



## AGENDA

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

Thursday, May 23, 2024  
5:00 p.m.

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

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

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

1. Providing Oral Comments During Meeting. Anyone attending in person desiring to address the Board of Directors is asked to fill out a speaker's slip and present it to the Clerk of the Board or the Secretary. To provide remote comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. On Zoom video conference by computer or mobile phone, use the "Raise Hand" feature. This will notify the moderator that you wish to speak during a specific item on the agenda or during non-agenda Public Comment. Members of the public will not be shown on video but will be able to speak when called upon. If joining the meeting using the Zoom dial-in number, you can raise your hand by pressing \*9. Comments will be limited to three (3) minutes.
2. Written Comments. Written public comments must be submitted prior to the start of the meeting by using this [Web Comment Form](#). Please indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided to the Board members in writing. In the discretion of the Chair, the first ten (10) submitted comments shall be stated into the record of the meeting. Comments read at the meeting will be limited to the first 400 words. Comments received after the start of the meeting will be collected, sent to the Board members in writing, and be part of the public record.

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

The public may participate using the following remote options:

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

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

## **WELCOME**

## **CALL TO ORDER**

## **ROLL CALL**

## **PLEDGE OF ALLEGIANCE**

## **SPECIAL PRESENTATIONS AND INTRODUCTIONS**

- **Proclamation for outgoing Community Advisory Committee member Anna Webb**

Recommendation: Present Proclamation to departing CAC member Anna Webb

## **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 25, 2024, Meeting Minutes**
2. **Receive and File Treasurer's Report for Period Ending March 31, 2024**
3. **Receive and File Update on Programs**
4. **Receive and File Update on Power Services**
5. **Receive and File Update on Human Resources**
6. **Receive and File Update on Customer Operations**

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 Update on Community Advisory Committee**

## **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. **Consideration and Approval of Community Advisory Committee (CAC) Appointment for the City of Imperial Beach**

Recommendation: Approve appointment to the Community Advisory Committee (CAC) for the City of Imperial Beach.

11. **Receive and File Update on IT and Data Analytics**

Recommendation: Receive and File update on IT and Data Analytics

12. **Presentation of Draft FY2024-25 Budget**

Recommendation: Receive and File Draft FY2024-25 Budget.

13. **Approve the Contract for Professional Services for Marketing, Communications, Website Redesign and Website Maintenance with JSR Strategies in the Not-to-Exceed Amount of \$500,000 Over Two Years with Options for Two, One-Year Extensions with Not-to-Exceed Amounts of \$200,000 for Each Subsequent Year**

Recommendation: Board approval of the contract in substantially similar form to Attachment A for professional services for Marketing, Communications, Website Redesign and Website Maintenance with JSR Strategies in the not-to-exceed amount of \$500,000 over two years with options for two, one-year extensions with not-to-exceed amounts of \$200,000 for each subsequent year.

14. **Approve Energy Storage Service Agreement with Eusmod Project I, LLC**

Recommendation: Approve Energy Storage Service Agreement with Eusmod Project I, LLC for a 200 MW (4-hour) Battery Energy System Storage (BESS) facility.

**15. Approve Financially Settled Toll and Energy Storage Agreement with MRP Pacifica Marketing LLC for Hybridization of Border Facility**

Recommendation: Approve Financially Settled Toll and Energy Storage Agreement with MRP Pacifica Marketing LLC for a thermal resource including 51.25 MW of Resource Adequacy and a co-located 52 MWh Battery Storage (“Border Project”) and authorize execution by CEO.

**16. Approve Financially Settled Toll and Energy Storage Agreement with MRP Pacifica Marketing II LLC for Hybridization of Enterprise Facility**

Recommendation: Approve Financially Settled Toll and Energy Storage Agreement with MRP Pacifica Marketing II LLC for a thermal resource including 48.04 MW of Resource Adequacy and a co-located 52 MWh Battery Storage (“Enterprise Project”) and authorize execution by CEO.

**CHIEF EXECUTIVE OFFICER REPORT**

*SDCP 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 SDCP business. There is to be no discussion or action taken on comments made by Directors unless authorized by law.*

**ADJOURNMENT**

The San Diego Community Power Board of Directors will adjourn to a special meeting scheduled on Thursday, May 30, 2024, at 5:30 p.m.

***Compliance with the Americans with Disabilities Act***

SDCP Board of Directors meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may contact (888) 382-0169 or info@sdcommunitypower.org. Requests for

disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

### ***Availability of Board Documents***

Copies of the agenda and agenda packet are available at <https://sdcommunitypower.org/resources/meeting-notes/>. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Members prior to or during the Board meeting are available for public review as required by law. Public records, including agenda-related documents, can be requested electronically at [info@sdcommunitypower.org](mailto:info@sdcommunitypower.org) or by mail to SDCP, PO BOX 12716, San Diego, CA 92112. The documents may also be posted at the above website. Such public records are also available for inspection, by appointment, at San Diego Community Power, 2305 Historic Decatur Road, Suite 200, San Diego, CA 92106. Please contact [info@sdcommunitypower.org](mailto:info@sdcommunitypower.org) to arrange an appointment.



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

**MEETING MINUTES**

April 25, 2024

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

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

The Agenda Items were considered in the order presented.

**WELCOME**

**CALL TO ORDER**

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

**ROLL CALL**

**PRESENT:** Chair LaCava (City of San Diego), Director McCann (City of Chula Vista), Director Hinze (City of Encinitas), Director Aguirre (City of Imperial Beach), Director Parent (City of La Mesa), and Director Yamane (City of National City) via Zoom Teleconference

**ABSENT:** Vice Chair Lawson-Remer (County of San Diego)

**Staff Present:** Chief Executive Officer (CEO) Burns, Chief Operating Officer (COO) Clark, Chief Financial Officer (CFO)/Treasurer Washington, General Counsel Tyagi, Clerk of the Board Clerk Hernandez, and Assistant Clerk of the Board Vences

**PLEDGE OF ALLEGIANCE**

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

**SPECIAL PRESENTATIONS AND INTRODUCTIONS**

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

**SPECIAL PRESENTATIONS AND INTRODUCTIONS**

Chair LaCava (City of San Diego) introduced Maricela Hernandez, Clerk of the Board.

**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.

Director Yamane (City of National City) reported that she was participating in today’s meeting via Zoom Teleconference under one of the exemptions allowed by AB 2449.

**CONSENT CALENDAR**

**1. Approve March 28, 2024, Meeting Minutes**

Approved.

**2. Receive and File Treasurer’s Report for Period Ending February 29, 2024**

Received and filed.

**3. Receive and File Update on Programs**

Received and filed.

**4. Receive and File Update on Power Services**

Received and filed.

**5. Receive and File Update on Human Resources**

Received and filed.

**6. Receive and File Update on Customer Operations**

Received and filed.

**7. Receive and File Update on Marketing, Public Relations, and Local Government Affairs**

Received and filed.

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

Received and filed.

**9. Receive and File Update on Regulatory and Legislative Affairs**

Received and filed.

**10. Approve Sixth Amendment to Professional Services Agreement with NewGen Strategies and Solutions**

Approved.

**11. Adopt Resolution Appointing an SDCP Secretary**

Approved.

**12. Approve Fifth Amendment to Professional Services Agreement with Brentech Inc. for up to \$316,680 for Computer and IT-Related Services through June 30, 2024**

Approved.

ACTION: Motioned by Director Hinze (City of Encinitas) and seconded by Director McCann (City of Chula Vista) to approve Consent Calendar Items 1 through 12. The motion carried 6/0 by Roll Call Vote as follows:

- AYES: Chair LaCava (City of San Diego), Director McCann (City of Chula Vista), Director Hinze (City of Encinitas), Director Aguirre (City of Imperial Beach), Director Parent (City of La Mesa), and Director Yamane (City of National City)
- NOES: None
- ABSTAINED: None
- ABSENT: Vice Chair Lawson-Remer (County of San Diego)

**REGULAR AGENDA**

**13. Update on Vehicle-Grid Integration Strategy Overview**

Senior Program Manager, Timothy Treadwell provided an overview on the Vehicle-Grid Integration Strategy and what is happening in the electric vehicles (EVs) market and San Diego County. He also discussed opportunities and challenges involved with the Vehicle-Grid Integration Strategy.

Following Board questions and comments, no action was taken.

**14. Quarterly Report on Community Advisory Committee**

Community Advisory Committee Chair Vasilakis provided an update on the CAC's proceedings, efforts, existing and upcoming vacancies, announced Anna Webb's departure, Eddie Price's intention to step down, and shared accomplishments for quarter ending March 31, 2024.

Following Board questions and comments, no action was taken.



**15. Approve First Amendment to the EEI Transaction Confirmation for Modified CAM Resource Adequacy between SDCP and SDG&E**

Managing Director Power Services, Byron Vosburg, provided an overview on the First Amendment to the EEI Transaction Confirmation for Modified CAM Resource Adequacy between SDCP and SDG&E, highlighting CPUC decisions, proposed transactions, and contract terms, price, and resources.

**ACTION:** Motioned by Director McCann (City of Chula Vista) and seconded by Director Aguirre (City of Imperial Beach) to approve First Amendment to the EEI Transaction Confirmation for Modified CAM Resource Adequacy between SDCP and SDG&E and authorize the CEO to execute the agreement in substantially similar form. The motion carried 6/0 by Roll Call Vote as follows:

**AYES:** Chair LaCava (City of San Diego), Director McCann (City of Chula Vista), Director Hinze (City of Encinitas), Director Aguirre (City of Imperial Beach), Director Parent (City of La Mesa), and Director Yamane (City of National City)  
**NOES:** None  
**ABSTAINED:** None  
**ABSENT:** Vice Chair Lawson-Remer (County of San Diego)

**16. Approve Amended and Restated Power Purchase Agreement (PPA) with Pelicans Jaw Solar, LLC**

Managing Director Power Services, Byron Vosburg, provided an overview on the Amended and Restated Power Purchase Agreement (PPA) with Pelicans Jaw Solar, LLC, highlighting the project summary, history, key terms, staff analysis, workforce development, and community benefits.

**ACTION:** Motioned by Director McCann (City of Chula Vista) and seconded by Director Aguirre (City of Imperial Beach) to approve a 15-year Amended and Restated Renewable Power Purchase Agreement with Pelicans Jaw Solar, LLC for a 440 MW solar photovoltaic electric (PV) generation facility and 238.5 MW (4-hour) Battery Energy System Storage (BESS) facility. The motion carried 6/0 by Roll Call Vote as follows:

**AYES:** Chair LaCava (City of San Diego), Director McCann (City of Chula Vista), Director Hinze (City of Encinitas), Director Aguirre (City of Imperial Beach), Director Parent (City of La Mesa), and Director Yamane (City of National City)  
**NOES:** None  
**ABSTAINED:** None  
**ABSENT:** Vice Chair Lawson-Remer (County of San Diego)

**REPORTS BY CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL**

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

## **DIRECTOR COMMENTS**

There were no Director comments.

## **ADJOURNMENT**

Chair LaCava (City of San Diego) adjourned the meeting at 5:52 p.m. to the next regular Board meeting scheduled on Thursday, May 23, 2024.

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Maricela Hernandez, MMC, CPMC  
Clerk of the Board



## SAN DIEGO COMMUNITY POWER Staff Report – Item 2

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To: San Diego Community Power Board of Directors  
From: Eric W. Washington, Chief Financial Officer  
Via: Karin Burns, Chief Executive Officer  
Subject: Review of Treasurer’s Report for Period Ending March 31, 2024  
Date: May 23, 2024

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### RECOMMENDATION

Receive and File Treasurer’s Report for Period Ended March 31, 2024.

### BACKGROUND

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

SDCP has prepared its year-to-date financial statements for the period ending March 31, 2024, along with budgetary comparisons.

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

On February 22, 2024, the SDCP Board of Directors (Board) approved a mid-year budget amendment for Fiscal Year 2023-24 that included net operating revenues of \$1,304,274,067, total expenses of \$1,071,601,284, and a resulting net position of \$232,672,783. Given that the Board approval occurred on February 22, 2024, the review of the Treasurer’s Report for period ending March 31, 2024, and reports for the remaining fiscal year will include a comparison against the mid-year budget amendment adopted by the Board. Additionally, given that the mid-year budget amendment is very closely aligned with the SDCP ProForma, treasurer’s reports moving forward will no longer include a ProForma comparison.

## ANALYSIS AND DISCUSSION

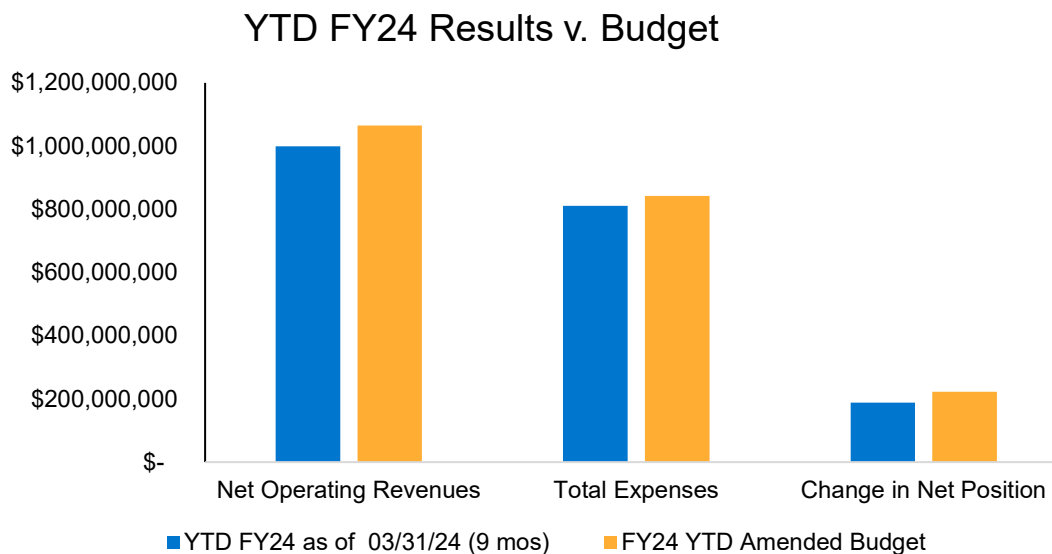
Actual financial results for the period ended 3/31/24: \$998.84 million in net operating revenues were reported compared to \$1.06 billion budgeted for the period. \$810.67 million in total expenses were reported (including \$790.83 million in energy costs) compared to \$842.22 million budgeted for the period (including \$803.66 million budgeted for energy costs). After expenses, SDCP’s change in net position of \$188.17 million was reported for Fiscal Year 2023-24. The following is a summary of the actual results compared to the Fiscal Year 2023-24 Amended Budget.

Table 1: Budget Comparison Versus Actual Result

Budget Comparison					
	YTD FY24 as of 03/31/24 (9 mos)	FY24 YTD Amended Budget	Budget Variance (\$)	Budget (%)	
Net Operating Revenues	\$ 998,841,535	\$ 1,064,910,269	\$ (66,068,734)	94%	
Total Expenses	\$ 810,669,218	\$ 842,219,623	\$ (31,550,405)	96%	
<b>Change in Net Position</b>	<b>\$ 188,172,317</b>	<b>\$ 222,690,646</b>	<b>\$ (34,518,329)</b>	<b>-16%</b>	

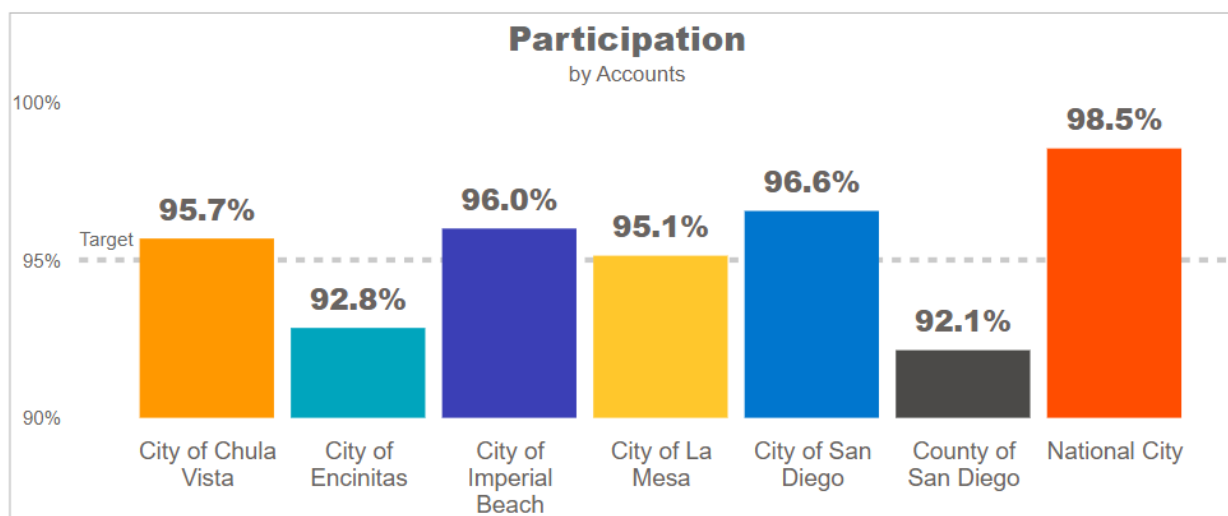
- Net operating revenues finished \$66.07 million (or 6.0 percentage points) under the budget primarily due to lower-than-expected customer load correlated with cooler weather in the summer months of 2023.
- Operating expenses finished \$31.55 million (or 4.0 percentage points) under the budget primarily similarly due to lower-than-expected customer load correlated with cooler weather in the summer months of 2023.

Figure 1: Proforma versus Actual Results



For the period ending 3/31/24, SDCP contributed \$188,172,317 to its net position compared to the expected gain of \$222,690,646 per the Fiscal Year 2023-24 amended budget. Total SDCP reserves at the end of the period were \$388,527,712 based on cash and cash equivalents – unrestricted, and total available liquidity (including lines of credit) was \$501,027,712. SDCP has a total Fiscal Year 2023-24 year-end reserve target of \$524,984,866, which is equivalent to 180-days of total operating expenses as set in SDCP’s Strategic Goals.

Figure 2: Participation Rates as of 5/1/2024



Jurisdiction	Active	Eligible	Opt Outs	Participation
<b>City of Chula Vista</b>	93,957	98,200	4,243	95.7%
<b>City of Encinitas</b>	26,441	28,478	2,037	92.8%
<b>City of Imperial Beach</b>	10,502	10,940	438	96.0%
<b>City of La Mesa</b>	28,027	29,460	1,433	95.1%
<b>City of San Diego</b>	601,523	622,994	21,471	96.6%
<b>County of San Diego</b>	174,895	189,915	14,921	92.1%
<b>National City</b>	19,251	19,542	287	98.5%
<b>Total</b>	<b>954,596</b>	<b>999,529</b>	<b>44,830</b>	<b>95.5%</b>

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 SDCP 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 is also presenting the state of SDCP Arrearages related to financial risk for FRMC consideration and for regular review. Additional metrics can be added by request. The below arrearage data includes SDCP's Receivables aged 120+ Days as of 5/1/2024.

