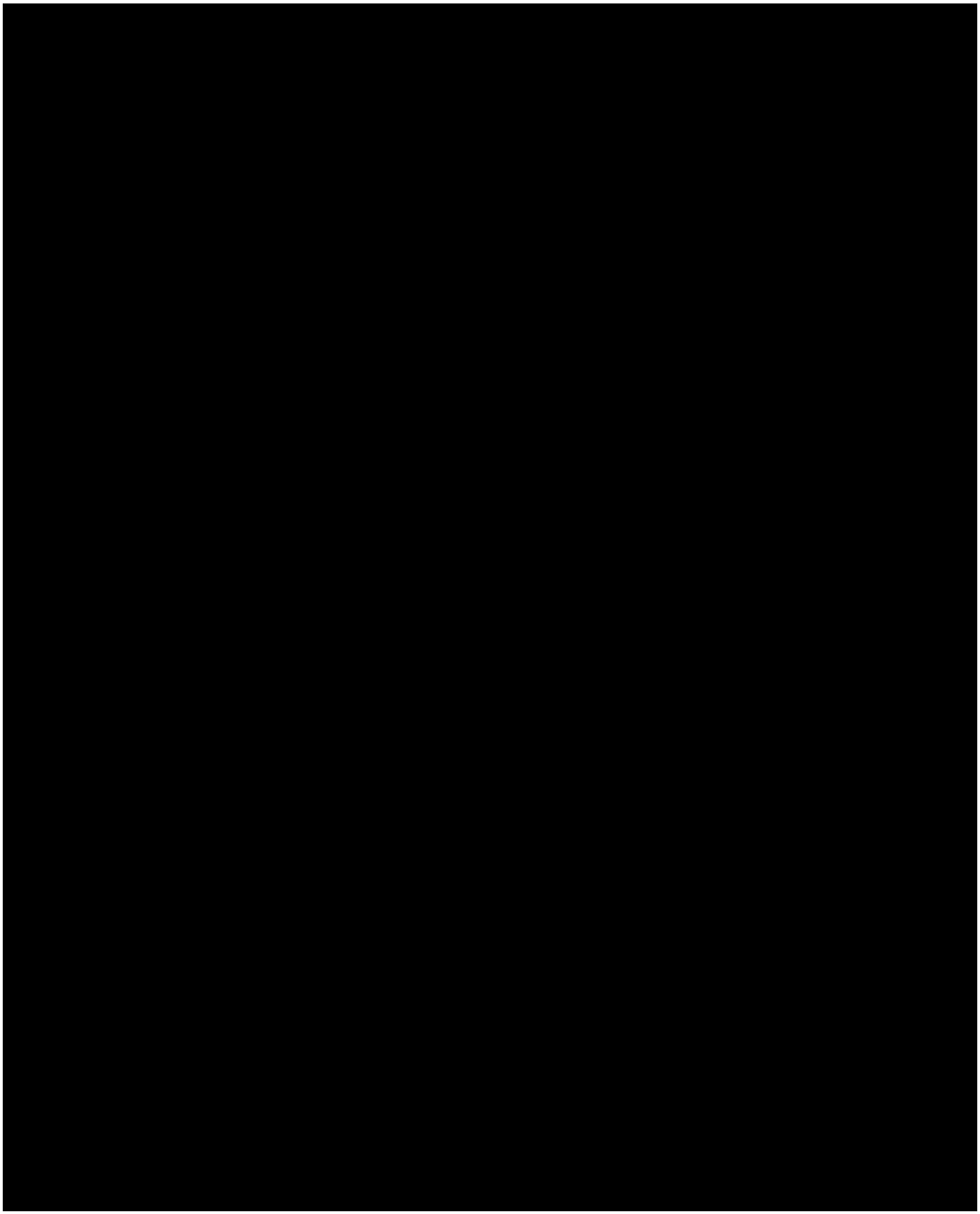






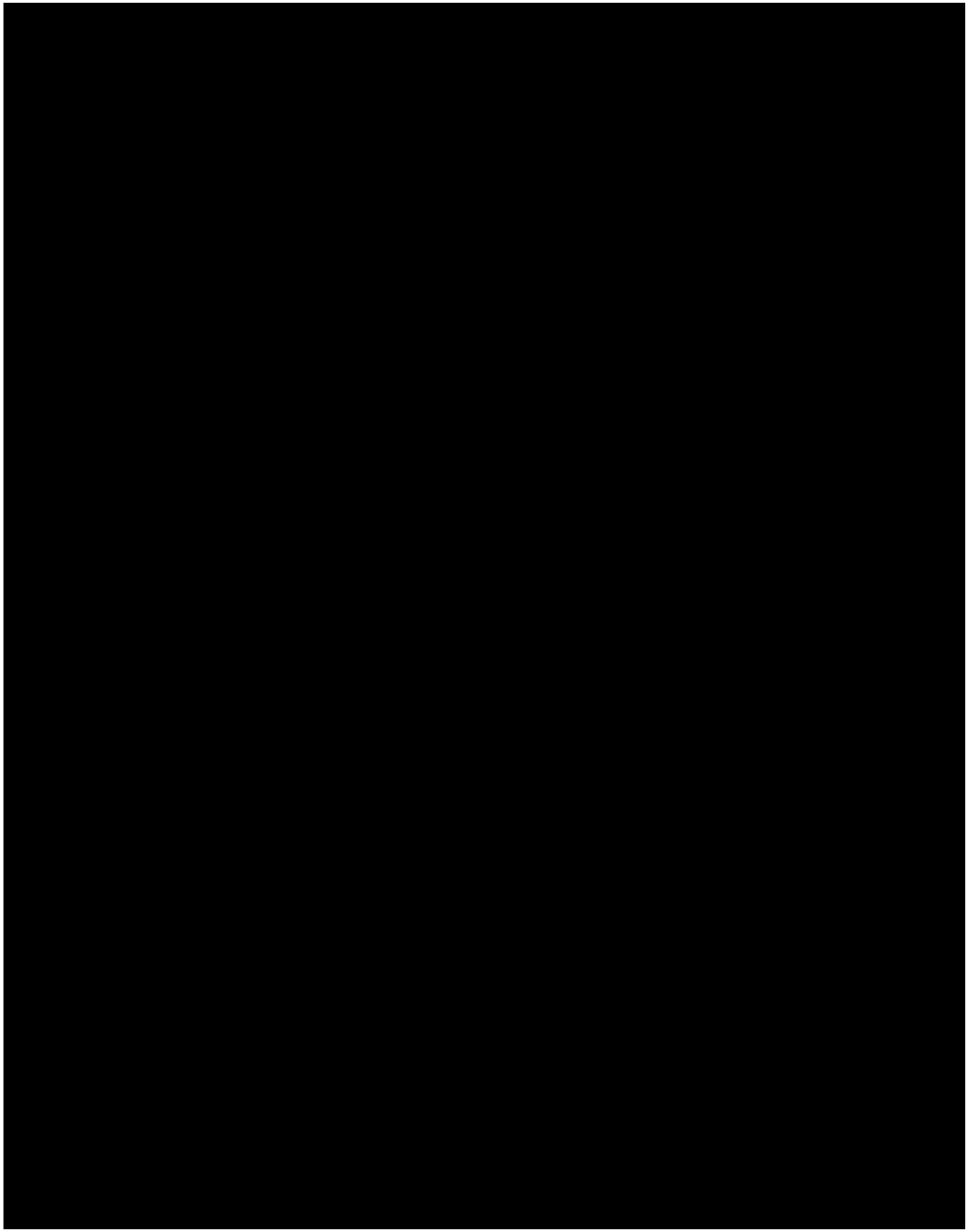




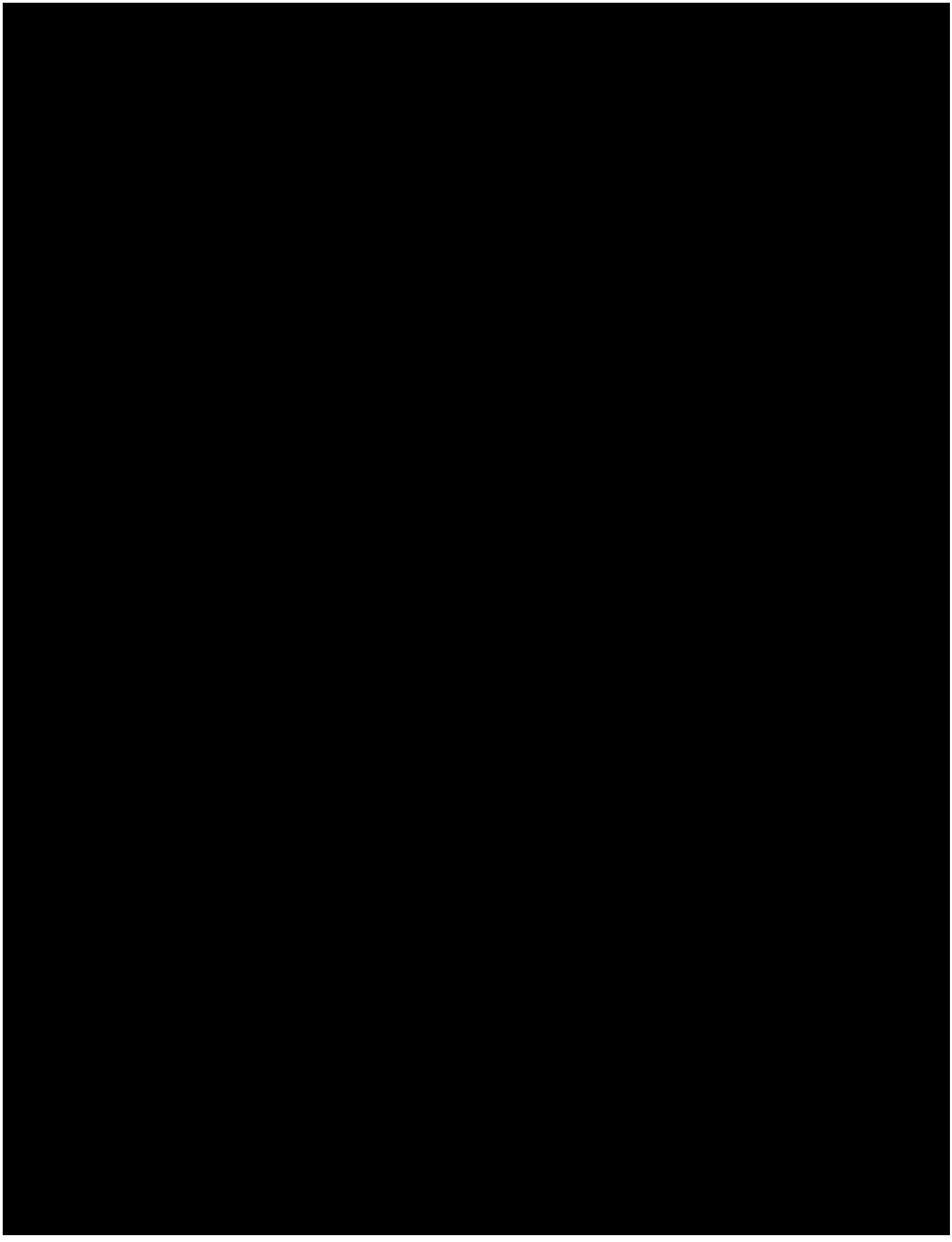


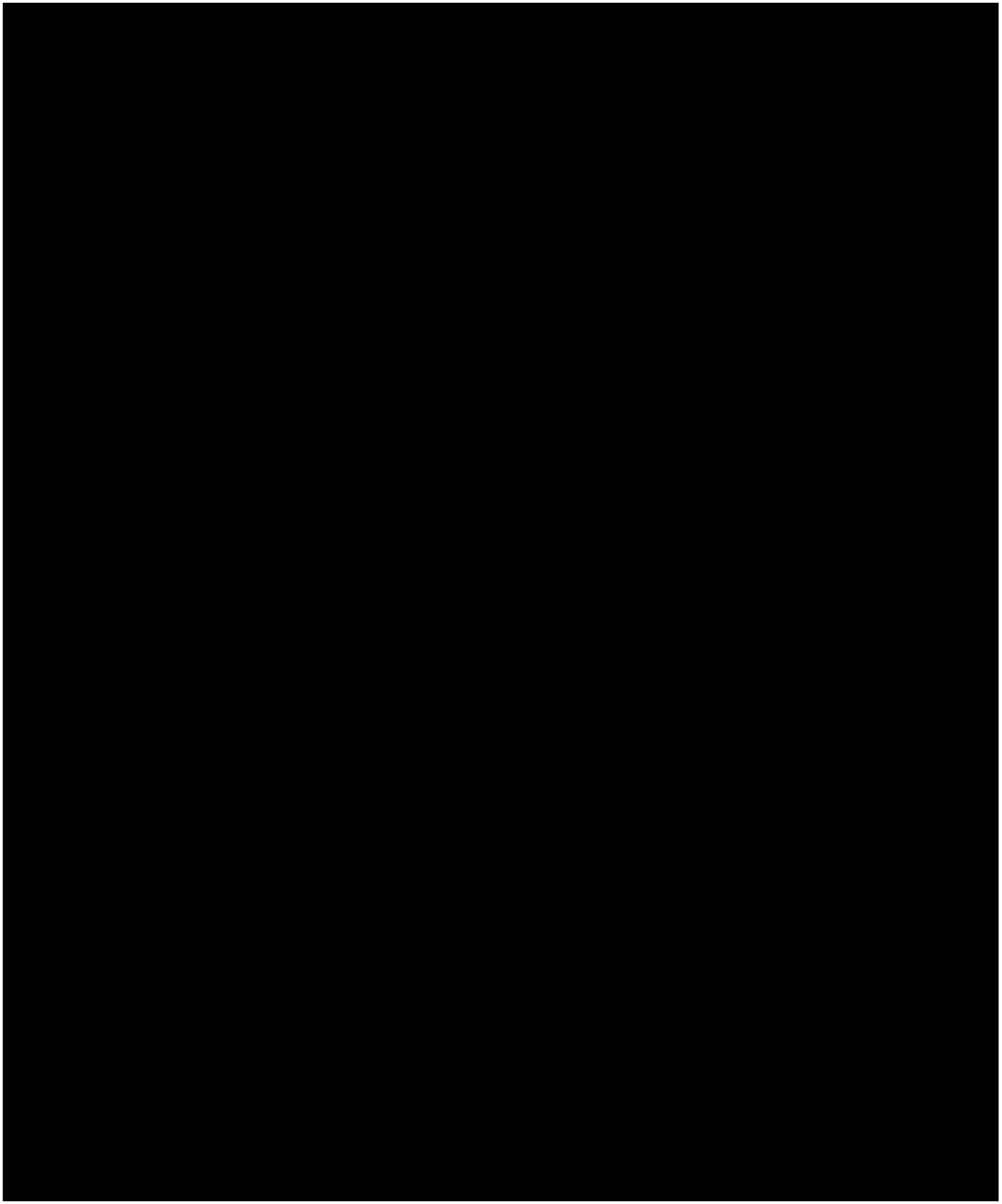














SAN DIEGO COMMUNITY POWER
Staff Report – Item 14

TO: **Board of Directors**

FROM: **Andrea Torres, Director of Origination**

VIA: **Karin Burns, Chief Executive Officer**

SUBJECT: **Approve EEI Master Agreement, Confirmation and Collateral Annex with Clean Power Alliance of Southern California**

DATE: **May 22, 2025**

RECOMMENDATION:

Approve the proposed Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement (Master Agreement), 10-year EEI Confirmation, and associated Paragraph 10 Collateral Annex with Clean Power Alliance of Southern California (CPA), referred to herein collectively as "VAMO Swap Agreements" or "VAMO Swap", in substantially final form for California RPS-eligible electric energy and associate Green Attributes, and authorize the Chief Executive Officer to execute the agreements.