Figure 3: State of SDCP Arrearages as of 5/01/2024

Balances over 120 days

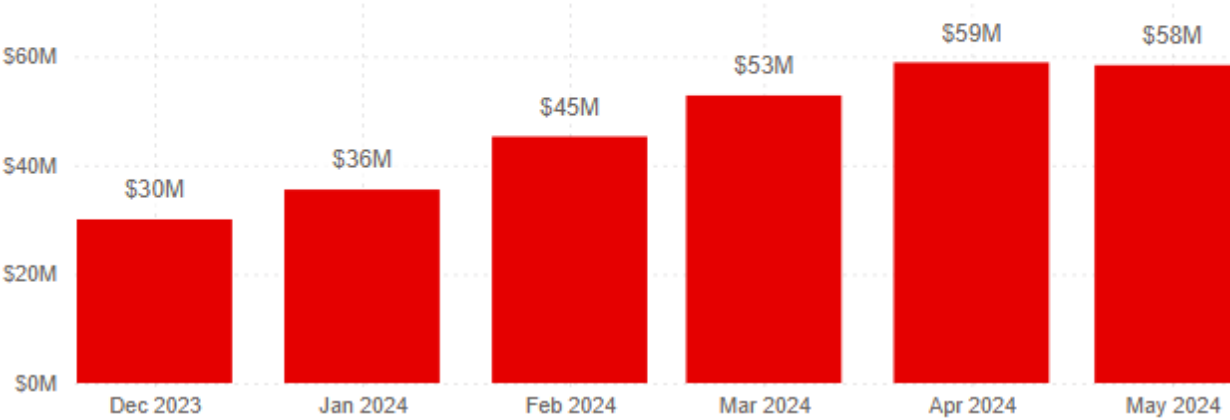
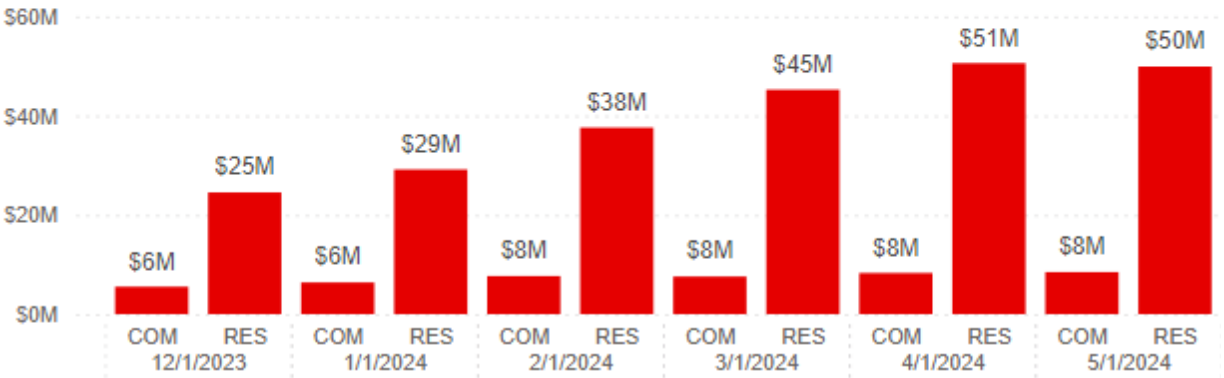


Figure 4: State of SDCP Arrearages Residential vs Commercial as of 5/01/2024

Balances over 120 days - RES vs COM



**COMMITTEE REVIEW**

The report was reviewed by the Finance and Risk Management Committee (FRMC) on May 16, 2024.

**FISCAL IMPACT**

N/A

**ATTACHMENTS**

Attachment A: 2024 Year-to-Date Period Ended 3/31/24 Financial Statements



## ACCOUNTANTS' COMPILATION REPORT

Management  
San Diego Community Power

Management is responsible for the accompanying financial statements of San Diego Community Power (a California Joint Powers Authority) which comprise the statement of net position as of March 31, 2024, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

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

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

*Maher Accountancy*

San Rafael, CA  
April 29, 2024



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

**ASSETS**

Current assets	
Cash and cash equivalents - unrestricted	\$ 388,527,712
Cash and cash equivalents - restricted	500,000
Accounts receivable, net of allowance	69,565,566
Accrued revenue	39,591,980
Prepaid expenses	9,251,255
Other receivables	873,033
Deposits	<u>1,901,222</u>
Total current assets	510,210,768
Noncurrent assets	
Cash and cash equivalents - restricted	1,147,000
Lease asset, net of amortization	1,347,879
Capital assets, net of depreciation	<u>132,609</u>
Total noncurrent assets	<u>2,627,488</u>
Total assets	<u><u>512,838,256</u></u>

**LIABILITIES**

Current liabilities	
Accrued cost of electricity	125,765,417
Accounts payable	3,940,240
Other accrued liabilities	2,289,261
State surcharges payable	578,353
Deposits - energy suppliers	3,812,500
Interest and finance costs payable	281,693
Lease liability	<u>950,071</u>
Total current liabilities	<u>137,617,535</u>
Noncurrent liabilities	
Supplier security deposits	624,000
Lease liability	<u>572,502</u>
Total noncurrent liabilities	<u>1,196,502</u>
Total liabilities	<u><u>138,814,037</u></u>

**NET POSITION**

Restricted for collateral	1,647,000
Unrestricted	<u>372,377,219</u>
Total net position	<u><u>\$ 374,024,219</u></u>

**SAN DIEGO COMMUNITY POWER  
STATEMENT OF REVENUES, EXPENSES  
AND CHANGES IN NET POSITION  
Nine Months Ended March 31, 2024**

**OPERATING REVENUES**

Electricity sales, net	\$ 997,761,785
Grant revenue	807,250
Other income	322,200
Total operating revenues	<u>998,891,235</u>

**OPERATING EXPENSES**

Cost of electricity	790,875,856
Contract services	14,006,692
Staff compensation	8,221,548
Other operating expenses	2,456,015
Depreciation and amortization	505,922
Total operating expenses	<u>816,066,033</u>
Operating income	<u>182,825,202</u>

**NON-OPERATING REVENUES (EXPENSES)**

Interest income	6,575,706
Interest and financing expense	(1,389,020)
Nonoperating revenues (expenses), net	<u>5,186,686</u>

**CHANGE IN NET POSITION**

	188,011,888
Net position at beginning of year	186,012,331
Net position at end of year	<u>\$ 374,024,219</u>

**SAN DIEGO COMMUNITY POWER  
STATEMENT OF CASH FLOWS  
Nine Months Ended March 31, 2024**

**CASH FLOWS FROM OPERATING ACTIVITIES**

Receipts from customers	\$ 1,079,731,434
Receipts of supplier security deposits	34,626,179
Receipts from wholesale sales	16,474,870
Other operating receipts	1,129,450
Payments to suppliers for electricity	(748,830,123)
Payments for goods and services	(15,447,375)
Payments of staff compensation and benefits	(7,862,170)
Payments for deposits and collateral	(4,304,693)
Payments of state surcharges	(1,742,916)
Net cash provided by operating activities	353,774,656

**CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES**

Principal payments - bank note	(35,730,000)
Interest and related expense payments	(1,627,931)
Net cash provided (used) by non-capital financing activities	(37,357,931)

**CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES**

Payments of lease liability	(350,466)
Payments to acquire capital assets	(71,550)
Net cash (used) by capital and related financing activities	(422,016)

**CASH FLOWS FROM INVESTING ACTIVITIES**

Interest income received	6,349,123
Net change in cash and cash equivalents	322,343,832
Cash and cash equivalents at beginning of year	67,830,880
Cash and cash equivalents at end of year	\$ 390,174,712

**Reconciliation to the Statement of Net Position**

Cash and cash equivalents (unrestricted)	\$ 388,527,712
Restricted cash - current	500,000
Restricted cash - noncurrent	1,147,000
Cash and cash equivalents	\$ 390,174,712

**SAN DIEGO COMMUNITY POWER**  
**STATEMENT OF CASH FLOWS (continued)**  
**Nine Months Ended March 31, 2024**

**RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES**

Operating income	\$ 182,825,202
Adjustments to reconcile operating income to net cash provided by operating activities	
Depreciation and amortization expense	505,922
(Increase) decrease in:	
Accounts receivable, net	40,948,165
Accrued revenue	39,200,804
Prepaid expenses	21,276,243
Other receivables	(412,735)
Deposits	15,755,128
Increase (decrease) in:	
Accrued cost of electricity	48,420,074
Accounts payable	3,500,975
Other accrued liabilities	(1,505,386)
State surcharges payable	77,764
Supplier security deposits	3,182,500
Net cash provided by operating activities	<u>\$ 353,774,656</u>



## ACCOUNTANTS' COMPILATION REPORT

Board of Directors  
San Diego Community Power

Management is responsible for the accompanying special purpose operating fund budgetary comparison schedule of San Diego Community Power (SDCP), a California Joint Powers Authority, for the period ended March 31, 2024, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

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

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

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

*Maher Accountancy*

San Rafael, CA  
April 29, 2024

**SAN DIEGO COMMUNITY POWER  
OPERATING FUND  
BUDGETARY COMPARISON SCHEDULE  
Nine Months Ended March 31, 2024**

	<b>2023/24 YTD Amended Budget</b>	<b>2023/24 YTD Actual</b>	<b>2023/24 YTD Amended Budget Variance (Under) Over</b>	<b>2023/24 YTD Actual/ Amended Budget %</b>	<b>2023/24 Annual Amended Budget</b>	<b>2023/24 Amended Budget Remaining</b>
<b>REVENUES AND OTHER SOURCES</b>						
Gross Ratepayer Revenues	1,115,089,287	\$ 1,039,335,193	(75,754,094)	93%	\$ 1,365,732,007	\$ 326,396,814
Less: Uncollectible Customer Accounts	(50,179,018)	(41,573,408)	8,605,610	83%	(61,457,940)	(19,884,532)
Grant Revenue	-	807,250	807,250		-	(807,250)
Other income		272,500	272,500		-	(272,500)
Total Revenues and Other Sources	<u>1,064,910,269</u>	<u>998,841,535</u>	<u>(66,068,734)</u>		<u>1,304,274,067</u>	<u>305,432,532</u>
<b>OPERATING EXPENSES</b>						
Cost of Energy	803,659,343	790,826,157	(12,833,186)	98%	1,020,844,552	230,018,395
Professional Services and Consultants	16,950,554	13,376,168	(3,574,386)	79%	22,250,657	8,874,489
Personnel Costs	8,809,332	8,221,548	(587,784)	93%	11,603,394	3,381,846
Marketing and Outreach	2,229,224	1,464,619	(764,605)	66%	2,925,978	1,461,359
General and Administration	5,196,691	1,706,299	(3,490,392)	33%	6,812,564	5,106,265
Programs	88,000	259,518	171,518	295%	115,500	(144,018)
Total Operating Expenses	<u>836,933,144</u>	<u>815,854,309</u>	<u>(21,078,835)</u>		<u>1,064,552,645</u>	<u>248,698,336</u>
Operating Income (Loss)	<u>227,977,125</u>	<u>182,987,226</u>	<u>(44,989,899)</u>		<u>239,721,422</u>	<u>56,734,196</u>
<b>NON-OPERATING REVENUES (EXPENSES)</b>						
Investment Income	-	6,575,706	6,575,706		-	(6,575,706)
Interest and Related Expenses	(1,795,229)	(1,390,615)	404,614	77%	(2,393,639)	(1,003,024)
Transfer to Capital Investment Program	(3,491,250)	-	3,491,250	0%	(4,655,000)	(4,655,000)
Total Non-Operating Revenues (Expenses)	<u>(5,286,479)</u>	<u>5,185,091</u>	<u>10,471,570</u>		<u>(7,048,639)</u>	<u>(12,233,730)</u>
<b>NET INCREASE (DECREASE)</b>	<u>\$ 222,690,646</u>	<u>\$ 188,172,317</u>	<u>\$ (34,518,329)</u>		<u>\$ 232,672,783</u>	<u>\$ 44,500,466</u>

See accountants' compilation report.



## SAN DIEGO COMMUNITY POWER Staff Report – Item 3

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To: San Diego Community Power Board of Directors  
From: Colin Santulli, Director of Programs  
Via: Jack Clark, Chief Operating Officer  
Subject: Update on Programs  
Date: May 23, 2024

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### RECOMMENDATION

Receive and file update on customer energy programs.

### BACKGROUND

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

### ANALYSIS AND DISCUSSION

Updates on customer energy programs are detailed below.

#### Building Electrification

##### ***California Energy Commission (“CEC”) Equitable Building Decarbonization Program***

Status: For the past year, Staff have been working with a coalition of Southern California agencies led by the Southern California Regional Energy Network (“SoCalREN”) to prepare for the CEC’s Equitable Building Decarbonization (“EBD”) direct install program. The CEC released its solicitation for program administrators on April 30, 2024. Responses are due by June 30, 2024, and a virtual pre-application workshop took place on May 10, 2024.

Next Steps: Staff will continue to meet with the coalition of Southern California agencies to craft a competitive proposal response while meeting the needs of residents and the program’s goals. Staff will be supporting the coalition throughout the proposal response period. Notice of Proposed Awards are anticipated by late-summer CY 2024.

## ***U.S. Environmental Protection Agency (“EPA”) Climate Pollution Reduction Grant (“CPRG”) Program***

Please refer to [Item 3](#) of the March 2024 Board staff report for the most recent update on this program.

## **Energy Education**

### ***Energy Education Website***

Please refer to [Item 3](#) of the February 2024 Board staff report for the most recent update on this program.

## **Energy Efficiency**

### ***California Department of Food and Agriculture (“CDFA”) Healthy Refrigeration Grant Program***

Please refer to [Item 3](#) of the February 2024 Board staff report for the most recent update on this program.

### ***FLEXmarket Pilot***

Please refer to [Item 3](#) of the March 2024 Board staff report for the most recent update on this program.

### ***Regional Energy Network (“REN”) Formation***

Please refer to [Item 3](#) of the January 2024 Board staff report for the most recent update on this program.

## **Flexible Load**

### ***Flexible Load Strategy***

Status: Staff have completed the software requirements gathering process that will guide the procurement process for a Distributed Energy Resources Management System (“DERMS”) software. Staff also requested existing bids from other public agencies that ran a DERMS solicitation. Staff are using the requirements and existing bids to guide the procurement process.

Next Steps: If required, Staff anticipate releasing a DERMS Request for Proposal for bidders in June 2024. Staff anticipate the DERMS software to be under contract by Q3 CY 2024.

### ***Vehicle-Grid Integration (“VGI”) Strategy***

Please refer to [Item 3](#) of the April 2024 Board staff report for the most recent update on this program.

## **Grant Programs**

### ***Community Clean Energy Grant Program***



Status: The [FY 2023-24 grant cycle](#) closed on April 5, 2024, and the grant evaluation process is currently taking place throughout April and May 2024.

Next Steps: Staff anticipate grant agreements to be executed and grant awards to be made by June 2024.

### ***Member Agency Grant Program***

Status: SDCP's FY 2023-24 Member Agency Grant Program closed on April 12, 2024. Grant applications were received from all seven of SDCP's member agencies and are currently being evaluated.

Next Steps: Staff anticipate grant agreements to be executed and grant awards to be made by June 2024.

## **Solar and Energy Storage**

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

Please refer to [Item 2](#) of the December 2023 Board staff report for the most recent update on this program. Staff anticipate bringing back an item to the Board in Q2/Q3 CY 2024 to update the tariff with support for virtual and aggregation versions of NBT.

### ***Residential Solar + Storage Program***

Please refer to [Item 3](#) of the March 2024 Board staff report for the most recent update on this program.

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

Status: The DAC-SASH Readiness Pilot was launched with GRID Alternatives ("GRID") in April 2024 upon finalization of the pilot Guidelines. The Guidelines stipulate how GRID will implement the pilot and provide no-cost roof repairs or replacement to homes that are otherwise eligible to participate in the DAC-SASH program. By providing repairs or replacement of roofs, GRID will be able to enroll more homes in the DAC-SASH program and complete more solar system installations within SDCP's service territory.

GRID is now working to identify eligible homes and homeowners and is focusing their targeting techniques on homes within the Transformative Climate Communities ("TCC") project area to support the TCC grant. The identification work is expected to continue through August 2024. Roof repair/replacement work may be completed simultaneously for eligible homes and may continue into March 2025.

Next Steps: Staff will meet with GRID monthly to keep track of the progress of the pilot and ensure success.

### ***Solar for Our Communities***

Status: The Disadvantaged Communities Green Tariff ("DAC-GT") and Community Solar Green Tariff ("CSGT") Request for Offer ("RFO") closed on February 24, 2024. The Green

Access Proceeding (“GAP”) Proposed Decision was released on March 5, 2024, and as a result, Staff have halted the evaluation of the bids received from the initial solicitation due to several substantial changes proposed that may affect the DAC-GT and CSGT program requirements. The Final Decision is expected to be released on May 30, 2024.

Next Steps: Staff will submit the Annual Budget Advice Letter (“ABAL”) 30 days after the Final Decision. Staff will present awarded bids to the Board for approval prior to submitting executed Power Purchase Agreements (“PPAs”) to the CPUC via a Tier 2 Advice Letter for approval no later than 180 days following the notification of selected bidders.

#### **AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW**

N/A

#### **FISCAL IMPACT**

N/A

#### **ATTACHMENTS**

N/A



## SAN DIEGO COMMUNITY POWER Staff Report – Item 4

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To: San Diego Community Power Board of Directors  
From: Byron Vosburg, Managing Director of Power Services  
Via: Karin Burns, Chief Executive Officer  
Subject: Update on Power Resources  
Date: May 23, 2024

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### RECOMMENDATION

Recommendation to receive and file update on Power Resources.

### BACKGROUND

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

### ANALYSIS AND DISCUSSION

#### Power Services Staffing

Building out a team of experienced, knowledgeable energy professionals has long been a top priority and allows SDCP not only to solicit, negotiate, and administer contracts for energy supply effectively, but also to monitor market activity, manage risk, bring in-house several activities that have historically been completed by consultants, and to dedicate additional resources to local and distributed energy procurement and development efforts. The SDCP Power Services team is now ten people strong, currently in the hiring process for an Energy Settlements Analyst, and excited to continue stable, prudent growth through 2024.

To help manage the risks associated with its growing power portfolio and financial & budget processes, staff issued an RFP for Professional Services for Energy Trading Risk Management (ETRM) in January 2024. The range of ETRM functions may include deal capture, position tracking and management, valuation, reporting, risk analysis, settlements, and budget integration. Staff is currently undergoing proof-of-concept trials with shortlisted submissions and is targeting board review of selected vendor(s) contracts in July 2024 or August 2024 for implementation by Q1 2025.

## Long-term Renewable Energy RFPs

As SDCP strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) are becoming integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term PPAs lock in renewable energy supply around which SDCP can build its power supply portfolio while also providing power supply cost certainty around which SDCP can develop its pro forma financial model. Moreover, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that SDCP provide 65% of its RPS-required renewable energy from contracts of at least ten years in length. Finally, in D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, incremental generation facilities that will achieve commercial operation during 2023 through 2026 for purposes of “Mid Term Reliability” (MTR). These requirements have been augmented and extended into 2026 and 2027 via D.23-02-040.

In pursuit of long-term contracts for renewable energy, over the past 18 months, staff released two RFPs for eligible Renewable Energy resources, an RFP for Stand Alone Storage projects, and evaluated other contracting opportunities to meet SDCP’s procurement goals. The SDCP Board has approved resulting contracts for over 1,000 MW of renewable generation and over 650 MW of storage capacity. Staff remain in negotiations with several other developers for additional resources that are expected to be online between 2025 and 2028. Staff and the Energy Contracts Working Group (ECWG) evaluate all RFP submissions prior to entering negotiations with selected participants. Assuming that Staff and shortlisted developer(s) are able to agree to mutually agreeable contracts consistent with terms authorized by the ECWG, Staff then review draft terms with the SDCP Board for approval and authorization to execute the relevant documents.

## Local Development

SDCP’s rolling Local RFI remains open and, in the last twelve months, has yielded eight board-approved contracts for local generation and storage facilities. SDCP also released an RFO for distributed renewable energy resources (DERs) which focuses on a broad range of distribution-level renewable projects within San Diego County. Staff have notified shortlisted participants and hope to present the resulting PPAs to the Board in the coming months. Additional ongoing local initiatives include a Feed-in-Tariff Program revamp and expansion, expected later this year, and continued collaboration with member agency staff to identify strategic opportunities to further infill development in 2024.

As Program Administrators of the CPUC's Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) programs, SDCP launched the RFP solicitation for respective program resources on August 26<sup>th</sup>, proposals for which were due February 24, 2024. Staff is currently reviewing all submitted offers as well as reviewing a recent Proposed Decision by the CPUC that has potential impacts to the existing programs.

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

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

### Short-Term RPS Procurement

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

Near-term California power markets continue to soften due to declining power and gas markets throughout the US, a mild California winter, significant Sierra snowpack, and robust spring-time renewable generation, all of which have so far offset the impacts of drought in the Pacific Northwest and resource scarcity throughout WECC.

### **COMMITTEE REVIEW**

N/A

### **FISCAL IMPACT**

N/A

### **ATTACHMENTS**

N/A



## SAN DIEGO COMMUNITY POWER Staff Report – Item 5

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To: San Diego Community Power Board of Directors  
From: Chandra Pugh, Director of People Operations  
Via: Karin Burns, Chief Executive Officer  
Subject: Update on Human Resources  
Date: May 23, 2024

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### RECOMMENDATION

Receive and file the update on Human Resources.

### DISCUSSION AND ANALYSIS

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

#### Hiring

Current open positions include:

Strategic Policy Manager / Sr  
Strategic Policy Manager  
Settlements Analyst  
Project Operations and Proposal  
Manager  
Community Engagement Associate  
Marketing Manager

#### Updates:

The Human Resources team is reviewing current policies to ensure equitable practices in line with our mission and values and in alignment with industry norms. This month we made recommendations to the leadership team after a review of our internal mobility, promotions process, and leave accruals policies. We will be sharing out the final policy updates with the organization during our All-Hands meeting.



It was also a pleasure to have a representative from our retirement plan provider speak to the staff at our monthly Lunch and Learn. We know that our employees need to have access to all available tools when preparing for their future and are committed to providing opportunities to enhance financial literacy and strategies for savings and retirement planning.

### **COMMITTEE REVIEW**

N/A

### **FISCAL IMPACT**

N/A

### **ATTACHMENTS**

N/A



## SAN DIEGO COMMUNITY POWER Staff Report – Item 6

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To: San Diego Community Power Board of Directors  
From: Lucas Utouh, Senior Director of Data Analytics and Customer Operations  
Via: Karin Burns, Chief Executive Officer  
Subject: Update on Customer Operations  
Date: May 23, 2024

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### RECOMMENDATION

Receive and file an update on various customer operations.

### BACKGROUND

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

### ANALYSIS AND DISCUSSION

#### A) Mass Enrollment Update

##### Phase 4:

Mass enrollment for all customers, including both Non-Net Energy Metering (Non-NEM) and Net Energy Metering (NEM) accounts, in National City and Unincorporated County of San Diego has officially completed as of April 1, 2024. As of April 29, 2024, SDCP is serving a cumulative total count of **954,596** active accounts. There are **174,895** active accounts currently enrolled in Unincorporated County of San Diego and **19,251** in National City.

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



## B) Customer Participation Tracking

Staff and Calpine have worked together to create a reporting summary of customer actions to opt out of SDCP service, opt up to Power100, or opt down from Power100 to PowerOn. The below charts summarize these actions accordingly as of April 29, 2024:

### I. Total Opt Outs - Including Active and Inactive

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

Opt Outs by Jurisdiction	2021	2022	2023	2024 Q1	2024-04	Total
City of Chula Vista	266	3,472	748	120	20	4,626
City of Encinitas	66	1,886	229	39	3	2,223
City of Imperial Beach	32	345	99	25	2	503
City of La Mesa	85	1,272	235	39	7	1,637
City of San Diego	1,077	19,278	3,187	530	71	24,140
County of San Diego			13,597	1,368	82	15,047
National City			284	22	3	309
<b>Total</b>	<b>1,526</b>	<b>26,253</b>	<b>18,379</b>	<b>2,143</b>	<b>188</b>	<b>48,485</b>

Opt Outs by Class Code	2021	2022	2023	2024 Q1	2024-04	Total
Residential	36	25,717	16,762	2,023	180	44,714
Commercial/Industrial	1,490	536	1,617	120	8	3,771
<b>Total</b>	<b>1,526</b>	<b>26,253</b>	<b>18,379</b>	<b>2,143</b>	<b>188</b>	<b>48,485</b>

Opt Outs by Reason	2021	2022	2023	2024 Q1	2024-04	Total
Concerns about government-run power agency	24	1,496	963	67	4	2,554
Concerns about lack of equivalent CCA programs		132	89	7	1	229
Decline to provide	227	3,596	2,528	214	22	6,587
Dislike being automatically enrolled	203	7,214	5,474	529	33	13,453
Existing relationship with the utility	2	2,394	1,968	210	19	4,593
Have grid reliability concerns	1	292	252	14	1	560
Have renewable Energy Reliability Concerns	6					6
Other	818	2,653	1,547	186	20	5,224
Rate or additional cost concerns	6	7,754	4,905	828	79	13,570
Rate or Cost Concerns	233					233
Service or billing concerns	6	724	655	88	9	1,482
<b>Total</b>	<b>1,526</b>	<b>26,253</b>	<b>18,379</b>	<b>2,143</b>	<b>188</b>	<b>48,485</b>

Opt Outs by Method	2021	2022	2023	2024 Q1	2024-04	Total
Customer Service Rep (CSR)	1,098	7,002	4,380	598	58	13,135
Interactive Voice Response (IVR)	101	4,899	3,792	506	71	9,369
Web	327	14,353	10,208	1,039	59	25,985
<b>Total</b>	<b>1,526</b>	<b>26,253</b>	<b>18,379</b>	<b>2,143</b>	<b>188</b>	<b>48,485</b>

\*Historical opt outs including inactive accounts of 4/29/2024.

## II. Opt Ups to Power 100 - Including Active and Inactive

Opt Ups by Jurisdiction	2021	2022	2023	2024 Q1	2024-04	Total
City of Chula Vista	701	168	55	5	16	945
City of Encinitas	18	1	1			20
City of Imperial Beach	60	29	11	2	2	104
City of La Mesa	148	118	19	3	1	289
City of San Diego	3,163	2,868	484	72	74	6,648
County of San Diego			200	19	562	781
National City			11	17	5	33
<b>Total</b>	<b>4,090</b>	<b>3,184</b>	<b>781</b>	<b>118</b>	<b>660</b>	<b>8,819</b>

Opt Ups by Class Code	2021	2022	2023	2024 Q1	2024-04	Total
Residential	3	2,895	550	72	68	3,586
Commercial/Industrial	4,087	290	231	46	592	5,234
<b>Total</b>	<b>4,090</b>	<b>3,184</b>	<b>781</b>	<b>118</b>	<b>660</b>	<b>8,819</b>

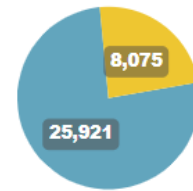
Opt Ups by Method	2021	2022	2023	2024 Q1	2024-04	Total
Customer Service Rep (CSR)	4,059	1,369	301	51	651	6,419
Interactive Voice Response (IVR)	4	81	78	22	1	186
Web	27	1,738	402	45	8	2,218
<b>Total</b>	<b>4,090</b>	<b>3,184</b>	<b>781</b>	<b>118</b>	<b>660</b>	<b>8,819</b>

### Current Active Power100 Accounts

#### Active Power100 Accounts

TownOrTerritory	Count
City of Encinitas	25,921
City of San Diego	6,051
City of Chula Vista	888
County of San Diego	772
City of La Mesa	254
City of Imperial Beach	79
City of National City	31
<b>Total</b>	<b>33,996</b>

#### Active Power100 Opt vs Defaulted



● Encinitas Defaulted ● Opted Up

## III. Opt Downs from Power100 - Including Active and Inactive

Opt Downs by Jurisdiction	2021	2022	2023	2024 Q1	2024-04	Total
City of Chula Vista		1	4			5
City of Encinitas	35	425	71	12	2	545
City of Imperial Beach		1				1
City of La Mesa		2				2
City of San Diego		26	13	2		41
County of San Diego			5		1	6
National City					1	1
<b>Total</b>	<b>35</b>	<b>455</b>	<b>93</b>	<b>14</b>	<b>4</b>	<b>601</b>

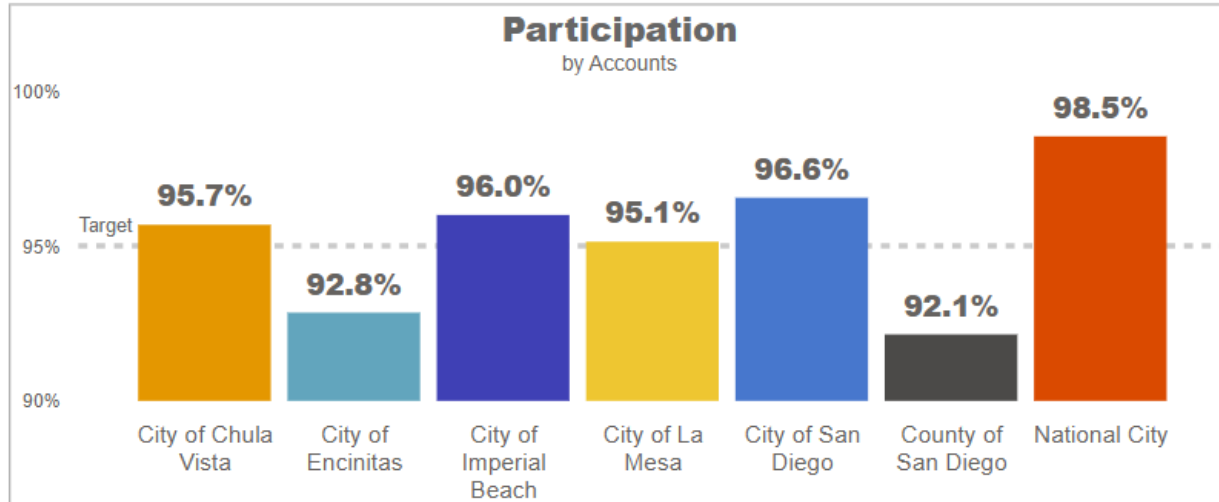
  

Opt Downs by Class Code	2021	2022	2023	2024 Q1	2024-04	Total
Residential		433	84	12	4	533
Commercial/Industrial	35	22	9	2		68
<b>Total</b>	<b>35</b>	<b>455</b>	<b>93</b>	<b>14</b>	<b>4</b>	<b>601</b>

Opt Downs by Method	2021	2022	2023	2024 Q1	2024-04	Total
Customer Service Rep (CSR)	31	305	62	10	2	410
Interactive Voice Response (IVR)	4	26	3	1		34
Web		124	28	3	2	157
<b>Total</b>	<b>35</b>	<b>455</b>	<b>93</b>	<b>14</b>	<b>4</b>	<b>601</b>

## Participation by Jurisdiction



Jurisdiction	Active	Eligible	Opt Outs	Participation
<b>City of Chula Vista</b>	93,957	98,200	4,243	95.7%
<b>City of Encinitas</b>	26,441	28,478	2,037	92.8%
<b>City of Imperial Beach</b>	10,502	10,940	438	96.0%
<b>City of La Mesa</b>	28,027	29,460	1,433	95.1%
<b>City of San Diego</b>	601,523	622,994	21,471	96.6%
<b>County of San Diego</b>	174,895	189,915	14,921	92.1%
<b>National City</b>	19,251	19,542	287	98.5%
<b>Total</b>	<b>954,596</b>	<b>999,529</b>	<b>44,830</b>	<b>95.5%</b>

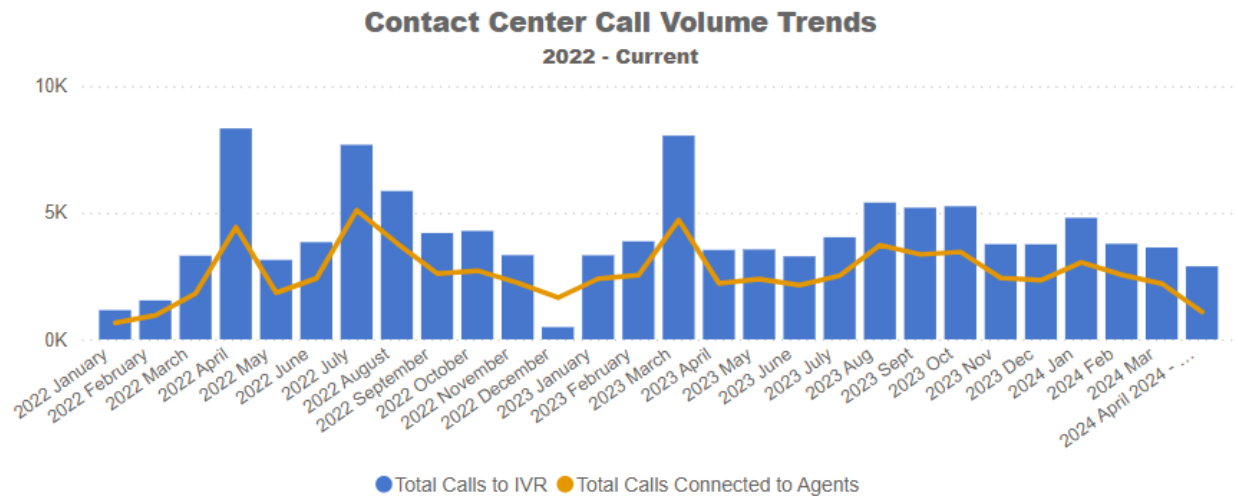
The Phase 4 mass enrollment process in National City and the Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers completed in May 2023. Net Energy Metering (NEM) customers were enrolled from April 2023 through March 2024 based on their true-up date. Mass enrollment for all customer accounts within National City and the Unincorporated County of San Diego concluded on April 1, 2024.

### C) Contact Center Metrics

Call volumes have continued to decrease with the completion of mass enrollment and pre-enrollment noticing. With the Joint Rate Comparison (JRC) having been released in mid-April that compares current SDCP rates to those of SDG&E, we anticipate that we may see a slight increase in calls. This latest JRC is accessible on our website via: [2024 Joint Rate Comparison](#)

The chart below summarizes contact made by customers into the Contact Center broken down by month through April 29<sup>th</sup>, 2024:

### V. Contact Center Metrics

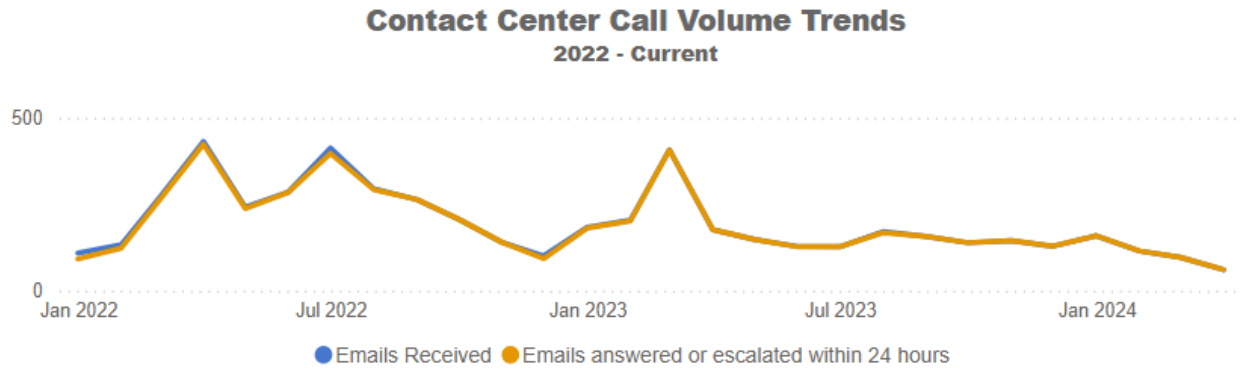


### Interactive Voice Response (IVR) and Service Level Agreement (SLA) Metrics

	Total					
	2021	2022	2023	2024 Q1	2024-04	Total
<b>Total Calls to IVR</b>	2,289	47,118	52,977	12,198	2,883	<b>117,465</b>
<b>Total Calls Connected to Agents</b>	1,401	30,174	34,173	7,792	1,083	<b>74,623</b>
<b>Avg Seconds to Answer</b>	20	12	7	16	11	<b>12</b>
<b>Avg Call Duration (Minutes)</b>	8.5	9.8	9.6	9.4	8.2	<b>9.3</b>
<b>Calls Answered within 60 Seconds (75% SLA)</b>	96.23%	95.50%	97.57%	92.85%	95.97%	<b>96.15%</b>
<b>Abandon Rate</b>	0.57%	0.36%	0.19%	0.57%	0.55%	<b>0.38%</b>

Similar to other CCAs' service territories, SDCP 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 SDCP's website for processing opt actions to continue accounting 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.

## D) Customer Service Email Trends



### Customer Service Emails

	Total					
	2021	2022	2023	2024 Q1	2024-04	Total
<b>Emails Received</b>	272	2,894	2,116	371	61	<b>5,714</b>
<b>Emails answered or escalated within 24 hours</b>	257	2,821	2,107	371	61	<b>5,617</b>
<b>Completion (%)</b>	94%	96%	100%	100%	100%	<b>97%</b>

As of this latest reporting month, SDCP has a total of 11 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 SDCP.

### COMMITTEE REVIEW

N/A

### FISCAL IMPACT

N/A

### ATTACHMENTS

N/A



## SAN DIEGO COMMUNITY POWER Staff Report – Item 7

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To: San Diego Community Power Board of Directors  
From: Jen Lebron, Director of Public Affairs  
Via: Karin Burns, Chief Executive Officer  
Subject: Marketing, Public Relations, and Local Government Affairs  
Date: May 23, 2024

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### RECOMMENDATION

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

### BACKGROUND

SDCP 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

SDCP'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*

Urban Collaborative Project Transportation Expo  
Southern California Tribal Chairmen's Association Tribal Energy Climate Collaborative  
City Heights Library  
North San Diego County Chamber of Commerce Regional Connect  
Business for Good  
Julian Community Trade Show  
South Bay Earth Day  
Progressive Labor Summit  
League of Women Voters Luncheon  
Spring Valley Library  
Biocom Earth Day Festival  
San Ysidro STEM Fair  
La Mesa Earth Day

County of San Diego Earth Day Fair  
Illumina Earth Day Fair  
Grossmont College Sustainability Fair  
Sony Electronics Earth Day Fair  
UCSD Climate Education Day  
Imperial Beach Library  
South County Economic Development Annual Economic Summit  
Downtown San Diego Partnership C Street Goes Green  
San Pascual Earth Day  
Surfrider's Ocean Beach Cleanup  
Encinitas Library  
Uplift Institute's Sustainable 'Hood' Education Expo  
La Jolla Library  
Nipaquay Elementary STEAM Fest  
Understanding Your Bill Energy Workshop at Logan Heights Library  
2024 California Efficiency + Demand Management Council Spring Symposium  
Logan Heights Library  
California Green Business Network  
Equality California Awards  
Moonlight State Beach Cleanup  
Cyclovia Encinitas  
Malcolm X Library  
Mission Valley Library  
Imperial Beach Chamber of Commerce  
National City Library

### *Marketing, Communications and Outreach*

SDCP has been working with local media to provide the public with information about its renewable power procurement efforts. It is also working with partner organizations on press releases regarding long-term power purchase agreements that will provide customers with reliable, affordable power when new projects come online within the next few years.

The Community Engagement division of the Public Affairs Department hosted its first in-person "Understanding Your Bill" workshop on Thursday, May 16 at the Logan Heights Library in the City of San Diego. This builds on SDCP's first webinar that it held in March. These events are the first in a series of online and in-person workshops that are aimed at answering questions and connecting customers with programs and practices that can save them money. Additional workshops are being planned for the remainder of the year that will focus on topics including solar customer billing and the benefits of SDCP service for large commercial and industrial customers.

The Public Affairs team has been working diligently behind the scenes to support soon-to-be-launched programmatic efforts, including rooftop solar and battery storage incentives, a program 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.

SDCP 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.

### **AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW**

N/A

### **FISCAL IMPACT**

N/A

### **ATTACHMENTS**

N/A





## SAN DIEGO COMMUNITY POWER Staff Report – Item 8

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To: San Diego Community Power Board of Directors

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

Via: Karin Burns, Chief Executive Officer

Subject: Update on Regulatory and Legislative Affairs

Date: May 23, 2024

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### RECOMMENDATION

Receive and file the update on regulatory and legislative affairs.

### BACKGROUND

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

### ANALYSIS AND DISCUSSION

#### A) Regulatory Updates

##### *Integrated Resource Planning*

On April 18, 2024, the California Public Utilities Commission (CPUC) issued an [Amended Scoping Memo and Ruling](#) outlining the issues to be addressed within the Integrated Resource Planning (IRP) proceeding (R.20-05-003) and corresponding schedule. The scope includes regular updates within the cyclical IRP process (top row) and implementation of policy changes (bottom row) as shown below.

Transmittal of portfolios to the California Independent System Operator (CAISO) for use in its annual Transmission Planning Process (TPP)

Periodic updating of the Inputs and Assumptions (I&A) for IRP modeling for multiple purposes

Development and adoption of a 2026 Preferred System Portfolio (PSP)

Compliance and monitoring of existing procurement requirements, including any issues related to requirements for backstop procurement and/or penalties

Implementation of Assembly Bill (AB) 1373, which allows the Commission to request that the Department of Water Resources (DWR) serve as a central procurement entity (CPE) for certain long lead-time (LLT) resources.