BACKGROUND:

On October 1, 2019, the founding members of San Diego Community Power (Community Power) adopted the Joint Powers Agreement (JPA) which was 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. As previously presented to the Board in February and November of last year, 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 ("prepayments"). These entities must sell that commodity to retail end-users that reside within their traditional service area. 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 October 24, 2024, the Board of Directors adopted Resolution No. 2024-08, authorizing execution of an energy prepayment transaction, related documents, and 'form of' documents subject to maximum issuance amount, limitation on fees, and minimum required savings. Community Power closed on its first prepayment transaction on November 20, 2024 and intends to execute additional bond purchase agreements to support the prepayment of additional power purchase and capacity agreements from renewable energy and storage projects to reduce the cost of such long-term agreements for Community Power customers.

Community Power currently sources over 1,000 GWh of renewable energy and associated Green Attributes (i.e. RECs) each year through an EEI Master Agreement and Confirm with San Diego Gas and Electric (SDG&E) executed on December 20, 2021. This agreement was entered into after Community Power's participation in the Voluntary Allocation Market Offer (VAMO) mechanism adopted by the Commission in D.21-05-030 to reform the administration of the Power Charge Indifferent Amount (PCIA). CPA has a similar set of agreements with Southern California Edison for the supply of renewable energy and RECs.

Community Power and CPA wish to swap up to 996,000 MWh each year from their respective VAMO volumes between July 2025 and June 2035 to enable both parties to secure prepayment of such volumes through their respective and independent prepayment bonds.

ANALYSIS AND DISCUSSION:

CCAs in California have begun entering into contracts that swap VAMO volumes to create a new long-term contract to enable prepayment transactions.

The swapped MWhs of renewable energy and RECs will be largely sourced from Community Power's and CPA's VAMO agreements with SDG&E and SCE, respectively. However, Community Power and CPA may choose to supply energy and RECs to each other from other solar resources in their long-term portfolios for which we have limited assignment rights. Community Power and CPA will each retain CAISO revenues associated with the delivery of energy and pay each other the same administratively set REC price, which mirrors the prices paid by Community Power and CPA to the IOUs under their respective VAMO contracts, such that there is no fiscal impact from the VAMO swap itself.

Contract Overview:

- Master Agreement: EEI's Master Agreement is a widely used standard contract in the U.S. wholesale electricity market. The attached Master Agreement modifies certain terms to that standard contract as agreed to by the parties.
- Paragraph 10 to the Collateral Annex: The Collateral Annex is a document that sets the agreed upon credit and collateral terms associated with the Master Agreement.
- Confirmations: Concurrently with (or subsequent to) an executed Master Agreement, separate "confirmations" are entered into contract for the purchase and sale of certain products, in this case the VAMO Swaps with one confirmation where Community Power is the seller and CPA is the buyer, and the other where CPA is the seller and Community Power is the buyer. The following table includes high-level terms outlined in the Confirmations:

Product:	California RPS-Eligible Electric Energy and associated Green Attributes from solar generating resources.
Contract Price:	"Contract Price" shall be the sum of the Energy Price and the REC Price.
Contract Quantity (MWh):	REC Vintage 2025: 360,000 MWh REC Vintage 2026: 720,000 MWh REC Vintage 2027: 720,000 MWh REC Vintage 2028: 720,000 MWh REC Vintage 2029: 720,000 MWh REC Vintage 2030: 996,000 MWh REC Vintage 2031: 996,000 MWh REC Vintage 2032: 996,000 MWh REC Vintage 2033: 996,000 MWh REC Vintage 2034: 996,000 MWh REC Vintage 2035: 498,000 MWh
Delivery Term:	July 1, 2025 through June 30, 2035; provided that, for the sole purpose of matching delivery of RECs with Delivered Energy, such period will extend through the date that all RECs associated with such Delivered Energy have been delivered from Seller to Buyer in accordance with this Confirmation.

FISCAL IMPACT:

No direct fiscal impact from the VAMO Swap Agreements. However, through the use municipal prepayment transactions, Community Power anticipates material VAMO portfolio cost savings for Community Power customers.

ATTACHMENTS:

A: EEI Master Power Purchase and Sale Agreement with CPA
B: EEI Confirmation for the California RPS-Eligible Electric Energy and Associated Green Attributes (Community Power as Seller)
C: EEI Confirmation for the California RPS-Eligible Electric Energy and Associated Green Attributes (CPA as Seller)
D: Paragraph 10 Collateral Annex with CPA

GLOSSARY OF TERMS

AB – Assembly Bill - An Assembly Bill is a piece of legislation that is introduced in the Assembly. In other words, the Assembly, rather than the Senate, is the house of origin in the legislature for the legislation. In California, it is common for legislation to be referred to by its house of origin number (such as, AB 32) even once it becomes law.

AL - Advice Letter - An Advice Letter is a request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief.

ALJ – Administrative Law Judge - ALJs preside over CPUC cases to develop the evidentiary record and draft proposed decisions for Commission action.

ARB – Air Resources Board - The California Air Resources Board (CARB or ARB) is the "clean air agency" in the government of California. CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change.

AReM – Alliance for Retail Energy Markets - a not for profit corporation that advocates for continued development of successful customer choice in retail energy markets and provides a focused voice for competitive energy retailers and their customers in selected public policy forums on the state level. AREM represented direct access providers such as Constellation NewEnergy and Direct Energy.

BayREN - Bay Area Regional Energy Network - BayREN offers region-wide energy programs, services and resources to members of the public by promoting energy efficient buildings, reducing carbon emissions and building government capacity.