Development of the Reliable and Clean Power Procurement Program (RCPPP) and related coordination with the resource adequacy program and rulemaking

Crafting of any additional policies to encourage procurement of LLT resources beyond the CPE

Of note, this scoping memo sets the timing for load serving entities (LSEs), including SDCP, to submit their next round of individual IRPs for November 1, 2025, as opposed to the regular biennial due date of November 1, 2024. Upcoming activity for the scoped issues is scheduled as follows:

- Assembly Bill (AB) 1373 Implementation (Department of Water Resources as Central Procurement Entity (CPE))
  - Administrative Law Judge (ALJ) Ruling issued for party comments – April 26, 2024
  - Webinar/Workshop - April 29, 2024
  - Party comments on ALJ ruling – May 24, 2024
  - Reply comments on ALJ ruling – June 5, 2024
  - Proposed Decision issued - July 19, 2024
- CAISO 2025-2026 TPP Recommendations
  - ALJ ruling with proposed portfolios issued - Late May 2024
  - Party comments on ALJ ruling - Late June 2024
  - Reply comments on ALJ ruling - July 2024
- RCPPP Development
  - Informal Release of Staff Proposal - June or July 2024
  - Webinar/Workshop - July or August 2024
  - ALJ ruling with proposed RCPPP issued - September 2024

### *AB 1373 Implementation Ruling*

AB 1373 directs the CPUC to decide by September 1, 2024, about the need for central procurement of long lead time resources by the Department of Water Resources (DWR). The [April 26<sup>th</sup> ALJ Ruling](#) seeks feedback to inform the CPUC's determination. The Ruling consists of 31 questions that ask parties about the eligibility of resources, need determination, relationship to LSE procurement, allocation of costs and benefits from resources that may be centrally procured, and the procurement process timeline. Via the Ruling, the CPUC has initially proposed to parties that offshore wind, geothermal, out-of-

state wind, and long duration energy storage be considered for DWR central procurement. SDCP is working with CalCCA on Ruling comments which are due on May 24, 2024.

### ***Green Access Programs***

As noted in the regulatory and legislative staff report for the April 2024 meeting of the Board of Directors ([see pages 42-43](#)), the CPUC was scheduled to vote on a recently issued [Proposed Decision](#) that evaluates and modifies the current Green Access Program (GAP) tariffs as well as adopts a new community renewable energy program during the April 18, 2024, CPUC Voting Meeting. The Commission rescheduled the item to be heard at the May 9<sup>th</sup> Voting Meeting but has since rescheduled the item again to May 30, 2024. SDCP has coordinated with a group of CCAs to ensure favorable modifications to the Disadvantaged Communities Green Tariff (DAC-GT) program remain in the final decision, along with additional recommendations, and will continue to monitor the status and potential revisions to the Proposed Decision.

### ***Income-Graduated Fixed Charges***

On May 9, 2024, the CPUC adopted the *Decision Addressing Assembly Bill 205 Requirements for Electric Utilities*. As of the writing of this report, the clean version of the adopted decision has not been distributed but the redlined version of the decision that was adopted can be found [here](#). All figures and estimates that follow are sourced from the adopted decision.

The Decision adopts a new fixed charge that will appear on residential customers' bills starting in 2025 in SDG&E and SCE regions, and 2026 in PG&E's region. This is not a new charge, but a restructuring of current volumetric bill charges to provide relief to low-income customers. This new charge does not impact the generation portion of the bill, only the transmission and distribution component of the bill.

The three different tiers for the fixed charge are as follows:

<b>TIER</b>	<b>DESCRIPTION</b>	<b>MONTHLY FIXED CHARGE AMOUNT</b>
1	0-100% of the Federal Poverty Guidelines (customers enrolled in CARE, a.k.a. California Alternate Rates for Energy)	Approximately \$6
2	100-200% of Federal Poverty Guidelines (customers enrolled in FERA, a.k.a. Family Electric Rate Assistance) and those renting deed-restricted affordable housing	Approximately \$12
3	Everyone else	\$24.15

Within SDG&E’s service area, the fixed charges paired with reductions in volumetric distribution rates (i.e., \$0.068/kWh) are estimated to have the following monthly bill impacts:

<b>Climate Zone</b>	<b>CARE</b>	<b>FERA</b>	<b>Non-CARE/FERA</b>
Inland	\$(6.63)	\$(10.31)	\$0.74
Coastal	\$(3.78)	\$(5.94)	\$2.39
Desert	\$(17.97)	\$(27.50)	\$0.33
Mountain	\$(19.79)	\$(30.89)	\$(6.39)

The CPUC estimates that customers who electrify their homes and vehicles will save money on their monthly bills as a result of the fixed charge. CPUC estimates indicate that SDG&E customers in an inland climate zone will save up to \$39.85 a month by electrifying their home and vehicle, and those living in a coastal climate zone will save up to \$43.68. The CPUC’s analysis assumes a typical residential customer enrolled in the existing default time-of-use (TOU) rate is switched to the new default rate structure that features the income-graduated fixed charge.

The CPUC recognizes that robust outreach is vital to the successful rollout of the program. As such, the IOUs will be holding a workshop to discuss their marketing, education, and outreach plans in July.

### ***Provider of Last Resort***

On April 18, 2024, the CPUC voted to adopt a [Final Decision](#) within Phase I of the Provider of Last Resort (POLR) rulemaking (please see the regulatory and legislative staff report for the March 2024 meeting of the Board of Directors, [pages 51-52](#), for details on the [Proposed Decision](#)). The Final Decision made several revisions, including but not limited to:

- Clarifications and modifications to the Financial Security Requirement (FSR)
  - Reduces resource adequacy (RA) costs in the FSR by accounting for returning central procurement entity RA allocations.
  - Clarifies that the rate component reflecting the Power Charge Indifference Adjustment (PCIA) should be removed regardless of whether it is positive or negative.
  - Reflects the appropriate PCIA rate vintages in the FSR.
  - Requires the IOUs to hold a meet and confer to determine how seasonal generation rates will be implemented in the FSR, noting a timing issue and that generation rates are calculated using the Phase 2 General Rate Case (GRC) application proceedings.
  - States Voluntary Allocation, Market Offer (VAMO) contracts will only flow from deregistered LSE to IOU POLR (not to any other LSE).

- The minimum FSR amount (i.e., the greater of the viability amounts of \$147,000 required for CCAs or the calculated per customer administrative fee) remains unchanged from the Proposed Decision.
- Modifications to financial monitoring framework
  - Requires CCAs to file the Tier 1 audited financial report to Energy Division once a year, in January or July, whichever comes earlier relative to the availability of the audited financial statement.
  - Removes confidential treatment of the letter sent to the CPUC if a Tier 2 trigger is tripped; CCAs now must follow the standard Commission processes for confidential treatment.

The IOUs are directed to each file a Tier 2 advice letter within 90 days from the effective date of the Decision to implement its changes, as well as hold one or more meet and confer sessions prior to that filing to discuss how the seasonal generation rates will be implemented. SDCP will incorporate all other changes into existing FSR and POLR-related processes. Phase II of this proceeding will contemplate entities other than IOUs acting as POLR.

## **B) State Legislative Activities Update**

April 26, 2024, marked a major legislative deadline for policy committees to hear and vote on bills. The Assembly Utilities and Energy Committee voted on 43 bills during April and the Senate Energy, Utilities and Communications Committee voted on 31. SDCP is monitoring and assessing all the bills for their impact on SDCP operations and customers.

### ***State Senator Steve Padilla Tours Chula Vista Energy Center***

SDCP's Director of Public Affairs, Jen Lebron, and Director of Power Contracts, Kenny Key, joined the project developer, Wellhead Electric Company, on the tour. The 50 MW battery project is in the Senator's legislative district and the tour was an excellent opportunity to demonstrate SDCP's development of local resources.

### ***Assembly Utilities & Energy Committee Oversight Hearing on Near and Midterm Reliability***

The May 8 hearing ([here](#) is the background document) held by the Assembly Utilities & Energy Committee featured CPUC President Alice Reynolds, CEC Vice Chair Siva Gunda, and CAISO CEO Elliot Mainzer. The hearing focused on actions the three agencies have taken to shore up grid reliability following the CAISO's initiation of rotating black outs in 2020 due to lack of adequate supply and the Governor's issuance of an emergency energy conservation text alert to 27 million Californians in September 2022 to keep the lights on. The state has created taxpayer funded grid contingencies – known as

the Strategic Reliability Reserve – and legislators were interested to know, ahead of this summer, if those contingencies will need to be used to keep the lights on in summer 2024.

Overall, the three panelists painted ([here](#) is their presentation) and optimistic picture about the state of the grid and summer reliability. Specifically, except under a specific scenario where wildfires impact transmission lines and there is a major heat wave event, they expect no capacity shortfalls this summer. This is because nearly 6.3 GWs of new resources were added to the CAISO grid in 2023. It is expected that over 7.5 GWs of new resources will be added this year. Plus, the state has secured, through the Strategic Reliability Reserve, over 3 GWs of contingency reserves, mainly through extending the operation of once-through cooling natural gas power plants that were previously slated to retire. Despite the positive outlook, the three agency leaders warned that it is still prudent to continue to develop contingency resources into the future to maintain grid reliability. They also noted there continue to be challenges scaling up clean resources while fossil fuel resources are retired. They noted that sustained procurement efforts – around 6-7GW per year – of new resources are needed.

### ***State Budget Update: Governor's Newsom's May Revise Energy Proposals***

On Friday, May 10, Governor Newsom released his [May Revise budget proposal](#), which reflects changes in the state budget condition since his original, January budget proposal was introduced. The release of the May Revise marks the beginning of final negotiation on the state budget. The Legislature is required to adopt a balanced budget by June 15.

Overall, the Governor's May Revise proposal projects that the deficit has grown by \$7 billion since January, for a total of \$44.9 billion. Accounting for the Early Action Budget package that already implemented \$17.3 billion in savings, the Legislature and Governor must craft a balanced budget with another \$27.6 billion in savings to bridge the remaining deficit gap. The Governor proposes to use some of the state's rainy-day reserves along with spending reductions and delays, including reductions to clean energy programs. The three energy programs SDCP staff is tracking for funding opportunities – the Distributed Electricity Backup Assets program, the Equitable Building Decarbonization program, and the Self-Generation Incentive Funds – receive cuts under the May Revise proposal, though significant funding, around 69-72%, is left intact. That could change as a final budget agreement comes together. SDCP staff will track funding developments on these programs.

### ***Update on Income Graduated Fixed Charge (IGFC) Legislation***

Above we provided information on the CPUC's decision to adopt an IGFC pursuant to a state law adopted in 2022. Several legislators also introduced bills on the matter. One such bill, [AB 1999 \(Irwin\)](#), was heard by the Assembly Utilities & Energy Committee on May 15. As introduced, the bill would have repealed the CPUC's authority to implement

an IGFC. However, the bill was amended on the same day the CPUC approved the IGFC to instead cap changes to the IGFC at the rate of inflation, to require a legislative report on the IGFC, and to end the IGFC by July 1, 2028. In other words, AB 1999 (Irwin) essentially attempted to treat the CPUC's recently adopted IGFC as a large-scale pilot program. It was approved by the committee but then it failed passage in the Assembly Appropriations Committee. The bill was opposed by SDG&E, SCE, the Association of Electrical Workers, and others. It was supported by the Environmental Working Group, California Solar & Storage Association, among others.

### ***Update on Supported Legislation***

In addition to the legislation noted in the April 25 staff report (Item 9), SDCP is now supporting the following bills:

- [SB 1006 \(Padilla\)](#), which would help unlock the potential of existing transmission infrastructure through grid-enhancing technologies such as dynamic line rating systems, advanced power flow control systems, and topology optimization software that could potentially defray the need for investments in larger transmission projects like entirely new lines. Incorporating these technologies will ultimately help SDCP achieve its renewable energy goals and reduce costs for ratepayers. It was approved by the Senate Energy, Utilities and Communications Committee on April 16 on a 18-0 vote. It was recently approved by the Senate Appropriations Committee.
- [AB 2329 \(Muratsuchi\)](#) which would create the California Affordable Decarbonization Authority to provide non-ratepayer dollars to fund building and transportation electrification, distributed energy resources, equity initiatives to assist customers in disadvantaged communities, and to provide direct bill credits for customers. If passed and funded, this bill would serve as another tool in SDCP's toolbox to achieve our shared clean energy goals in a manner that manages costs for all of California's ratepayers. It was approved by the Assembly Utilities and Energy Committee on April 17 on a 13-0 vote and by the Assembly Natural Resources Committee on April 22 on a 10-0 vote. It was held by the Assembly Appropriations Committee on their suspense file due to fiscal costs.
- [AB 2672 \(Petrie-Norris\)](#), which would make Project Home Key sites eligible for the CPUC's 30% CARE rate discount. Home Key is a state program that provides grants for local entities to purchase hotels, motels, and other buildings and to transition them into affordable housing. There are four Home Key projects in San Diego. The San Diego Housing Commission and SDG&E are both supporting the bill. It was approved by the Assembly Utilities and Energy

Committee on April 17 on a 16-0 vote. It was recently approved by the Assembly Appropriations Committee.

[AB 2891 \(Friedman\)](#), which SDCP supported and referenced in the April 25 staff report (Item 9), was also held by the Assembly Appropriations on their suspense file. The bill would have set up a process at the California Energy Commission to establish load modification rules that would have allowed SDCP to secure resource adequacy value for the flexible load strategy.

### **C) Federal Legislative Activities Update**

None.

### **AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW**

N/A

### **FISCAL IMPACT**

N/A

### **ATTACHMENTS**

N/A





## SAN DIEGO COMMUNITY POWER Staff Report – Item 9

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To: San Diego Community Power Board of Directors  
From: Xiomalys Crespo, Community Engagement Manager  
Via: Karin Burns, Chief Executive Officer  
Subject: Receive and File Community Advisory Committee Monthly Report  
Date: May 23, 2024

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### RECOMMENDATION

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

### BACKGROUND

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

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

At the direction of the Chief Executive Officer, the CAC provides quarterly presentations to the Board of Directors in the regular agenda, and monthly reports in the consent agenda. The next quarterly presentation will take place during the July 25, 2024 Board of Directors meeting.

### ANALYSIS AND DISCUSSION

During the May 9, 2024 regular CAC meeting:

- Chair Vasilakis (City of San Diego) welcomed new Board Clerk Maricela Hernandez, who will directly support the CAC moving forward, and officially announced Eddie Price's (formerly of the City of San Diego) resignation.
- The CAC approved the consent agenda, which included the February meeting minutes and updates on Marketing, Public Relations, and Local Government

Affairs; Customer Operations; Regulatory and Legislative Affairs; and Programs. Members received staff reports and briefings for all items.

- The CAC heard a presentation on SDCP's Green-e Certified Service. Members asked questions about its power mix and cap for enrollment. Members also commended staff for their responsive effort to meet customer needs.
- The CAC also heard an update from the Power100 Ad-Hoc Committee, in which Members Castañeda (National City), Cazares (La Mesa), Petersen (County of San Diego), and Hammond (Encinitas) met to learn about the Power100 Champions program and strategize on engaging with key small businesses in the community.
- Committee members had recommendations on local procurement as a future agenda item for the CAC. Announcements included community events.

As of May 9, 2024, the CAC has four vacancies representing the County of San Diego (unincorporated), the City of San Diego, the City of Chula Vista, and the City of Imperial Beach. Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically.

The vacancies have been advertised at meetings, community events, and through SDCP's social media.

### **COMMITTEE REVIEW**

N/A

### **FISCAL IMPACT**

There is no fiscal impact associated with this item.

### **ATTACHMENTS**

N/A





## SAN DIEGO COMMUNITY POWER Staff Report – Item 10

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To: San Diego Community Power Board of Directors  
From: Xiomalys Crespo, Community Engagement Manager  
Via: Karin Burns, Chief Executive Officer  
Subject: Board consideration and approval of appointment of Community Advisory Committee Member for the City of Imperial Beach  
Date: May 23, 2024

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### RECOMMENDATION

Board consideration and approval of appointment of Kenneth Hoyt, representing the City of Imperial Beach, to the Community Advisory Committee (CAC).

### BACKGROUND

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

The Board shall establish a Community Advisory Committee comprised of non-Board members. The primary purpose of the Community Advisory Committee shall be to advise the Board of Directors and provide for a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of the Authority. The Community Advisory Committee is advisory only, and shall not have decision-making authority, nor receive any delegation of authority from the Board of Directors. Each Party may nominate a committee member(s) and the Board shall determine the final selection of committee members, who should represent a diverse cross-section of interests, skills sets, and geographic regions.

### ANALYSIS AND DISCUSSION

At both the March 2024 CAC and Board of Directors meetings, staff announced a CAC vacancy for the City of Imperial Beach. Since, staff has promoted this and other vacancies through SDCP's social media channels and the CAC, as well as directly engaging with staff, advocacy organizations, and the general public during networking and tabling events in all of our member agencies.

A total of one (1) application for Imperial Beach was received. An additional candidate from a previous recruitment cycle was also contacted. Staff worked with Director Aguirre to advance the application.

If approved by the Board with a simple majority vote, staff will work with the representative to conduct his oath of office and onboarding prior to the next CAC meeting on June 13, 2024. Staff will also update Attachment A: CAC Roster and Seat Assignments, which is publicly available through SDCP's website, to include the new representative.

As of the drafting of this report, seats for the County of San Diego (unincorporated) and the City of Chula Vista have remained vacant, and a new vacancy for the City of San Diego opened earlier in the month. Applications for vacant seats remain open until filled.

### **COMMITTEE REVIEW**

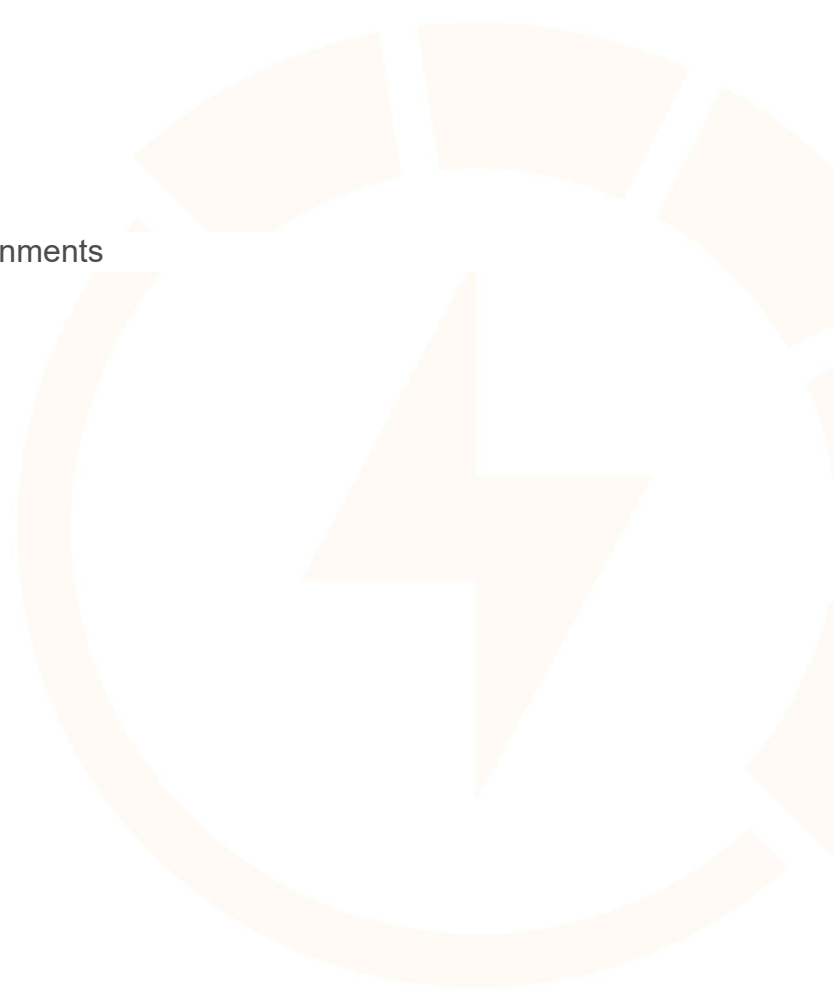
N/A

### **FISCAL IMPACT**

N/A

### **ATTACHMENTS**

Attachment A: CAC Roster and Seat Assignments





## Community Advisory Committee Roster

Member Agency	Name	Appointed	Current Term	Term Ends
San Diego	Eddie Price	April 2020	Second	2025
	Matthew Vasilakis (Chair)	April 2020	Second	2026
Chula Vista	Anthony Sclafani	July 2022	First	2025
	<b>Vacant</b>	-	-	-
La Mesa	Lauren Cazares (Secretary)	March 2023	First	2025
	David Harris (Vice-Chair)	April 2020	Second	2026
Encinitas	Gary L. Jahns	April 2020	Second	2025
	Tara Hammond	April 2020	Second	2026
Imperial Beach	<b>Vacant</b>	-	-	-
	Ilian Sandoval	November 2023	First	2026
County of San Diego (unincorporated)	Peter Andersen	February 2022	First	2025
	<b>Vacant</b>	-	-	-
National City	Aida Castañeda	February 2022	First	2025
	Lawrence Emerson	February 2022	Second	2026

Terms end at the end of every June. Members are subject two, three-year consecutive terms. They are also subject to CAC Policies and Procedures. Odd seats are in blue.



## SAN DIEGO COMMUNITY POWER Staff Report – Item 11

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To: San Diego Community Power Board of Directors  
From: Kiran Singh, Director of IT and Data Analytics  
Via: Karin Burns, Chief Executive Officer  
Subject: Update on IT & Data Analytics.  
Date: May 23, 2024

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### RECOMMENDATIONS

Receive and file the update on IT and Data Analytics.

### BACKGROUND

SDCP onboarded the Director of IT and Analytics November 2024 to continue its commitment to building its in-house IT and analytics service functions. Along with SDCP staff, the director conducted the discovery and assessment of the current state of data and IT operations. This report outlines top level opportunities that came out of the assessment.

SDCP'S goal of putting customers as the cornerstone of what we do requires efficient and low-cost operations. This assessment shares technology strategies, solutions, and a roadmap to enable SDCP to deliver on its commitment to SDCP Board of Directors (BOD) and to its communities. The plan shared in this assessment includes opportunities through which SDCP will build technology and analytics capabilities.

### ANALYSIS AND DISCUSSION

Since its inception, SDCP has grown tremendously. Between 2022 to 2023, revenues doubled, enrollments were up 26%, staff growth also doubled, and the number of customer programs grew exponentially. This has led to increased usage of IT, data and software applications.

The opportunities listed below will deliver three key benefits – Simplification, Transformation and Effectiveness.



Focus on the following four strategic areas will ensure that key benefits are delivered to support SDCP growth trajectory.

1. Business Transformation underpinned by digital and data transformation.
2. Business Optimization by right-sourcing aligning insourcing of core business operations.
3. Organizational Structures – Evolution and expansion of staffing structures.
4. Efficiencies via simplification and governance – processes and frameworks.

SDCP staff have implemented several initiatives that are already delivering efficiencies for the agency.

- Completed IT strategy for next 3 years.
- Launched a new IT RFP for FY 2025.
- Onboarded IT manager to help staff with IT services.
- Rolled out IT office hours to support staff in a systematic way. This resulted in streamlined desktop support and reduced costs.
- Implemented backup tool to enable reliability to business operations and continuity.
- SDCP staff piloted a Work & Asset management tool that will be rolled out to the entire organization in the next fiscal year.
- IT rolled out a cableless conference room initiative to make SDCP's office environment safer and more productive. This is delivering savings in 8 manhours/day.
- Kicked off cyber security and phishing awareness to minimize risk from cyber threats.
- Collaborating with Power Services on the Energy Trade and Risk Management platform assessment and selection.
- Supporting Customer Programs with SDREN, Solar and Battery and DERMS program.

#### **COMMITTEE REVIEW**

N/A

#### **FISCAL IMPACT**

N/A

#### **ATTACHMENTS**

Attachment A: PDF presentation





# SDCP IT & Data Analytics

- **Building a World Class IT & Data Organization to deliver clean energy for local communities with global impact**

Kiran Singh, Director of IT and Data Analytics

May, 2024





# Table of Contents

- 1 Executive Summary**  
Principles, Inspirations & Technology mechanics
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Discovery process & roadmap
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SDCP landscape
- 4 Opportunities**  
Building a world class IT & data analytics org

# Executive Summary

A robust technology and data strategy, and successful execution of it has delivered business transformation for many organizations world-wide and has proved to be a game changer in providing customer benefits.

San Diego Community Power (SDCP) is on a path to deliver 100% clean energy by 2035 or sooner to the consumers within its territories and is committed to its mission. SDCP's goal of sustained enrollment and excellent financial standing requires efficient and low-cost operations. This deck shares options and technology strategy to enable SDCP to deliver on its commitment to SDCP Board Of Directors (BOD) and to its communities.

The plan shared in this deck includes opportunities through which SDCP would build technology and analytics capabilities. As a growing organization, we must have effective and low-cost operations, and in-house IT & Data capabilities would help achieve these goals and sustain market volatility.



# Thank You - Entire SDCP Staff and SDCP Leaders

- [@Kevin Bateman](#)
- [@Tim Manglicmot](#)
- [@Lucas Utouh](#)
- [@Ryan Hanke](#)
- [@Kenny Key](#)
- [@Jen Lebron](#)
- [@Chandra Pugh](#)
- [@Charlene Hoffman](#)
- [@Laura Fernandez](#)
- [@Emily Fisher](#)
- [@Carly Newman](#)
- [@Nelson Lomeli](#)
- [@Jordan Rutledge](#)
- [@Colin Santulli](#)
- [@Sandra Vences](#)
- [@Lorena Puga Bernaden](#)
- [@Renata Halls-Gordon](#)
- [@Jack Clark](#)
- [@Eric Washington](#)
- [@Byron Vosburg](#)
- [@Karin Burns](#)
- [@Lucas Utouh](#)



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# Discovery Process

# Current State - SDCP Data & IT Landscape

## Discovery

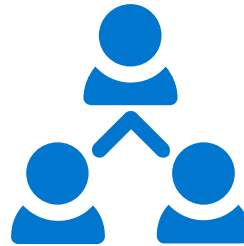
- Goals: Collect current state info



- Current enterprise IT & data landscape
- Current organization wide initiatives
- Current pain points

## Assessment

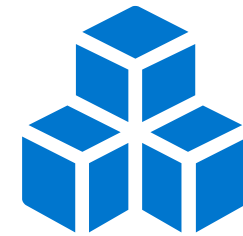
- Goals: Assess current state.



- Understand system capabilities, cyber risks, resource allocations, data privacy standards
- Understand & prioritize organization-wide initiatives
- Understand & prioritize issue resolutions to serve

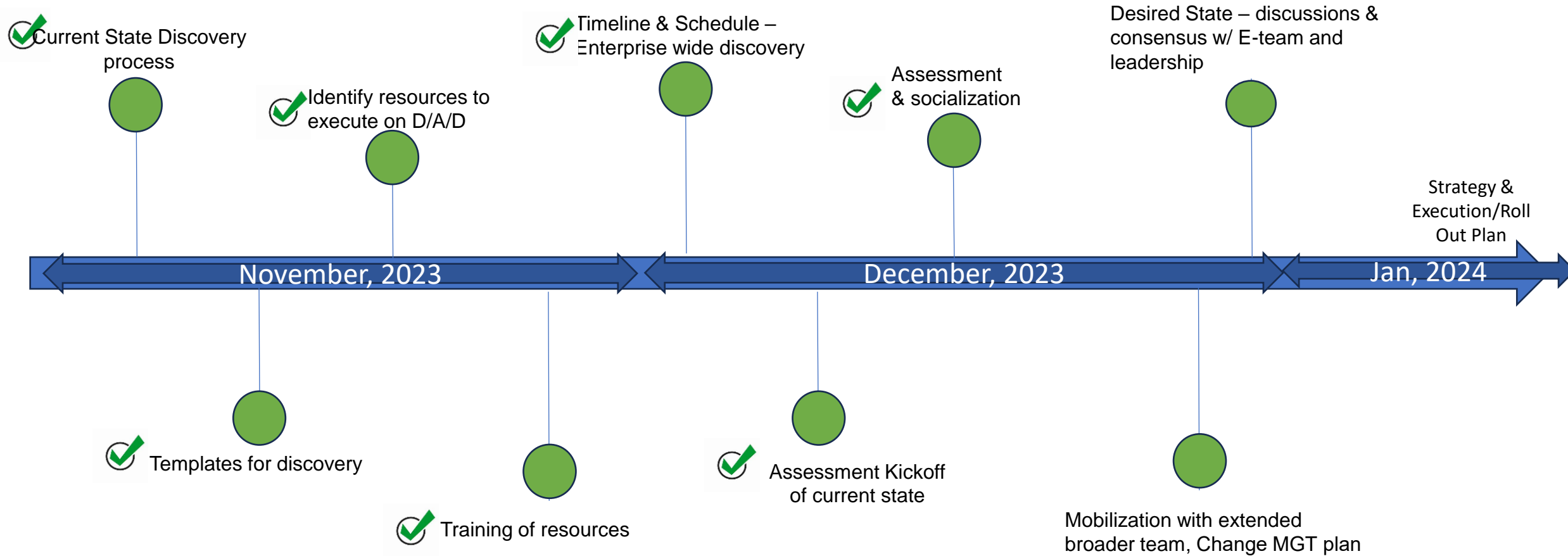
## Desired State

- Goals: Meeting of minds



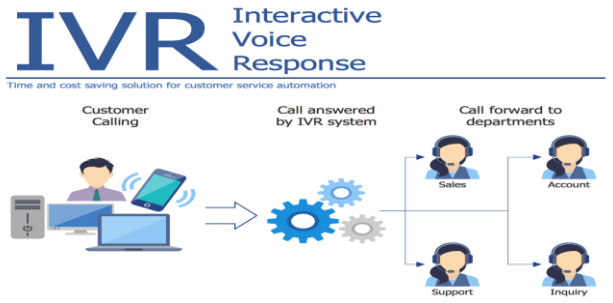
- Strategic approach to developing a world class modern IT & Data org
- Reliable, trusted & scalable systems that enable growth & innovation
- IT structures & processes that empower enterprise teams

# Current State - Roadmap & Plan



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# Assessment

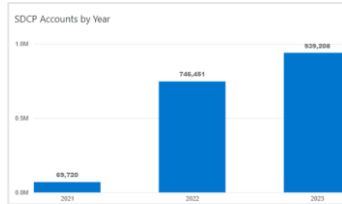


**Key systems and essential capabilities SDCP staff needs to succeed and deliver on clean energy goals**

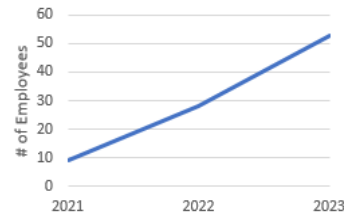


# Current State – Findings

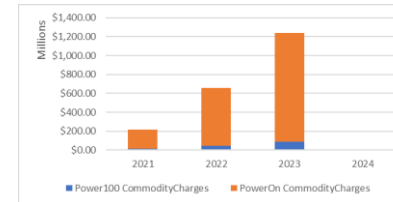
## Business Growth in Numbers



**Enrollments #, up 26+%**



**2x growth in staff**



**\$ in revenue, doubled**



**10+ community programs**



**19 internal initiatives**



**4000 Customer calls/month**



**500+ Hardware Equipment**



**50+ Software**

# Current State – Findings



## Pain points and challenges impacting SDCP Value Proposition

### Issues impacting strategic business value:

- ❖ Cost of operations
- ❖ Enrollment sustainability
- ❖ Market volatility
- ❖ Community visibility & expectation
- ❖ Talent acquisition
- ❖ SDG&E impact
- ❖ Higher cost of living in San Diego
- ❖ Access to data for broader visibility & strategic decision-making
- ❖ Customer connections & experience

### Issues impacting business operations & efficiencies

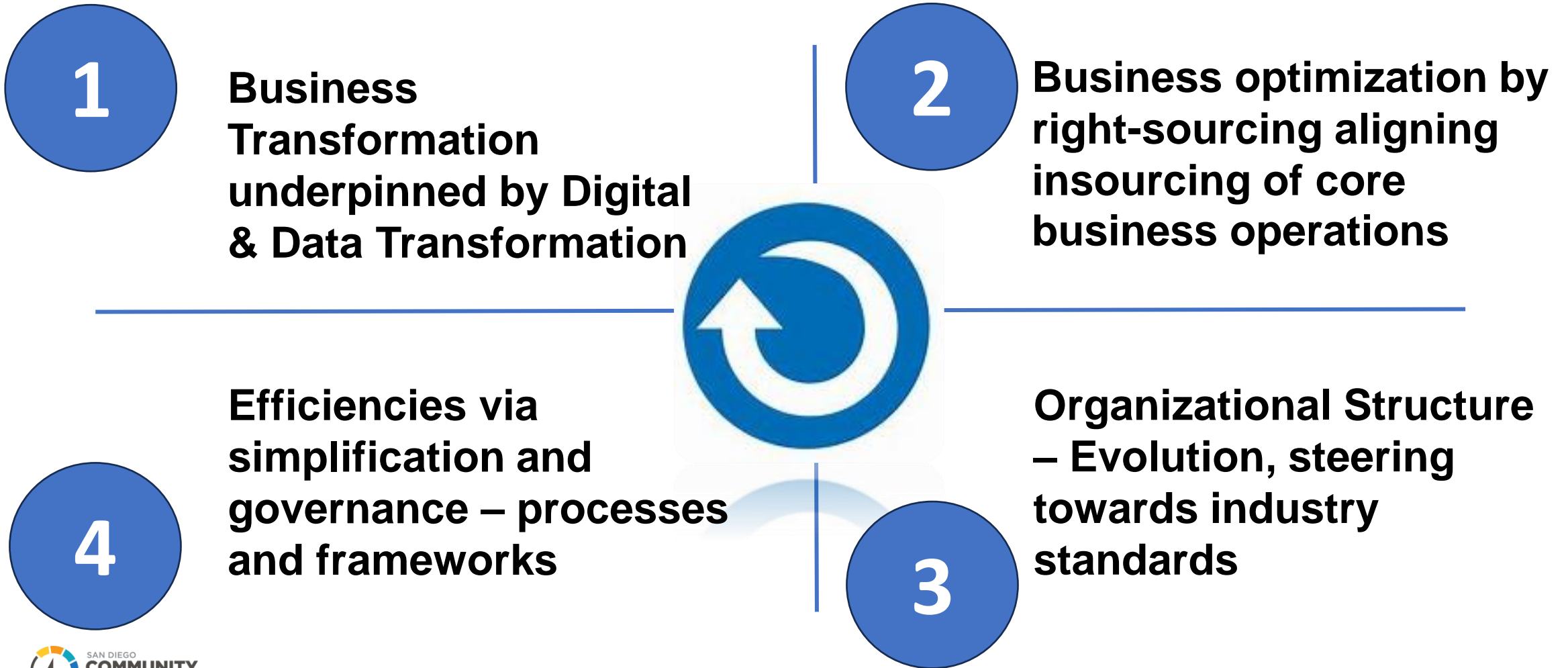
- ❖ Manual processes hurting emp experience & burn out,
- ❖ Risk and governance issues due to third-party dependencies
- ❖ Number of software applications in use
- ❖ Lack of enterprise standard software for core business operations
- ❖ Large pool of hardware & Software but no tool for tracking
- ❖ No consistent way to track vendors for deliveries
- ❖ Limited use of data for analytics and reporting
- ❖ Data quality, governance, approval process to access info or prevent unauthorized access.

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# Opportunities

# Current State – Assessment

## Opportunities – Simplifications, Transformation and Effectiveness



# 1

## Business Transformation underpinned by Digital & Data Transformation

Stabilization, Transform and Innovate

### Insource IT Services & Users Support

- 2024+ IT Plan
- Cyber security controls
- Digitization of tracking & monitoring of SDCP assets
- Work management

### Develop Business Applications Portfolio

- Digitization of business operations
- Consolidation of Software /business applications
- Cost Visibility
- Modernize to improve employee experience

### Unlock Value Through Data

- Build SDCP data platform
- Centralization of internal & external data
- Analytics roadmap
- Enable responsible AI

# 1

## Impact - Digital & Data Transformation

Increased efficiency, greater operational agility and, ultimately, the unlocking of new value for staff, customers and agency constituents.

- Robust internal IT eco-system to deliver higher staff productivity.
- Improve support and service quality
- Cost containment and cost reduction on vendor spend.
- Ensure adequate protection from cyber threats and provide cyber security to everyone
- Self-reliant and reduce dependency on external vendors for core operations.

- Drive growth by digitizing and rewiring operational processes
- Build and provide right tools to operate.
- Work management tools – Plan ahead and be ready for market changes, reduce rework
- Drive sustainability efforts through innovative technologies
- Improve collaboration within and across functions.

- Single source of truth
- Improve Time-to-Market using SDCP's own secure data platform
- Improve the customer experience – use data driven approach to predict and proactively respond to customer needs
- Improving staff experience and driving cultural change to reduce manual touch points

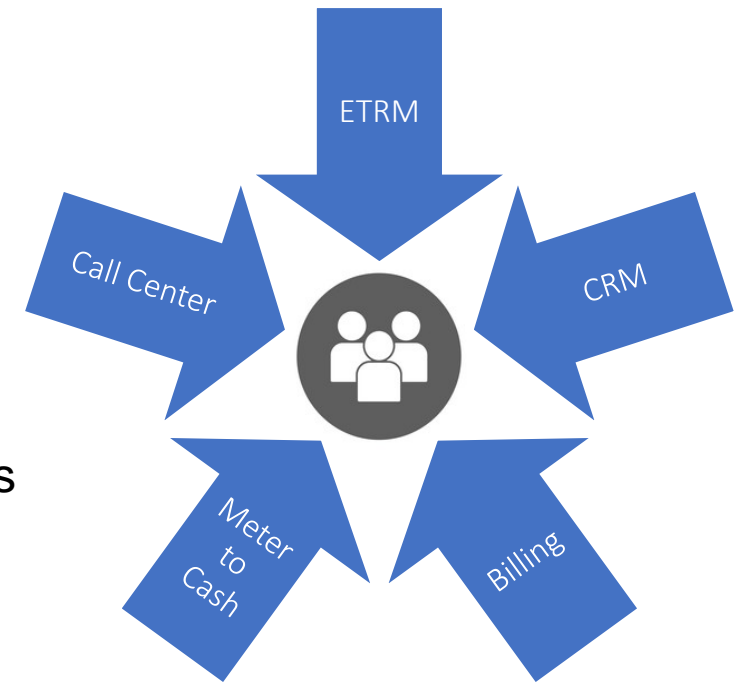
# 2

## Business optimization by right-sourcing aligning insourcing of core business operations

Right-sourcing and insourcing would require prioritization and growth strategy

### ❖ Right-sourcing and insourcing strategy & roadmap

- Reduce dependencies on external vendors
- Build core capabilities internally & evolve
- Better functional controls and change management
- Right behavior - Cost-Benefit-Risk analysis
- Documented Operational models and visibility to on-going costs



# 2

## Impact - Business optimization

Better insights into core business activities, controls and improved time to market

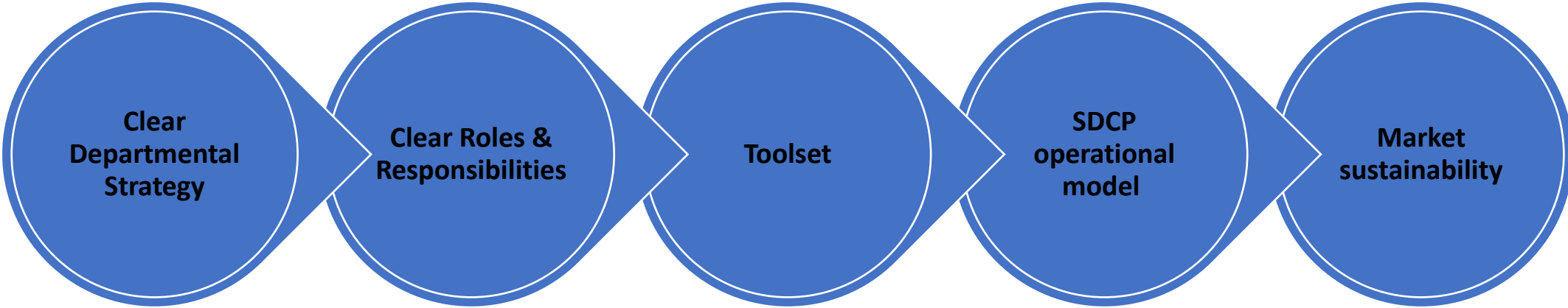
- Self-reliance and self-support core operational applications
  - Such as Data Analytics, Customer Relationship Management (CRM) and Energy Trade and Risk Management (ETRM) etc.
- Evolve and mature business processes to fit into CCA model
- Reduce manual touches and automate processes
- Digital transformation and do more with less
- Controller of SDCP data
- Deliver AI and analytics using SDCP data



# 3

# Organizational Structure – steering towards industry standards

Growth requires structures and framework for efficiencies



# 3

## Impact - Organizational Structure

Clear visibility, efficient work allocation, prioritization, innovation, caring of staff and focus on goals.