CAISO – California Independent System Operator - a non-profit independent system operator that oversees the operation of the California bulk electric power system, transmission lines and electricity market generated and transmitted by its members (~80% of California's electric flow). Its stated mission is to "operate the grid reliably and efficiently, provide fair and open transmission access, promote environmental stewardship and facilitate effective markets and promote infrastructure development." CAISO is regulated by FERC and governed by a five-member governing board appointed by the governor.

CALCCA – California Community Choice Association – Association made up of Community Choice Aggregation (CCA) groups which represents the interests of California's community choice electricity providers.

CALSEIA – California Solar Energy Industries - CALSEIA represents more than 200 companies doing solar-related business in California, including manufacturers, distributors, installation contractors, consultants, and educators. Members' annual dues support professional staff and a lobbyist who represent the common interests of California's solar industry at the Legislature, Governor's Office, and state and local agencies.

CALSLA – California City County Street Light Association - statewide association representing cities, counties and towns before the CPUC that is committed to maintaining fair and equitable street light electric rates and facilities charges, and disseminating street light related information.

CAM – Cost Allocation Mechanism - the cost recovery mechanism to cover procurement costs incurred in serving the central procurement function.

CARB – California Air Resources Board – The CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change in California.

CARE – California Alternative Rates for Energy - A State program for low-income households that provides a 30% discount on monthly energy bills and a 20% discount on natural gas bills. CARE is funded through a rate surcharge paid by all other utility customers.

CBE – Communities for a Better Environment - environmental justice organization that was founded in 1978. The mission of CBE is to build people's power in California's communities of color and low-income communities to achieve environmental health and justice by preventing and reducing pollution and building green, healthy and sustainable communities and environments.

CCA – Community Choice Aggregator - A community choice aggregator, sometimes referred to as community choice aggregation, allows local governments to procure power on behalf of their residents, businesses, and municipal accounts from an alternative supplier while still receiving transmission and distribution service from their existing utility provider. CCAs are an attractive option for communities that want more local control over their electricity sources, more green power than is offered by the default utility, and/or lower electricity prices. By aggregating demand, communities gain leverage to negotiate better rates with competitive suppliers and choose greener power sources.

CCSF – City and County of San Francisco - The City and County of San Francisco often engage in joint advocacy before the CPUC. San Francisco operates CleanPowerSF, a CCA.

CEC – California Energy Commission - the primary energy policy and planning agency for California, whose core responsibilities include advancing state energy policy, achieving energy efficiency, investing in energy innovation, developing renewable energy, transforming transportation, overseeing energy infrastructure and preparing for energy emergencies.

CEE – Coalition for Energy Efficiency - non-profit comprised of US and Canadian energy efficiency administrators working together to accelerate the development and availability of energy efficient products and services.

CLECA – California Large Energy Consumers Association - an organization of large, high load factor industrial customers located throughout the state; the members are in the cement, steel, industrial gas, pipeline, beverage, cold storage, food packaging, and mining industries, and share the fact that electricity costs comprise a significant portion of their costs of production. Some members are bundled customers, others are Direct Access (DA) customers, and some are served by Community Choice Aggregators (CCAs); a few members have onsite renewable generation.

CPUC – California Public Utility Commission - state agency that regulates privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies, in addition to authorizing video franchises.

C&I – Commercial and Industrial – Business customers. C&I customers generally consume much higher volumes of electricity and gas. Many utilities segment their C&I customers by energy consumption (small, medium and large).

CP – Compliance Period – Time period to become RPS compliant, set by the CPUC (California Public Utilities Commission)

DA – Direct Access – An option that allows eligible customers to purchase their electricity directly from third party providers known as Electric Service Providers (ESP).

DA Cap – the maximum amount of electric usage that may be allocated to Direct Access customers in California, or more specifically, within an Investor-Owned Utility service territory.

DACC – Direct Access Customer Coalition a regulatory advocacy group comprised of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements

DA Lottery – a random drawing by which DA waitlist customers become eligible to enroll in DA service under the currently-applicable Direct Access Cap.

DA Waitlist – customers that have officially registered their interest in becoming a DA customer but are not yet able to enroll in service because of DA cap limitations.

DAC – Disadvantaged Community - Disadvantaged communities refers to the areas throughout California which most suffer from a combination of economic, health, and environmental burdens. These burdens include poverty, high unemployment, air and water pollution, presence of hazardous wastes as well as high incidence of asthma and heart disease. One way that the state identifies these areas is by collecting and analyzing information from communities all over the state. CalEnviroScreen, an analytical tool created by the California Environmental Protection Agency (CalEPA), combines different types of census tract-specific information into a score to determine which communities are the most burdened or "disadvantaged."

DASR – Direct Access Service Request – Request submitted by C&I customers to become direct access eligible.

Demand - The rate at which electric energy is delivered to or by a system or part of a system, generally expressed in kilowatts (kW), megawatts (MW), or gigawatts (GW), at a given instant or averaged over any designated interval of time. Demand should not be confused with Load or Energy.

DER – Distributed Energy Resource – A small-scale physical or virtual asset (e.g. EV charger, smart thermostat, behind-the-meter solar/storage, energy efficiency) that operates locally and is connected to a larger power grid at the distribution level.

Distribution - The delivery of electricity to the retail customer's home or business through low voltage distribution lines.

DLAP – Default Load Aggregation Point – In the CAISO's electricity optimization model, DLAP is the node at which all bids for demand should be submitted and settled.