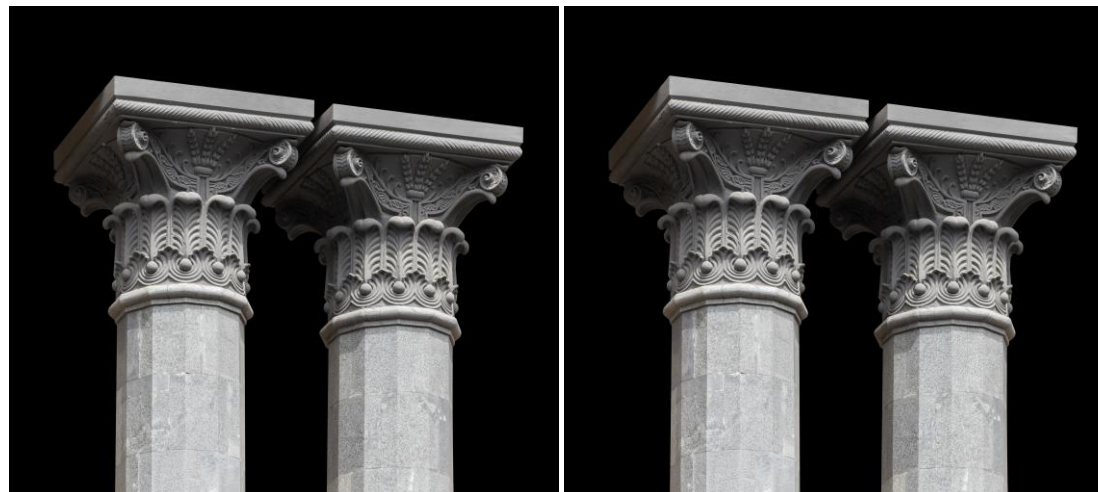
- Standard operating procedure leading to better decision-making.
- Processes removing ambiguity and continuous improvement
- Roles and responsibility leading to staff retention
- Improved collaboration leading to higher productivity
- Effective functional organization that allows goal alignment
- Staff morale and focus on SDCP goals

# 4

## Efficiencies via simplification and governance – processes and frameworks

Simplifying processes and governance would lead to staff effectiveness

- ❖ Structures & Processes
- ❖ Policy & Governance
- ❖ Vendor Oversight/audit



# 4

## Impact - Efficiencies via simplification and governance

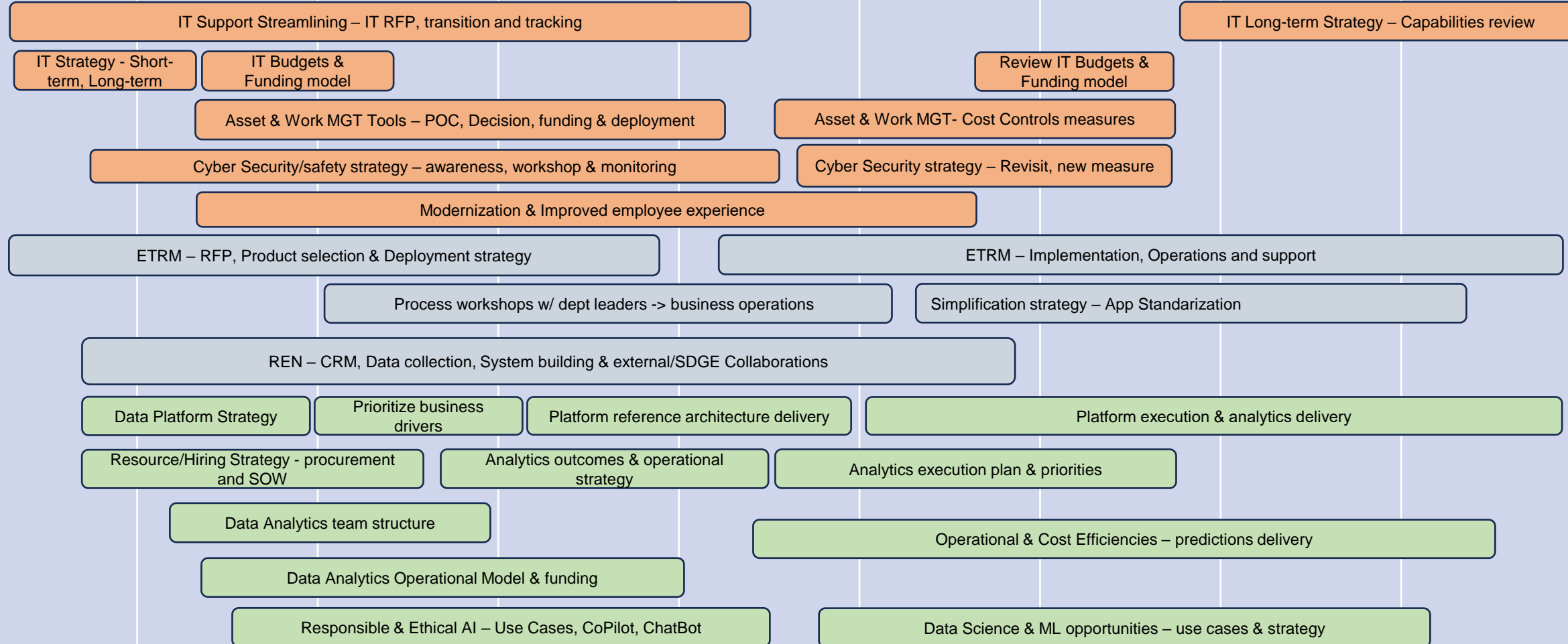
Governance, effectiveness, strategic, readiness to respond to market volatility

- Manage external complexity with the governance and policy
- Effective and powerful strategies to navigate through complexities
- Better organizational performance
- Organized vendor selection and management
- Focus on local jobs and sustainability

# Roadmap

## CY 2024 COST VISIBILITY

## CY 2025 COST CONTAINMENT



# Future State – Impact

## Simplifications, Transformation and Effectiveness

1

Local jobs and economic growth

2

Focus on customer and clean energy goals

3

Staff retention and productivity

4

Focus on sustainability and effective management of external complexities



# Thank You





## SAN DIEGO COMMUNITY POWER Staff Report – Item 13

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To: San Diego Community Power Board of Directors

From: Jen Lebron, Director of Public Affairs  
Jill Monroe, Senior Manager, Marketing & Communications

Via: Karin Burns, Chief Executive Officer

Subject: Approve the Contract for Professional Services for Marketing, Communications, Website Redesign and Website Maintenance with JSR Strategies in the Not-to-Exceed Amount of \$500,000 Over Two Years with Options for Two, One-Year Extensions with Not-to-Exceed Amounts of \$200,000 for Each Subsequent Year

Date: May 23, 2024

---

### RECOMMENDATION

Board approval of the contract in substantially similar form to Attachment A for professional services for Marketing, Communications, Website Redesign and Website Maintenance with JSR Strategies in the not-to-exceed amount of \$500,000 over two years with options for two, one-year extensions with not-to-exceed amounts of \$200,000 for each subsequent year.

### BACKGROUND

San Diego Community Power (SDCP) has continuous needs to educate and inform its customers about its services and products. While it has a small team of marketing and communications professionals on staff, there is a need to supplement their efforts with a third-party vendor to reach its nearly 1 million customers.

Through a competitive bidding process, SDCP has enlisted JSR Strategies to provide Marketing and Communications Services as well as Website Redesign and Website Maintenance Services. These services are sought to directly support SDCP's ongoing marketing, outreach, and communication efforts.

In 2020, SDCP enlisted Civilian, Inc. through a competitive bid process to manage an array of marketing activities to drive awareness, spark community engagement, and maintain high customer enrollment. Civilian worked closely with SDCP staff during the initial two-year contract period and two subsequent one-year options exercised by SDCP



to support SDCP's brand development, website creation, and mass enrollment of approximately 960,000 customer accounts.

## **ANALYSIS AND DISCUSSION**

On March 5, 2024, SDCP issued a Request for Proposals (RFP) for Professional Services for Marketing, Communications, Website Redesign and Website Maintenance. Proposers were able to apply to provide one or both Services, referred to as Group 1 (Marketing and Communications) and Group 2 (Website Redesign & Website Maintenance) Services throughout the RFP. Proposers were required to fully respond to each group of their choosing in their submitted proposal to be considered.

The general tasks in each category include but were not limited to the following:

Group 1 Contemplated Services:

- Agency Branding, Design, Messaging and Identity
- Marketing and Advertising Campaigns
- Project Management/Performance Metrics
- Agency Branding, Design, Messaging and Identity Transition (Optional)

Group 2 Contemplated Services:

- Web Redesign, Content Development, and Maintenance
- Website Transition (Optional)

SDCP staff hosted a pre-proposal webinar for prospective proposers on March 14, 2024, and responded to questions received during the proposal period on March 27, 2024, via the website <https://sdcommunitypower.org/resources/solicitations/>. Given the interest in the RFP and the volume of questions received, SDCP issued an addendum to extend the RFP response period from April 3 to April 10, 2024.

SDCP received 27 proposals for Group 1 and Group 2 services and invited seven firms to in-person interviews following proposal review and scoring. These included four interviews for either Group 1 or Group 2 Services and three interviews for combined Group 1 and Group 2 Services.

Following the interviews, JSR Strategies was identified as the proposer able to bring the greatest value to SDCP. JSR Strategies has conducted branding, web development, and campaign management for other Community Choice Aggregators (CCAs) including MCE and Pioneer Community Energy. Their proposal and interview demonstrated an ability to effectively support SDCP marketing, outreach, and communication efforts into the future.

## **AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW**

N/A

## **FISCAL IMPACT**

SDCP estimates no more than \$500,000 in expenditures in accordance with the proposed budget and scope over the initial term of the contract. If approved, costs for the Marketing, Communications, Website Redesign and Website Maintenance services provided by JSR Strategies will be included in the proposed FY 2024-25 operating budget planned to be reviewed by the Board June 27, 2024.

## **ATTACHMENTS**

Attachment A: JSR Scope of Work

## **SAN DIEGO COMMUNITY POWER PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between SAN DIEGO COMMUNITY POWER, a California joint powers agency (“**SDCP**”) and **JSR Strategies LLC, a limited liability company** (“**Consultant**” of “**JSR**”). SDCP and Consultant are sometimes individually referred to as “**Party**” and collectively as “**Parties**.”

### **RECITALS**

- A. Consultant desires to perform and assume responsibility for the provision of certain professional services required by SDCP on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in Marketing, Communication, Website Design, & Maintenance services for SDCP customers, is licensed in the State of California, and is familiar with the plans of SDCP.
- B. SDCP desires to engage Consultant to render such professional services for Marketing, Communication, Website Design, & Maintenance services for its customers. (“**Project**”) as set forth in this Agreement.

### **AGREEMENT**

#### **1. Scope of Services and Term.**

General Scope of Services. Consultant promises and agrees to furnish to SDCP all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately deliver Marketing, Communication, Website Design, & Maintenance services necessary for the Project (“**Services**”). The Services are more particularly described in Exhibit A attached hereto, and which are stated in the proposal to SDCP. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto, and all applicable local, state, and federal laws, rules and regulations.

1.1 Term. The term of this Agreement shall be from May 23, 2024 to May 22, 2026, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines. SDCP reserves the right to contract for up to two additional one-year extensions for these services.

#### **2. Responsibilities of Consultant.**

2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. SDCP retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of SDCP and shall at all times be under Consultant’s

exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

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

2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of SDCP.

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

**Jessica Rhodes, Angela Vine, Britni Ho Estes, Brent Collier, Meghan Pues, Andrea Carayiannas, Brittany Brewer, Jen Eis, Mark Eis, Dorothy Bagabuyo, Sandeep Malireddy, Rohan Ramgopaul, Megan Komar, Scott Dickson**

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

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

2.7 Coordination of Services. Consultant agrees to work closely with SDCP staff in the performance of Services and shall be available to SDCP's staff, consultants and other staff at all

reasonable times.

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

2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to SDCP, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold SDCP, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

2.10 Insurance.

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

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

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

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

2.10.3 Professional Liability. Consultant shall procure and maintain, and require its subcontractors to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim.

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

(A) General Liability.

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

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

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

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

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

(C) Workers' Compensation and Employers Liability Coverage.

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

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

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

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

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

Liability Additional Insured Endorsement to SDCP at least ten (10) days prior to the effective date of cancellation or expiration.

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

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

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

(vi) Neither SDCP nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

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

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

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

2.10.8 Verification of Coverage. Consultant shall furnish SDCP with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to SDCP. The certificates and endorsements for each insurance policy shall be signed



by a person authorized by that insurer to bind coverage on its behalf and shall be on forms provided by SDCP if requested. All certificates and endorsements must be received and approved by SDCP before work commences. SDCP reserves the right to require complete, certified copies of all required insurance policies, at any time.

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

2.10.10 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### 3. **Fees and Payments.**

3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit C, attached hereto. The total compensation shall not exceed **\$482,455** without written approval of Karin Burns, SDCP's CEO. Extra Work may be authorized, as described below, and, if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.2 Payment of Compensation. Consultant shall submit to SDCP a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. SDCP shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

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

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

Representative.

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

5. **General Provisions.**

5.1 Termination of Agreement.

5.1.1 Grounds for Termination. SDCP may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to SDCP, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

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

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

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

<b>Consultant:</b>	<b>JSR</b>	<b>Strategies</b>	<b>LLC</b>
	<b>Attn:</b>	<b>Jessica</b>	<b>Rhodes,</b>
	<b>P.O. Box 2943</b>		<b>CEO</b>
	Sacramento, CA 95812		

**SDCP:** San Diego Community Power  
Attn: Chief Executive Officer  
P.O. Box 12716  
San Diego, CA 92112

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its

applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### 5.3 Ownership of Materials and Confidentiality.

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

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

SDCP shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by SDCP, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of SDCP.

Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the SDCP.

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

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

5.3.3 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of SDCP, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use SDCP's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of SDCP.

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

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

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

#### 5.6 Indemnification.

5.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of SDCP's choosing), indemnify and hold the SDCP, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against SDCP, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree

that may be rendered against SDCP or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse SDCP and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the SDCP, its officials, officers, employees, agents, or volunteers. This section shall survive any expiration or termination of this Agreement.

5.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code § 2782.8), then, and only to the extent required by Civil Code § 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

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

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

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

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

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

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

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

reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

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

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

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

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

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

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

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

5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

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

**SAN DIEGO COMMUNITY POWER**

**JSR STRATEGIES LLC**

By : \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By : \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary, SDCP Board of Directors

APPROVED AS TO FORM:

\_\_\_\_\_  
SDCP General Counsel

*\*A corporation requires the signatures of two corporate officers.*

*One signature shall be that of the Chairman of Board, the President or any Vice President, and the second signature (on the attest line) shall be that of the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of such corporation.*

*If the above persons are not the intended signators, evidence of signature authority shall be provided to SDCP.*



## EXHIBIT A

### SCOPE OF SERVICES

## **Task I: Design Services**

### **Task I-A: Brand Refresh**

#### **Step I: Inclusion – Putting SDCP Target Audiences First**

Brand development should always begin by placing SDCP’s target audiences at the center of the design. To start, JSR will review historical research conducted by SDCP, including any data shared by vendors or partners. JSR will examine important queries on the SDCP website and, for additional insights, analyze the languages utilized on the site.

Internal branding work can pose challenges unless key stakeholders can provide input promptly without impeding the process. JSR will support internal branding by crafting a single survey for SDCP staff and Board members, enabling the sharing of insights and comments informing the brainstorming process for new branding elements.

JSR recommends implementing a 2024 digital customer satisfaction survey that strives to understand community perceptions throughout SDCP’s service territory. JSR will create, promote and advertise the customer satisfaction survey. SDCP will assist by translating documents and by directly calling business accounts. Up to \$10,000 will be used on paid digital media. Paid media management is billed at 15% of the media spend.

*The complexity of the survey and the desired margin of error could increase the cost of the scope. In such a case, the scope of services shall be revisited by both JSR Strategies and SDCP representatives to determine if ‘Extra Work’ shall be authorized, prior to proceeding with additional surveys.*

#### **Step II: Brand Style and Core Content Refinement**

JSR will build a brand style guide and a core content guide because they are indispensable tools for maintaining brand consistency and coherence across all communication and marketing efforts. These guides serve as a roadmap for future campaigns, ensuring that every item of content, from advertising to social media posts, aligns with the brand's identity, values, and messaging. A brand safeguards its uniqueness and integrity by establishing clear guidelines, thus fostering a consistent experience for the audience, enhancing brand recognition, and building trust over time.

To expedite this work, SDCP will provide current practices, key messages, and any requirements to develop a clear and consistent brand style guide and core content (style and grammar) guide.

JSR will use findings from Step I and collected historical data to generate a brand creative brief, outlining the strategy of the creative work. Using the creative brief as a project map, JSR will craft visual recommendations for updated brand elements, which may include:

- Color review and recommendations
- Graphic elements recommendations
- Symbol or icon guidelines
- Photo style recommendations

Depending on the number of updates needed, JSR first presents general mood boards, which are visual maps that endeavor to capture the feeling of the brand refresh and the brand’s direction into the future. JSR will create up to six mood boards for review.

The SDCP team will select up to three mood boards to proceed with, and the JSR team will refine and hone the mood boards using the elements listed in the creative brief.

JSR will then present the mood boards to SDCP to narrow the updates to two mood boards. If time permits, SDCP may want to test the reception of these mood boards more formally at stakeholder meetings and events and with its constituents, including local customers, throughout the process. *If the services expand beyond JSR’s recommended process, the scope of work shall be revisited by both JSR Strategies and SDCP representatives to determine if ‘Extra Work’ shall be authorized.*

SDCP will choose the final elements, and JSR will create a brand guide based on the approved elements for SDCP. This brand guide will be the foundation of the look and feel of all subsequent brand elements.

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Kickoff meeting agenda	Three days or more before the first kickoff meeting occurs	Calendar
JSR findings from review of historical SDCP surveys, campaigns, and customer personas for the development of a brief for SDCP	Within 15 business days of receipt of all elements from SDCP	Slide Presentation
SDCP internal staff survey	Within 10 business days of SDCP approval of draft questions – survey will be distributed by SDCP staff	Survey Monkey, Slide Presentation

SDCP customer awareness survey	Within 10 business days of SDCP approval of draft questions – survey will be distributed by SDCP staff	Survey Monkey, Slide Presentation
SDCP brand and creative brief	Within 10 business days of SDCP approval of survey results	MS Word, PDF
SDCP core content (style and grammar) guide	Draft delivered within 10 business days of launching the website content writing  Final due prior to website launch with the complete brand guide	MS Word, PDF
SDCP brand mood boards	JSR will deliver draft boards within 15 business days of the final signed creative brief, and final boards will be delivered within five days of the final compiled and submitted revisions. Five days will be added for every round of revisions.	PDF
SDCP brand architecture recommendations	Based on a review of desired sub-brands, JSR will provide a recommended approach for the creation of sub-brands within 10 business days of moodboard approval	Slides

**Task I-B: Brand Element Revamp**

Once the SDCP brand design is approved, JSR will create designs for required SDCP elements with the brand guide as a foundation. The first step is to hold a collateral and template strategy meeting. JSR will strive to understand SDCP goal(s) or desired outcome(s) for each element, including ensuring that colors meet ADA compliance requirements, materials are culturally competent, and the entire service territory is included.

Working through any content/design issues during this phase is essential before moving on to the development; campaign-level projects may require an additional creative brief.

Work could include an update of program collateral, including FAQs, program brochures, fact sheets, event giveaways, and PowerPoint templates or other elements as requested.

This scope element could also include strategic counsel, as requested by SDCP, on subjects including marketing trends, industry best practices, the energy landscape, and local stakeholders. *Depending on hours remaining within each task detailed in the table below,*

*services that expand beyond JSR's scope of work shall be revisited by both JSR and SDCP representatives to determine if 'Extra Work' shall be authorized.*

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Draft written and designed deliverables as agreed upon by JSR and SDCP	Within 3 business days of stated timeline by element, as agreed upon by JSR and SDCP	Native files and PDF/JPG/PNG/ EPS
Final written deliverables	Within five days of receipt of SDCP comments	MS Word, PDF

### **Task I-C: Marketing and Advertising Campaign(s)**

#### **Campaign Strategy Work**

With such a wide range of target audiences and messages, prioritizing communication goals is essential. JSR will set strategic marketing goals to ensure that JSR tracks success and effectiveness. Strategy sessions will include refining marketing goals to include specific metrics, sometimes referred to as key performance indicators (KPIs), that can be measured at weekly, monthly, and quarterly intervals.

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Campaign Strategy	35 business days prior to any paid media launch	MS Word, PDF

#### **Task I-C Sub Task: Media Planning**

JSR will negotiate and oversee the implementation of all media purchasing on behalf of SDCP, as requested. This oversight includes placement and rate negotiations, reconciliation and payment of invoices, active stewardship of media programs to ensure optimal performance, and providing performance reports and billing backup at agreed-upon intervals.

The first step of this process includes developing a media plan that provides equitable reach throughout SDCP's service area/territory and establishes SDCP as a trusted community partner.

Throughout the planning process, market-level nuances play a key role in informing JSR's approach and channel selection.

Once a media plan is signed by SDCP or approved in writing via email, JSR will pre-bill media for each quarter and launch. JSR will process payment for media vendors based on the pre-billed amount. JSR will maintain a detailed accounting of how much has been pre-billed, how much has been paid to vendors, the balance to be spent, and how much is remaining. Credits owed, if any, can either be refunded or reallocated.

JSR bills in advance for paid media, based on the paid media plan. JSR’s manager of paid media will create, manage, place and optimize all ads, as indicated above. In addition to ad management, the JSR team will recommend improvements. Paid media management is billed at 15% of the media spend.

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Draft and Final Media Plan 2024–2025	Within 45 days of campaign strategy	Excel
Media Buy Documentation	Monthly or as necessary	With Invoice

**Task I-D: Project Management and Reporting**

JSR project managers will track all projects through the monday.com software.

Successful reporting for marketing can prove a return on investment, highlight successes, and identify opportunities for improvement. Reporting KPIs will be defined within the JSR strategy. These can easily include any of the metrics listed in the request for proposals, including impressions, engagements, comments, cost per click (CPC), cost per impression (CPM), click-through rate (CTR), email open rates, public relations advertising value equivalencies (tracked via Critical mention), brand mentions, and more.

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Monthly Reporting	Within 15 days from the last day of the month	MS Word, PDF

**Task II: Website Redesign and Website Maintenance Services**

SDCP’s website is an entry portal for its customers and potential customers. Providing an

accurate, approachable, and easy-to-maneuver way to access updated information is the first step in being seen as a trustworthy local provider focused on offering environmental and economic benefits to your residential and business customers.

JSR builds all modern websites on a WordPress platform using the Elementor theme and content management system. SDCP’s new website will be built on a WordPress platform and hosted on Kinsta (a WordPress host). The platform is intended to be easy to update and tailored for growth so that it can host SDCP’s possible future offerings and technical needs (chatbot, rate calculator, custom translations) as identified prior to build-out.

**Task II-A: Website Strategy and Website Kickoff**

To begin the discovery process, JSR will hold a kickoff meeting to review the project timeline and identify roles related to website development. During this meeting, JSR will discuss web requirements identified within the website strategy and any relevant integrations. JSR will review the current design and identify key dates that will inform the timeline. If this meeting defines additional integrations or web capabilities, the cost of the site could increase, and will be discussed by the Parties.

*Deliverables in draft and final versions may include*

- Website brief
- Project timeline
- Site map
- Integration requirements
  - *This includes any special builds, iframe integrations, translation requirements, plugin recommendations, and more*
- Chatbot recommendations
- Website reporting and conversion strategy to identify the baseline and craft goals for key performance indicators for the site

*Working through any integration, speed, and compliance issues during this phase is essential to accurately reflect the additional costs of custom coding. Changes in integration after this phase could result in a supplemental scope of work and change the launch date.*

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Website Sitemap	Drafted for approval before November 15, 2024	TBD
Website Brief	Drafted for approval before November 15, 2024	MS Word, PDF

## Task II-B: Website Content Organization and Design

Based on the sitemap defined, JSR will segment pages into the following tiers:

- Tier I Page: Highly customized design, typically used only for this page
  - JSR will design up to five Tier I pages
- Tier II Page: Customized design may occur in a few other page locations
  - JSR will design up to five Tier II pages
- Tier III Page: Secondary internal page design
  - JSR will design up to five Tier III pages
- Tier IV Page: Blog or post design
  - JSR will design up to three blog/post pages

Content is key to great design, so JSR will work on content for all Tier I and Tier II-identified pages. This contract includes up to 100 hours of writing or proofreading time for additional content. Once JSR has all the final content for each key page, the design process will begin.

JSR will create designs with the brand guide as a foundation and the website strategy as the compass.

- JSR will create one round of two options of XD designs for all Tier I pages (selected by SDCP). Wireframes may be used to show rough layouts and content areas.
- Based on SDCP feedback, JSR will create a full homepage (Tier I) design in Adobe XD after the wireframes are reviewed and approved.
- Once the homepage is finalized and approved, JSR will create full XD designs for up to five Tier I pages and up to five Tier II pages, up to five Tier III pages, and up to three internal pages.

*It is essential to work through any content/design issues during this phase before moving on to the development of the SDCP site. Additional changes after this phase could result in a supplemental scope of work and change the launch date accordingly.*

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Content documents for each website page	Within 15 business days of JSR receiving a website migration list of pages from SDCP	Google Doc
XD designs for up to five Tier I pages and up to five Tier II pages, up to five Tier III pages, and up to three internal pages	By the end of January, or within 45 days post signing of both the website brief and creative brief.	XD

### **Task II-C: Development, Content Entry, and Quality Assurance (QA)**

JSR will build the SDCP site in a protected demo environment during the development phase.

- JSR will enter all final content (approved in Phase II).
- JSR will conduct an internal quality assurance (QA) process before sending it for review.
- Once final content and internal QA is complete, SDCP will have two rounds of edits specific to minor content, usability, and design concerns. All major feature and design concerns will have been agreed to in the previous stages.
- Once SDCP approves, JSR will be ready for the final project phase.

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Final website for review	Within 30 days of estimated launch at the end of June. This date is subject to change, depending on technical specifications requested in earlier phases.	MS Word, PDF

### **Task II-D: Site Launch and Training**

After approvals are completed, it's time to launch the site. The JSR Strategies team will ensure that the site is live and functioning on desktop, tablet, and mobile platforms. Within four weeks of site launch, JSR Strategies will host a project wrap-up meeting and provide training to ensure that SDCP staff are ready to take on the daily management of the site. Historically, training on this site can be rapid (1.5 hours for WordPress-savvy teams) or can be comprehensive (up to 20 hours for teams that need more support). Training for the site will be based on need and the remaining budget.

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Website Training Guide	Within 30 days of site launch	Shared Google Document
Website Training Sessions	Up to 20 hours of recordable website training meetings	Google Meet

### **Task II-E: Website Hosting**

JSR manages numerous websites and relies on Kinsta as the hosting provider. Kinsta provides website hosting services that prioritize performance, reliability, and security. Utilizing Google



Cloud Platform's advanced technology, Kinsta aims to enhance website speed and ensure a smooth user experience. The service features an intuitive management dashboard for easy site administration, alongside automatic daily backups and robust security protocols to effectively protect and manage data.

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Website Hosting and Management and Website Transition	June 1, 2024 – June 30, 2025	File System
Web Strategy Meeting Agenda and Follow-Up	Quarterly	MS Word, PDF
Plugin Updates	Monthly	PDF
Website Updates	As requested	Directly to site

**EXHIBIT B**

**SCHEDULE OF SERVICES**

The following is a proposed schedule of services. Start dates and end dates depend on clear communication, responses, and two rounds of revisions per element or fewer. The timeline for implementation is subject to change.

	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
<b>Kickoff</b>													
<b>Brand Work (Surveys)</b>													
<b>Brand Work (Moodboards)</b>													

<b>Element Work</b>													
<b>Website Content Development</b>													
<b>Website Design</b>													
<b>Website Development</b>													
<b>Website Hosting</b>													

**EXHIBIT C**

**COMPENSATION BILLING RATES**

Typical hourly rates by staff are listed in the first column. JSR Strategies is able to offer SDCP estimated hourly rate discounts for the following staff.

<b>Staff/Expense</b>	<b>Hourly Rates</b>	<b>Reduced Rates for Nonprofit Sustainability Clients</b>
CEO	220	195
Senior PR Support or Editor	195	165
Account Executive	165	150
Web Developer/Custom Code	195	165
Videography and Creative Direction	165	150

PR Strategy and Writer	165	125
Media Strategist	165	125
Brand Management	150	125
Art Director	150	125
Account Manager/Project Manager	125	100
Graphic Designer	100	85
Production Designer	95	75
Administration/Billing	60	50

**ESTIMATED TASK BUDGETS**

JSR bills on a time and materials basis, so task budgets depend greatly on what JSR is asked to perform. Please see the budget range below. If additional elements are requested or the process needs more meetings or additional rounds of approvals, the budget range could run higher. The following is an estimate by task with approximate staff hours. Task budgets may shift with written approval by SDCP.

The budget by task will be communicated on a monthly basis via invoices. Each invoice will include detailed information on staff time utilized for each task.

The operations team will continuously monitor the budget and expenditures. If any areas of concern are identified, JSR will promptly address these concerns during regular status calls. This proactive communication aims to maintain transparency and effective budget management.

Task	Description	Estimate 2024–2025	Approximate Staff Hours	Estimate 2025–2026	Approximate Staff Hours
I-A	Brand	\$85,560	300 hours		

	Refresh		and up to \$40,000 paid media		
I-B	Brand Element Revamp	\$30,625	203	\$30,000	182
I-C	Marketing and Advertising	\$35,000	212	\$35,000	212
I-C Sub task	Paid Media Planning			\$30,000	0 <i>*see I-C Sub task page 18-19</i>
I-D	Project Management	\$10,000	61	\$24,000	160
II-A	Website Strategy	\$10,175	67		
II-B	Website Content and Design	\$52,765	351		
II-C	Website Development	\$46,825	365		
II-D	Site Launch & Training	\$24,505	208		
II-E	Website Hosting	\$34,000	126 hours & plugin costs	\$34,000	126 hours & plugin costs

maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

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

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

2.10.3 Professional Liability. Consultant shall procure and maintain, and require its subcontractors to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim.

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

(A) General Liability.

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

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

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

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

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

(C) Workers’ Compensation and Employers Liability Coverage.

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

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

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

(i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply

on a primary and non-contributory basis for the benefit of SDCP (if agreed to in a written contract or agreement) before SDCP's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

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

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

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

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

(vi) Neither SDCP nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

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

2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by SDCP. Consultant shall guarantee that, at the

option of SDCP, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SDCP, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

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

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

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

2.10.10 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### **3. Fees and Payments.**

3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit C, attached hereto. The total compensation shall not exceed **\$482,455** without written approval of Karin Burns, SDCP's CEO. Extra Work may be authorized, as described below, and, if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.2 Payment of Compensation. Consultant shall submit to SDCP a monthly itemized



statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. SDCP shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

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

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

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

## 5. **General Provisions.**

### 5.1 Termination of Agreement.

5.1.1 Grounds for Termination. SDCP may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to SDCP, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

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

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

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

**Consultant: JSR Strategies LLC**  
**Attn: Jessica Rhodes, CEO**  
**P.O. Box 2943**  
Sacramento, CA 95812

**SDCP:** San Diego Community Power  
Attn: Chief Executive Officer  
P.O. Box 12716  
San Diego, CA 92112

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

5.3 Ownership of Materials and Confidentiality.

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

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

SDCP shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part

by SDCP, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of SDCP.

Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the SDCP.

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

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

5.3.3 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of SDCP, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use SDCP's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of SDCP.

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

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

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

5.6 Indemnification.

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

5.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code § 2782.8), then, and only to the extent required by Civil Code § 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

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

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

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

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

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

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

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

5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

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

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

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

5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, SDCP shall have the right to rescind this Agreement without liability. For the

term of this Agreement, no member, officer or employee of SDCP, during the term of his or her service with SDCP, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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

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

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

5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

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

**SAN DIEGO COMMUNITY POWER**

**JSR STRATEGIES LLC**

By : \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By : \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary, SDCP Board of Directors

APPROVED AS TO FORM:

\_\_\_\_\_  
SDCP General Counsel

*\*A corporation requires the signatures of two corporate officers.*

*One signature shall be that of the Chairman of Board, the President or any Vice President, and the second signature (on the attest line) shall be that of the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of such corporation.*

*If the above persons are not the intended signators, evidence of signature authority shall be provided to SDCP.*

## EXHIBIT A

### SCOPE OF SERVICES

## **Task I: Design Services**

### **Task I-A: Brand Refresh**

#### **Step I: Inclusion – Putting SDCP Target Audiences First**

Brand development should always begin by placing SDCP’s target audiences at the center of the design. To start, JSR will review historical research conducted by SDCP, including any data shared by vendors or partners. JSR will examine important queries on the SDCP website and, for additional insights, analyze the languages utilized on the site.

Internal branding work can pose challenges unless key stakeholders can provide input promptly without impeding the process. JSR will support internal branding by crafting a single survey for SDCP staff and Board members, enabling the sharing of insights and comments informing the brainstorming process for new branding elements.

JSR recommends implementing a 2024 digital customer satisfaction survey that strives to understand community perceptions throughout SDCP’s service territory. JSR will create, promote and advertise the customer satisfaction survey. SDCP will assist by translating documents and by directly calling business accounts. Up to \$10,000 will be used on paid digital media. Paid media management is billed at 15% of the media spend.

*The complexity of the survey and the desired margin of error could increase the cost of the scope. In such a case, the scope of services shall be revisited by both JSR Strategies and SDCP representatives to determine if ‘Extra Work’ shall be authorized, prior to proceeding with additional surveys.*

#### **Step II: Brand Style and Core Content Refinement**

JSR will build a brand style guide and a core content guide because they are indispensable tools for maintaining brand consistency and coherence across all communication and marketing efforts. These guides serve as a roadmap for future campaigns, ensuring that every item of content, from advertising to social media posts, aligns with the brand's identity, values, and messaging. A brand safeguards its uniqueness and integrity by establishing clear guidelines, thus fostering a consistent experience for the audience, enhancing brand recognition, and building trust over time.



To expedite this work, SDCP will provide current practices, key messages, and any requirements to develop a clear and consistent brand style guide and core content (style and grammar) guide.

JSR will use findings from Step I and collected historical data to generate a brand creative brief, outlining the strategy of the creative work. Using the creative brief as a project map, JSR will craft visual recommendations for updated brand elements, which may include:

- Color review and recommendations
- Graphic elements recommendations
- Symbol or icon guidelines
- Photo style recommendations

Depending on the number of updates needed, JSR first presents general mood boards, which are visual maps that endeavor to capture the feeling of the brand refresh and the brand’s direction into the future. JSR will create up to six mood boards for review.

The SDCP team will select up to three mood boards to proceed with, and the JSR team will refine and hone the mood boards using the elements listed in the creative brief.

JSR will then present the mood boards to SDCP to narrow the updates to two mood boards. If time permits, SDCP may want to test the reception of these mood boards more formally at stakeholder meetings and events and with its constituents, including local customers, throughout the process. *If the services expand beyond JSR’s recommended process, the scope of work shall be revisited by both JSR Strategies and SDCP representatives to determine if ‘Extra Work’ shall be authorized.*

SDCP will choose the final elements, and JSR will create a brand guide based on the approved elements for SDCP. This brand guide will be the foundation of the look and feel of all subsequent brand elements.

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Kickoff meeting agenda	Three days or more before the first kickoff meeting occurs	Calendar
JSR findings from review of historical SDCP surveys, campaigns, and customer personas for the development of a brief for SDCP	Within 15 business days of receipt of all elements from SDCP	Slide Presentation

SDCP internal staff survey	Within 10 business days of SDCP approval of draft questions – survey will be distributed by SDCP staff	Survey Monkey, Slide Presentation
SDCP customer awareness survey	Within 10 business days of SDCP approval of draft questions – survey will be distributed by SDCP staff	Survey Monkey, Slide Presentation
SDCP brand and creative brief	Within 10 business days of SDCP approval of survey results	MS Word, PDF
SDCP core content (style and grammar) guide	Draft delivered within 10 business days of launching the website content writing  Final due prior to website launch with the complete brand guide	MS Word, PDF
SDCP brand mood boards	JSR will deliver draft boards within 15 business days of the final signed creative brief, and final boards will be delivered within five days of the final compiled and submitted revisions. Five days will be added for every round of revisions.	PDF
SDCP brand architecture recommendations	Based on a review of desired sub-brands, JSR will provide a recommended approach for the creation of sub-brands within 10 business days of moodboard approval	Slides

**Task I-B: Brand Element Revamp**

Once the SDCP brand design is approved, JSR will create designs for required SDCP elements with the brand guide as a foundation. The first step is to hold a collateral and template strategy meeting. JSR will strive to understand SDCP goal(s) or desired outcome(s) for each element, including ensuring that colors meet ADA compliance requirements, materials are culturally competent, and the entire service territory is included.

Working through any content/design issues during this phase is essential before moving on to the development; campaign-level projects may require an additional creative brief.

Work could include an update of program collateral, including FAQs, program brochures, fact sheets, event giveaways, and PowerPoint templates or other elements as requested.

This scope element could also include strategic counsel, as requested by SDCP, on subjects including marketing trends, industry best practices, the energy landscape, and local stakeholders. *Depending on hours remaining within each task detailed in the table below, services that expand beyond JSR's scope of work shall be revisited by both JSR and SDCP representatives to determine if 'Extra Work' shall be authorized.*

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Draft written and designed deliverables as agreed upon by JSR and SDCP	Within 3 business days of stated timeline by element, as agreed upon by JSR and SDCP	Native files and PDF/JPG/PNG/ EPS
Final written deliverables	Within five days of receipt of SDCP comments	MS Word, PDF

### **Task I-C: Marketing and Advertising Campaign(s)**

#### **Campaign Strategy Work**

With such a wide range of target audiences and messages, prioritizing communication goals is essential. JSR will set strategic marketing goals to ensure that JSR tracks success and effectiveness. Strategy sessions will include refining marketing goals to include specific metrics, sometimes referred to as key performance indicators (KPIs), that can be measured at weekly, monthly, and quarterly intervals.

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Campaign Strategy	35 business days prior to any paid media launch	MS Word, PDF

#### **Task I-C Sub Task: Media Planning**

JSR will negotiate and oversee the implementation of all media purchasing on behalf of SDCP, as requested. This oversight includes placement and rate negotiations, reconciliation and payment of invoices, active stewardship of media programs to ensure optimal performance, and providing performance reports and billing backup at agreed-upon intervals.

The first step of this process includes developing a media plan that provides equitable reach throughout SDCP's service area/territory and establishes SDCP as a trusted community partner.

Throughout the planning process, market-level nuances play a key role in informing JSR’s approach and channel selection.

Once a media plan is signed by SDCP or approved in writing via email, JSR will pre-bill media for each quarter and launch. JSR will process payment for media vendors based on the pre-billed amount. JSR will maintain a detailed accounting of how much has been pre-billed, how much has been paid to vendors, the balance to be spent, and how much is remaining. Credits owed, if any, can either be refunded or reallocated.

JSR bills in advance for paid media, based on the paid media plan. JSR’s manager of paid media will create, manage, place and optimize all ads, as indicated above. In addition to ad management, the JSR team will recommend improvements. Paid media management is billed at 15% of the media spend.

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Draft and Final Media Plan 2024–2025	Within 45 days of campaign strategy	Excel
Media Buy Documentation	Monthly or as necessary	With Invoice

**Task I-D: Project Management and Reporting**

JSR project managers will track all projects through the monday.com software.

Successful reporting for marketing can prove a return on investment, highlight successes, and identify opportunities for improvement. Reporting KPIs will be defined within the JSR strategy. These can easily include any of the metrics listed in the request for proposals, including impressions, engagements, comments, cost per click (CPC), cost per impression (CPM), click-through rate (CTR), email open rates, public relations advertising value equivalencies (tracked via Critical mention), brand mentions, and more.

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Monthly Reporting	Within 15 days from the last day of the month	MS Word, PDF

## Task II: Website Redesign and Website Maintenance Services

SDCP’s website is an entry portal for its customers and potential customers. Providing an accurate, approachable, and easy-to-manuever way to access updated information is the first step in being seen as a trustworthy local provider focused on offering environmental and economic benefits to your residential and business customers.

JSR builds all modern websites on a WordPress platform using the Elementor theme and content management system. SDCP’s new website will be built on a WordPress platform and hosted on Kinsta (a WordPress host). The platform is intended to be easy to update and tailored for growth so that it can host SDCP’s possible future offerings and technical needs (chatbot, rate calculator, custom translations) as identified prior to build-out.

### Task II-A: Website Strategy and Website Kickoff

To begin the discovery process, JSR will hold a kickoff meeting to review the project timeline and identify roles related to website development. During this meeting, JSR will discuss web requirements identified within the website strategy and any relevant integrations. JSR will review the current design and identify key dates that will inform the timeline. If this meeting defines additional integrations or web capabilities, the cost of the site could increase, and will be discussed by the Parties.