DR – Demand Response - An opportunity for consumers to play a significant role in the operation of the electric grid by reducing or shifting their electricity usage during peak periods in response to time-based rates or other forms of financial incentives.

DRP – Distributed Resource Plans - plans that are required by statute that are intended to identify optimal locations for the deployment of distributed resources.

DWR – Department of Water Resources – DWR manages California's water resources, systems, and infrastructure in a responsible, sustainable way.

ECR – Enhanced Community Renewable - An IOU program that reflects the "Community Solar" model of renewable energy purchasing. Customers sign up to purchase a portion of a local solar project directly from a Developer at a level that meets at least 25% of their monthly electricity demand, but up to 100%. The customer will pay the Developer for the subscribed output, and receive a credit on their utility bill that reflects their enrollment level.

ED – Energy Division - The CPUC's Energy Division develops and administers energy policy and programs to serve the public interest, advise the Commission, and ensure compliance with the Commission decisions and statutory mandates.

EE – Energy Efficiency- the use of less energy to perform the same task or produce the same result. Energy-efficient homes and buildings use less energy to heat, cool, and run appliances and electronics, and energy-efficient manufacturing facilities use less energy.

ELCC – Effective Load Carrying Capacity – The additional load met by an incremental generator while maintaining the same level of system reliability. For solar and wind resources the ELCC is the amount of capacity which can be counted for Resource Adequacy purposes.

EPIC – Electric Program Investment Charge – The EPIC program was created by the CPUC to support investments in clean energy technologies that provide benefits to the electricity ratepayers of PG&E, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE)

ERRA – Energy Resource Recovery Account – ERRA proceedings are used to determine fuel and purchased power costs which can be recovered in rates. The utilities do not earn a rate of return on these costs, and only recover actual costs. The costs are forecast for the year ahead. If the actual costs are lower than forecast, then the utility gives money back, and vice versa.

ES – Energy Storage - the capture of energy produced at one time for use at a later time to reduce imbalances between energy demand and energy production.

ESA – Energy Storage Agreement - means a battery services contract, a capacity contract, demand response contract or similar agreement.

ESP – Energy Service Provider - An energy entity that provides service to a retail or end-use customer.

EV – Electric Vehicle - a vehicle that uses one or more electric motors for propulsion.

FCR – Flexible Capacity Requirements - "Flexible capacity need" is defined as the quantity of resources needed by the CAISO to manage grid reliability during the greatest three-hour continuous ramp in each month. Resources will be considered as "flexible capacity" if they can sustain or increase output, or reduce ramping needs, during the hours of "flexible need." "FCR"

means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions.

GHG – Greenhouse gas - water vapor, carbon dioxide, tropospheric ozone, nitrous oxide, methane, and chlorofluorocarbons (CFCs). A gas that causes the atmosphere to trap heat radiating from the earth. The most common GHG is Carbon Dioxide, though Methane and others have this effect as well.

GRC – General Rate Case – Proceedings used to address the costs of operating and maintaining the utility system and the allocation of those costs among customer classes. For California's three large IOUs, the GRCs are parsed into two phases. Phase I of a GRC determines the total amount the utility is authorized to collect, while Phase II determines the share of the cost each customer class is responsible and the rate schedules for each class. Each large electric utility files a GRC application every three years for review by the Public Advocates Office and interested parties and approval by the CPUC.

GTSR – Green Tariff Shared Renewables - The GTSR program enables customers to receive 50 to 100 percent of their electricity demand from renewable sources. The GTSR program has two components: the Green Tariff (GT) component and the Enhanced Community Renewables (ECR) component. Through GT, a customer may pay the difference between their current generation charge and the cost of procuring 50 to 100 percent renewables. With ECR, a customer agrees to purchase a share of a community renewable (typically solar) project directly from a developer, and in exchange will receive a credit from their utility for the customer's avoided generation procurement.

GWh – Gigawatt-hour - The unit of energy equal to that expended in one hour at a rate of one billion watts. One GWh equals 1,000 megawatt-hours.

ICA – Integration Capacity Analysis - The enhanced integrated capacity and locational net benefit analysis quantifies the capability of the system to integrate Distributed Energy Resources (DERs) within the distribution system. Results are dependent on the most limiting element of the various power system criteria such as thermal ratings, power quality, system protection limits and safety standards of existing equipment.

IDER – Integrated Distributed Energy Resources – A CPUC proceeding that aims to more effectively coordinate the integration of demand-side resources in order to better meet customer and grid needs, while enabling California to attain its greenhouse gas reduction goals.

IDSM – Integrated Demand-Side Management - an approach that joins together all the resources utilities have at their disposal to plan, generate and supply electricity in the most efficient manner possible.

IEP – Independent Energy Producers – California's oldest and leading nonprofit trade association, representing the interest of developers and operators of independent energy facilities and independent power marketers.

IMD – Independent Marketing Division - Under state law, IOUs are prohibited from lobbying or marketing on community choice unless the IOU forms an independent marketing division funded by shareholders rather than ratepayers. SDG&E' and its parent company Sempra were permitted by the CPUC to create such an independent marketing division, which allowed SDG&E to lobby against plans to create a CCA program.

IOU – Investor-Owned Utility – A private electricity and natural gas provider, such as SDG&E, PG&E or SCE, which are the three largest IOUs in California.

IRP – Integrated Resource Plan – A plan which outlines an electric utility's resource needs in order to meet expected electricity demand long-term.

kW – Kilowatt – Measure of power where power (watts) = voltage (volts) x amperage (amps) and 1 kW = 1000 watts

kWh – Kilowatt-hour – This is a measure of consumption. It is the amount of electricity that is used over some period of time, typically a one-month period for billing purposes. Customers are charged a rate per kWh of electricity used.

LCE – Lancaster Choice Energy - the CCA that serves the City of Lancaster, California.

LCFS – Low Carbon Fuel Standard – A CARB program designed to encourage the use of cleaner low-carbon fuels in California, encourage the production of those fuels, and therefore, reduce greenhouse gas emissions.

LCR – Local (RA) Capacity Requirements – The amount of Resource Adequacy capacity required to be demonstrated in a specific location or zone.

LMP – Locational Marginal Price – Each generator unit and load pocket is assigned a node in the CAISO optimization model. The model will assign a LMP to the node in both the day- ahead and real time market as it balances the system using the least cost. The LMP is comprised of three components: the marginal cost of energy, congestion and losses. The LMP is used to financially settle transactions in the CAISO.

LNBA – Locational Net Benefits Analysis - a cost-benefit analysis of distributed resources that incorporates location-specific net benefits to the electric grid.

Load - An end use device or customer that receives power from an energy delivery system. Load should not be confused with Demand, which is the measure of power that a load receives or requires. See Demand.

LSE – Load-serving Entity – Entities that have been granted authority by state, local law or regulation to serve their own load directly through wholesale energy purchases and have chosen to exercise that authority.

LTPP – Long-Term Procurement Rulemaking - This is an "umbrella" proceeding to consider, in an integrated fashion, all of the Commission's electric procurement policies and programs.

MCE – Marin Clean Energy - the first CCA in California that began serving customers in 2010. They serve customers in Contra Costa, Marin, Napa and Solano counties in Northern California.

MEO – Marketing Education and Outreach - a term generally used to describe various strategies to inform customers, such as to motivate consumers to take action on energy efficiency or conservation measures and change their behavior.

MW – Megawatt – measure of power. A megawatt equals 1,000 kilowatts or 1 million watts.

MWH – Megawatt-hour – measure of energy

NAESCO – National Association of Energy Service Companies - – an advocacy and accreditation organization for energy service companies (ESCOs). Energy Service Companies

contract with private and public sector energy users to provide cost-effective energy efficiency retrofits across a wide spectrum of client facilities.

NBC – Non-Bypassable Charge - fees that are paid on every kilowatt-hour of electricity that is consumed from the grid. These charges can be used to fund things like energy assistance programs for low-income households and energy efficiency programs. These charges apply even if customers buy grid-supplied power from an outside power company such as a CCA.

NDA – Non-Disclosure Agreement - a contract by which one or more parties agree not to disclose confidential information that they have shared with each other.

NEM – Net Energy Metering – A program in which solar customers receive credit for excess electricity generated by solar panels.

NRDC – Natural Resources Defense Council - non-profit international environmental advocacy group.

NP-15 – North Path 15 – NP-15 is a CAISO pricing zone usually used to approximate wholesale electricity prices in northern California in PG&E's service territory.

OIR – Order Instituting Rulemaking - A procedural document that is issued by the CPUC to start a formal proceeding. A draft OIR is issued for comment by interested parties and made final by vote of the five Commissioners of the CPUC.

OSC – Order to Show Cause - order requiring an individual or entity to explain, justify, or prove something.

ORA – Office of Ratepayer Advocates - the independent consumer advocate within the CPUC, now called Public Advocates office.

PA – Program Administrator (for EE Business Plans) IOUs and local government agencies authorized to implement CPUC-directed Energy Efficiency programs.

PCE – Peninsula Clean Energy Authority - CCA serving San Mateo County and all 20 of its cities and towns as well as the City of Los Banos.

PCC1 – RPS Portfolio Content Category 1 – Bundled renewables where the energy and REC are dynamically scheduled into a California Balancing Authority (CBA) such as the CAISO. Also known as "in-state" renewables.

PCC2 – RPS Portfolio Content Category 2 – Bundled renewables where the energy and REC are from out-of-state and not dynamically scheduled to a CBA.

PCC3 – RPS Portfolio Content Category 3 – Unbundled REC

PCIA or "exit fee" - Power Charge Indifference Adjustment (PCIA) is an "exit fee" based on stranded costs of utility generation set by the California Public Utilities Commission. It is calculated annually and assessed to customers of CCAs and paid to the IOU that lost those customers as a result of the formation of a CCA.

PCL – Power Content Label – A user-friendly way of displaying information to California consumers about the energy resources used to generate the electricity they sell, as required by AB 162 (Statue of 2009) and Senate Bill 1305 (Statutes of 1997).

PD – Proposed Decision – A procedural document in a CPUC Rulemaking that is formally commented on by parties to the proceeding. A PD is a precursor to a final Decision voted on by the five Commissioners of the CPUC.

PG&E – Pacific Gas & Electric - the IOU that serves 16 million people over a 70,000 square mile service area in Northern California.

PHC – Prehearing Conference - CPUC hearing to discuss the scope of a proceeding among other matters. Interested stakeholders can request party status during these.

Pnode – Pricing Node – In the CAISO optimization model, it is a point where a physical injection or withdrawal of energy is modeled and for which a LMP is calculated.

PPA – Power Purchase Agreement – A contract used to purchase the energy, capacity and attributes from a renewable resource project.

PRP – Priority Review Project - transportation electrification pilot projects approved by the CPUC pursuant to SB 350.

PRRR – Progress on Residential Rate Reform – Pursuant to a CPUC decision, the IOUs must submit to the CPUC and parties periodic updates on the progress of their efforts to assist customers with residential rate design changes related to rate reform, including tier collapse and transition to a default time of use rate.

PUC – Public Utilities Code - California statute that contains 33 Divisions, and the range of topics within this Code includes natural gas restructuring, private energy producers, telecommunication services, and specific municipal utility districts and transit authorities. Primary statute for governance of utilities as well as CCAs in California.

PURPA – Public Utilities Regulatory Policy Act - federal statute passed by Congress to encourage fuel diversity via alternative energy sources and to introduce competition into the electric sector. It was meant to promote energy conservation (reduce demand) and promote greater use of domestic energy and renewable energy (increase supply). The law was created in response to the 1973 energy crisis.

RA – Resource Adequacy - Under its Resource Adequacy (RA) program, the California Public Utilities Commission (CPUC) requires load-serving entities—both independently owned utilities and electric service providers—to demonstrate in both monthly and annual filings that they have purchased capacity commitments of no less than 115% of their peak loads.

RAM – Renewables Auction Mechanism - a procurement program the Investor-owned Utilities (IOUs) may use to procure RPS eligible generation. The IOUs may use RAM to satisfy authorized procurement needs, for example, system Resource Adequacy needs, local Resource Adequacy needs, RPS needs, reliability needs, Local Capacity Requirements, Green Tariff Shared Renewables needs, and any need arising from Commission or legislative mandates.

RE – Renewable Energy - Energy from a source that is not depleted when used, such as wind or solar power.

REC - Renewable Energy Certificate - A REC is the property right to the environmental benefits associated with generating renewable electricity. For instance, homeowners who generate solar

electricity are credited with 1 solar REC for every MWh of electricity they produce. Utilities obligated to fulfill an RPS requirement can purchase these RECs on the open market.

RES-BCT – Renewables Energy Self-Generation Bill Credit Transfer - This program enables local governments and universities to share generation credits from a system located on one government-owned property with billing accounts at other government-owned properties. The system size limit under RES-BCT is 5 MW, and bill credits are applied at the generation-only portion of a customer's retail rate.

RFO – Request for Offers a competitive procurement process used by organizations to solicit the submission of proposals from interested parties in response to a scope of services.

RPS - Renewable Portfolio Standard - Law that requires CA utilities and other load serving entities (including CCAs) to provide an escalating percentage of CA qualified renewable power (culminating at 33% by 2020) in their annual energy portfolio.

SB – Senate Bill - a piece of legislation that is introduced in the Senate. In other words, the Senate, rather than the Assembly, is the house of origin in the legislature for the legislation.

SCE – Southern California Edison - the large IOU that serves the Los Angeles and Orange County area.

SCP – Sonoma Clean Power Authority - CCA serving Sonoma County and surrounding areas in Northern California.

SDG&E – San Diego Gas & Electric - the IOU that serves San Diego county, they own the infrastructure that delivers SDCP energy to customers.

SGIP – Self-Generation Incentive Program – A program which provides incentives to support existing, new, and emerging distributed energy resources (storage, wind turbines, waste heat to power technologies, etc.)

SUE – Super User Electric - electric surcharge that's intended to penalize consumers for excessive energy use.

SVCE – Silicon Valley Clean Energy - CCA serving Silicon Valley Area.

TCR EPS Protocol – The Climate Registry Electric Power Sector Protocol – Online tools and resources provided by The Climate Registry to assist organizations to measure, report, and reduce carbon emissions.

TE – Transportation Electrification - For the transportation sector, electrification means replacing fossil fuels with electricity as the means of powering light-duty vehicles, medium- and heavy-duty trucks, and buses. The primary goal is to reduce greenhouse gas (GHG) emissions and, ultimately, contribute to mitigating the effects of climate change on the planet.

Time-of-Use (TOU) Rates — The pricing of delivered electricity based on the estimated cost of electricity during a particular time-block. Time-of-use rates are usually divided into three or four time-blocks per 24 hour period (on-peak, midpeak, off-peak and sometimes super off-peak) and by seasons of the year (summer and winter). Real time pricing differs from TOU rates in that it is based on actual (as opposed to forecasted) prices that may fluctuate many times a day and are weather sensitive, rather than varying with a fixed schedule.

TM – Tree Mortality - refers to the death of forest trees and provides a measure of forest health. In the context of energy, the CPUC is tasked with utilizing its authority to extend contracts and take actions to authorize new contracts on bioenergy facilities that receive feedstock from high hazard zones.

TURN – The Utility Reform Network - A ratepayer advocacy group charged with ensuring that California IOUs implement just and reasonable rates.

Unbundled RECs - Renewable energy certificates that verify a purchase of a MWH unit of renewable power where the actual power and the certificate are "unbundled" and sold to different buyers.

VPP – Virtual Power Plant – A cloud-based network that leverages an aggregation of distributed energy resources (DERs) to shift energy demand or provide services to the grid. For example, thousands of EV chargers could charge at a slower speed and hundreds of home batteries could discharge to the grid during a demand peak to significantly reduce the procurement of traditional supply resources.

VAMO – Voluntary Allocation, Market Offer - the process for SDG&E to allocate a proportional share of their renewable portfolio to SDCP and other LSEs within the service territory.