*Deliverables in draft and final versions may include*

- Website brief
- Project timeline
- Site map
- Integration requirements
  - *This includes any special builds, iframe integrations, translation requirements, plugin recommendations, and more*
- Chatbot recommendations
- Website reporting and conversion strategy to identify the baseline and craft goals for key performance indicators for the site

*Working through any integration, speed, and compliance issues during this phase is essential to accurately reflect the additional costs of custom coding. Changes in integration after this phase could result in a supplemental scope of work and change the launch date.*

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Website Sitemap	Drafted for approval before November	TBD

	15, 2024	
Website Brief	Drafted for approval before November 15, 2024	MS Word, PDF

## Task II-B: Website Content Organization and Design

Based on the sitemap defined, JSR will segment pages into the following tiers:

- Tier I Page: Highly customized design, typically used only for this page
  - JSR will design up to five Tier I pages
- Tier II Page: Customized design may occur in a few other page locations
  - JSR will design up to five Tier II pages
- Tier III Page: Secondary internal page design
  - JSR will design up to five Tier III pages
- Tier IV Page: Blog or post design
  - JSR will design up to three blog/post pages

Content is key to great design, so JSR will work on content for all Tier I and Tier II-identified pages. This contract includes up to 100 hours of writing or proofreading time for additional content. Once JSR has all the final content for each key page, the design process will begin.

JSR will create designs with the brand guide as a foundation and the website strategy as the compass.

- JSR will create one round of two options of XD designs for all Tier I pages (selected by SDCP). Wireframes may be used to show rough layouts and content areas.
- Based on SDCP feedback, JSR will create a full homepage (Tier I) design in Adobe XD after the wireframes are reviewed and approved.
- Once the homepage is finalized and approved, JSR will create full XD designs for up to five Tier I pages and up to five Tier II pages, up to five Tier III pages, and up to three internal pages.

*It is essential to work through any content/design issues during this phase before moving on to the development of the SDCP site. Additional changes after this phase could result in a supplemental scope of work and change the launch date accordingly.*

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Content documents for each website page	Within 15 business days of JSR receiving a website migration list of	Google Doc

	pages from SDCP	
XD designs for up to five Tier I pages and up to five Tier II pages, up to five Tier III pages, and up to three internal pages	By the end of January, or within 45 days post signing of both the website brief and creative brief.	XD

### **Task II-C: Development, Content Entry, and Quality Assurance (QA)**

JSR will build the SDCP site in a protected demo environment during the development phase.

- JSR will enter all final content (approved in Phase II).
- JSR will conduct an internal quality assurance (QA) process before sending it for review.
- Once final content and internal QA is complete, SDCP will have two rounds of edits specific to minor content, usability, and design concerns. All major feature and design concerns will have been agreed to in the previous stages.
- Once SDCP approves, JSR will be ready for the final project phase.

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Final website for review	Within 30 days of estimated launch at the end of June. This date is subject to change, depending on technical specifications requested in earlier phases.	MS Word, PDF

### **Task II-D: Site Launch and Training**

After approvals are completed, it's time to launch the site. The JSR Strategies team will ensure that the site is live and functioning on desktop, tablet, and mobile platforms. Within four weeks of site launch, JSR Strategies will host a project wrap-up meeting and provide training to ensure that SDCP staff are ready to take on the daily management of the site. Historically, training on this site can be rapid (1.5 hours for WordPress-savvy teams) or can be comprehensive (up to 20 hours for teams that need more support). Training for the site will be based on need and the remaining budget.

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Website Training Guide	Within 30 days of site launch	Shared Google Document

Website Training Sessions	Up to 20 hours of recordable website training meetings	Google Meet
---------------------------	--	-------------

**Task II-E: Website Hosting**

JSR manages numerous websites and relies on Kinsta as the hosting provider. Kinsta provides website hosting services that prioritize performance, reliability, and security. Utilizing Google Cloud Platform's advanced technology, Kinsta aims to enhance website speed and ensure a smooth user experience. The service features an intuitive management dashboard for easy site administration, alongside automatic daily backups and robust security protocols to effectively protect and manage data.

<i>Deliverables</i>	<i>Due</i>	<i>Format</i>
Website Hosting and Management and Website Transition	June 1, 2024 – June 30, 2025	File System
Web Strategy Meeting Agenda and Follow-Up	Quarterly	MS Word, PDF
Plugin Updates	Monthly	PDF
Website Updates	As requested	Directly to site

**EXHIBIT B**

**SCHEDULE OF SERVICES**

The following is a proposed schedule of services. Start dates and end dates depend on clear communication, responses, and two rounds of revisions per element or fewer. The timeline for implementation is subject to change.

	Ju n	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Kickoff													



<b>Brand Work (Surveys)</b>													
<b>Brand Work (Moodboards)</b>													
<b>Element Work</b>													
<b>Website Content Development</b>													
<b>Website Design</b>													
<b>Website Development</b>													
<b>Website Hosting</b>													

**EXHIBIT C**

**COMPENSATION BILLING RATES**

Typical hourly rates by staff are listed in the first column. JSR Strategies is able to offer SDCP estimated hourly rate discounts for the following staff.

<b>Staff/Expense</b>	<b>Hourly Rates</b>	<b>Reduced Rates for Nonprofit Sustainability Clients</b>
CEO	220	195
Senior PR Support or Editor	195	165
Account Executive	165	150

Task	Description	Estimate 2024–2025	Approximate Staff Hours	Estimate 2025–2026	Approximate Staff Hours
I-A	Brand Refresh	\$85,560	300 hours and up to \$40,000 paid media		
I-B	Brand Element Revamp	\$30,625	203	\$30,000	182
I-C	Marketing and Advertising	\$35,000	212	\$35,000	212
I-C Sub task	Paid Media Planning			\$30,000	0 <i>*see I-C Sub task page 18-19</i>
I-D	Project Management	\$10,000	61	\$24,000	160
II-A	Website Strategy	\$10,175	67		
II-B	Website Content and Design	\$52,765	351		
II-C	Website Development	\$46,825	365		
II-D	Site Launch & Training	\$24,505	208		
II-E	Website Hosting	\$34,000	126 hours & plugin costs	\$34,000	126 hours & plugin costs

<b>Brand Work (Surveys)</b>													
<b>Brand Work (Moodboards)</b>													
<b>Element Work</b>													
<b>Website Content Development</b>													
<b>Website Design</b>													
<b>Website Development</b>													
<b>Website Hosting</b>													

**EXHIBIT C**

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<b>Staff/Expense</b>	<b>Hourly Rates</b>	<b>Reduced Rates for Nonprofit Sustainability Clients</b>
CEO	220	195
Senior PR Support or Editor	195	165
Account Executive	165	150

Web Developer/Custom Code	195	165
Videography and Creative Direction	165	150
PR Strategy and Writer	165	125
Media Strategist	165	125
Brand Management	150	125
Art Director	150	125
Account Manager/Project Manager	125	100
Graphic Designer	100	85
Production Designer	95	75
Administration/Billing	60	50

**ESTIMATED TASK BUDGETS**

JSR bills on a time and materials basis, so task budgets depend greatly on what JSR is asked to perform. Please see the budget range below. If additional elements are requested or the process needs more meetings or additional rounds of approvals, the budget range could run higher. The following is an estimate by task with approximate staff hours. Task budgets may shift with written approval by SDCP.

The budget by task will be communicated on a monthly basis via invoices. Each invoice will include detailed information on staff time utilized for each task.

The operations team will continuously monitor the budget and expenditures. If any areas of concern are identified, JSR will promptly address these concerns during regular status calls. This proactive communication aims to maintain transparency and effective budget management.

Task	Description	Estimate 2024–2025	Approximate Staff Hours	Estimate 2025–2026	Approximate Staff Hours
I-A	Brand Refresh	\$85,560	300 hours and up to \$40,000 paid media		
I-B	Brand Element Revamp	\$30,625	203	\$30,000	182
I-C	Marketing and Advertising	\$35,000	212	\$35,000	212
I-C Sub task	Paid Media Planning			\$30,000	0 <i>*see I-C Sub task page 18-19</i>
I-D	Project Management	\$10,000	61	\$24,000	160
II-A	Website Strategy	\$10,175	67		
II-B	Website Content and Design	\$52,765	351		
II-C	Website Development	\$46,825	365		
II-D	Site Launch & Training	\$24,505	208		
II-E	Website Hosting	\$34,000	126 hours & plugin costs	\$34,000	126 hours & plugin costs



## SAN DIEGO COMMUNITY POWER Staff Report – Item 14

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To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services; and  
Andrea Torres, Sr. Portfolio Manager, Power Services

Via: Karin Burns, Chief Executive Officer

Subject: Approve Energy Storage Service Agreement with Euismod Project I, LLC  
for a 200 MW (4-hour) Battery Energy System Storage (BESS) facility

Date: May 23, 2024

---

### RECOMMENDATION

Approve the proposed 15-year Energy Storage Service Agreement with Euismod Project I, LLC for a 200 MW (4-hour) Battery Energy System Storage (BESS) facility and authorize the CEO to execute the agreement.

### BACKGROUND

As San Diego Community Power (SDCP) strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term contracts of at least 10 years in duration are integral components of its energy supply portfolio. Long-term contracts provide renewable generation and clean energy storage facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term contract that SDCP signs with a developing facility will underpin a new, incremental renewable energy project and support the development of energy storage projects to address intermittency from renewable growth. In addition, long-term contracts lock in energy and capacity supply around which SDCP can build its power supply portfolio while also providing power supply cost certainty around which SDCP can develop its pro forma financial model.

The proposed Energy Storage Service Agreement (ESSA) is for capacity, energy arbitrage and ancillary services benefits from a 200 MW/800 MWh, 4-hour battery energy storage facility, known as the Euismod Project, being developed by Aypa Power (“Aypa”), a Blackstone portfolio company.

The proposed ESSA originated from an offer SDCP received in late 2023 via its 2023 Request for Information for projects seeking to apply to the CAISO Transmission Planning Process in 2024 (“TPD RFI”). SDCP engaged with Aypa after shortlisting the Euismod Project and has reached ESSA terms mutually agreeable to both parties.



## ANALYSIS AND DISCUSSION

The Euismod Project was shortlisted from among a robust volume of offers received via SDCP's TPD RFI, due in part to the offer's competitive pricing. The Euismod Project is part of a larger planned 600 MW/2,400 MWh battery energy storage project in Kern County, CA.

Below is additional information regarding Aypa and the proposed ESSA.

Background on Aypa:

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

ESSA Overview

- Project: 200 MW (800 MWh) battery energy storage facility
- Project location: Kern County
- Guaranteed commercial operation date: June 1, 2028
- Contract term: 15 years
- Pricing: Fixed pricing with no escalation
- SDCP would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones as well as seller's failure to meet guaranteed storage capacity, availability, and efficiency rates.

Community Benefits and Workforce Development:

- The project is estimated to create approximately 180 construction jobs and 12 permanent jobs.
- Aypa will require that the energy, procurement and construction contractor utilize a Project Labor Agreement
- The project has committed \$100,000 to a community benefit fund to benefit SDCP customers.

## COMMITTEE REVIEW

The ECWG reviewed project offer and recommended staff to move forward with the execution of this ESSA.

## FISCAL IMPACT



The competitive energy and capacity pricing of the ESSA are confidential, but the long-term purchase of capacity and energy arbitrage capability will provide SDCP with significant value over the term of this ESSA.

## **ATTACHMENTS**

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





## ENERGY STORAGE SERVICE AGREEMENT

### COVER SHEET

**Seller:** Euismod Project I, LLC (“**Seller**”)

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

**Description of Facility:** A 200 MW/800 MWh battery energy storage facility, located in Kern County, in the State of California as further described in Exhibit A.

**Milestones:**

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

**Delivery Term:** 15 Contract Years

**Guaranteed Capacity:** 200 MW-AC at four (4) hours of continuous discharge, as may be adjusted pursuant to Section 2.2(a)(i) or Section 5 of Exhibit B.

**Dedicated Interconnection Capacity:** 200 MW

**Guaranteed Availability:** ██████████

**Guaranteed Efficiency Rate:**

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

**Minimum Efficiency Rate:** [REDACTED]

**Contract Price:**

Contract Year	Contract Price
1 – 15	[REDACTED]

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

- Discharging Energy

- Installed Capacity and Effective Capacity
- Ancillary Services
- Capacity Attributes

**Scheduling Coordinator:** Buyer/Buyer Third Party

**Security Amount:**

Development Security: [REDACTED]


[REDACTED]

[REDACTED]

Performance Security: [REDACTED]

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## ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement (“**Agreement**”) is entered into as of [REDACTED], 2023 (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, Seller intends to develop, design, construct, own, and operate the Facility; and

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

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

### ARTICLE 1 DEFINITIONS

**1.1 Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.7(c).

“**Administrative NQC Reduction**” means a reduction in the maximum achievable Net Qualifying Capacity of the Facility due [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” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to



Buyer the public entities designated as members or participants under the Joint Powers Agreement creating Buyer shall not constitute or otherwise be deemed an “Affiliate” for purposes of this Agreement. Notwithstanding the foregoing, with respect to Seller, “Affiliates” shall mean Ultimate Parent and its subsidiaries; *provided however*, that the term “Affiliate,” when used with respect to Seller shall not include any direct or indirect tax equity investor for purposes of this Agreement.

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

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

[REDACTED]

[REDACTED]

“**Assigned Capacity**” has the meaning set forth in Section 2.2(a)(i).

“**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 C.

“**Availability Notice**” has the meaning set forth in Section 4.10.

“**Availability Standards**” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“**Available Capacity**” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to charge and discharge Energy and provide Ancillary Services.

“**Bankrupt**” or “**Bankruptcy**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

**“Battery Charging Factor”** means a fraction, the numerator of which is the amount of Charging Energy absorbed by the Facility [REDACTED] and the denominator of which is the Effective Capacity.

**“Battery Discharging Factor”** means one (1) minus a fraction, the numerator of which is the amount of Discharging Energy discharged during the first four (4) hours of the discharging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.

**“Business Day”** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

**“Buyer”** has the meaning set forth on the Cover Sheet.

**“Buyer Default”** means an Event of Default of Buyer.

**“Buyer Dispatched Test”** has the meaning in Section 4.4(c).

**“Buyer Failure”** means a failure by Buyer (or its agents) to perform Buyer’s obligations hereunder and includes an Event of Default of Buyer.

**“Buyer’s Indemnified Parties”** has the meaning set forth in Section 16.1(a).

**“CAISO”** means the California Independent System Operator Corporation or any successor entity performing similar functions.

**“CAISO Approved Meter”** means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Charging Energy and Discharging Energy delivered to or from the Delivery Point.

**“CAISO Balancing Authority Area”** has the meaning set forth in the CAISO Tariff.

**“CAISO Certification”** means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all applicable Ancillary Services, PMAX, and PMIN.

**“CAISO Charges Invoice”** has the meaning set forth in Exhibit D.

**“CAISO Dispatch”** means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

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

“**CAISO Operating Order**” means the Operating Instruction or Dispatch Instruction as those terms are defined in the CAISO Tariff.

“**CAISO Tariff**” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, as the same may be amended or modified from time-to-time and approved by FERC.

“**Capacity Attribute**” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the ability of the Facility to charge, discharge and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits. Capacity Attributes are measured in MW and shall exclude Energy, Ancillary Services, Green Attributes or Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

“**Capacity Damages**” has the meaning set forth in Section 5 of Exhibit B.

“**Capacity Test**” or “**CT**” means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity, or Efficiency Rate or any other test conducted pursuant to Exhibit O.

“**CEQA**” means the California Environmental Quality Act, as amended or supplemented from time to time.

“**Change of Control**” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any cash equity or tax equity provider and any trustee or agent or similar representative thereof acting on their behalf) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

“**Charging Energy**” means the Energy delivered to the Facility pursuant to a Charging Notice, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses and Station Use. All Charging Energy shall be used solely to charge the Facility.

“**Charging Notice**” means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC or the CAISO, directing the Facility to charge at a specific MW rate for a specified period of time or to a specified Stored Energy Level; *provided*, (a) any such operating instruction shall be in accordance with the Operating Restrictions and such “Charging Notice”

shall be deemed automatically adjusted to comply with the Operating Restrictions upon Buyer's and Buyer's SC's receipt of notice from Seller of such required adjustment to comply with the Operating Restrictions

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

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

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

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

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

**"Commercial Operation Delay Damages"** means

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

**"Compliance Actions"** has the meaning set forth in Section 3.7(a).

**"Compliance Expenditure Cap"** has the meaning set forth in Section 3.7.

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

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

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

**"Contract Price"** has the meaning set forth on the Cover Sheet.

**"Contract Term"** has the meaning set forth in Section 2.1(a).

**"Contract Year"** means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“**Costs**” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“**Cover Sheet**” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“**CPM Soft Offer Cap**” has the meaning set forth in the CAISO Tariff.

“**CPUC**” means the California Public Utilities Commission, or any successor entity performing similar functions.

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

“**Cure Plan**” has the meaning set forth in Section 11.1(b)(iii).

“**Curtailement Order**” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Discharging Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

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

“**Daily Delay Damages**” means [REDACTED]

“**Damage Payment**” means the dollar amount that equals the amount of the Development Security.

“**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 Charging Energy and/or Discharging Energy, as applicable, that is permitted to be delivered from and/or to the Delivery Point under Seller’s Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

“**Deemed Delivered RA**” means the amount of Resource Adequacy expressed in MW<sub>AC</sub> that the Facility would have delivered, but for (a) Buyer Failure or (b) a Force Majeure Event.

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

“**Deliverability**” has the meaning set forth in the CAISO Tariff.

“**Deliverability Allocation Date**” means the date on which Seller notifies Buyer that CAISO has confirmed to Seller’s reasonable satisfaction that the Facility has been allocated Full Capacity Deliverability Status or Partial Capacity Deliverability Status for Queue Position 2055 of no less than 150 MW.

“**Deliverability Allocation Outside Date**” means [REDACTED].

“**Delivered RA**” means [REDACTED]

“**Delivery Point**” means the PNode assigned to the Facility by the CAISO.

“**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.

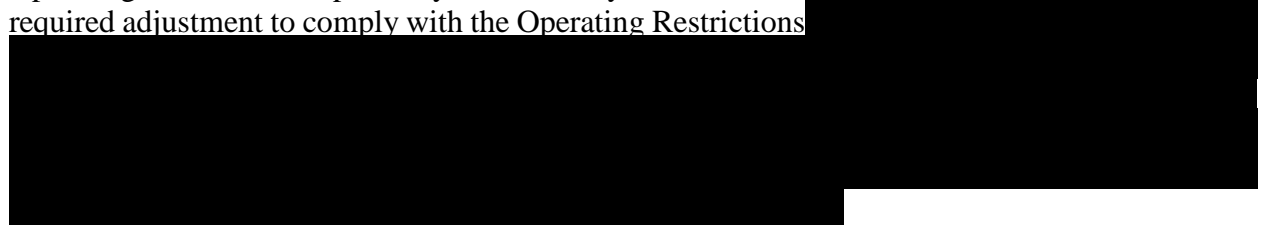
“**Development Cure Period**” has the meaning set forth in Exhibit B.

“**Development Security**” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Discharging Energy**” means all Energy delivered from the Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for Station Use and Electrical Losses to the Delivery Point.

“**Discharging Notice**” means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC or the CAISO, directing the Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to a specified Stored Energy Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Procedures

and such “Discharging Notice” shall be deemed automatically adjusted to comply with the Operating Restrictions upon Buyer’s and Buyer’s SC’s receipt of notice from Seller of such required adjustment to comply with the Operating Restrictions



“**Disclosing Party**” has the meaning set forth in Section 18.2.

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

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

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

“**Effective Date**” has the meaning set forth in the Preamble.

“**Effective Flexible Capacity**” or “**EFC**” has the meaning set forth in the CAISO Tariff.

“**Efficiency Rate**” means the tested rate calculated pursuant to Sections II.I(2) and III(A) of Exhibit O by dividing Discharging Energy by Charging Energy.

“**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 Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy.

“**Emission Reduction Credits**” or “**ERCs**” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

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

“**Energy Management System**” or “**EMS**” means the Facility’s energy management system.

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

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

“**Excused Event**” has the meaning set forth in Exhibit P.

“**Facility**” means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including the Energy Management System and mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities and Interconnection Facilities other than Seller’s Interconnection Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

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

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

“**FERC**” means the Federal Energy Regulatory Commission or any successor government agency.

“**Financial Close**” means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller’s owner(s).

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



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

**“Flexible RAR”** means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

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

**“Full Capacity Deliverability Status”** or **“FCDS”** has the meaning set forth in the CAISO Tariff.

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

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

**“Guaranteed Availability”** means the minimum guaranteed Monthly Capacity Availability of the Facility in each month of the Delivery Term, as set forth on the Cover Sheet.

**“Guaranteed Capacity”** means the maximum dependable operating capability of the Facility to discharge electric energy, as measured in MW AC at the Delivery Point for four (4) hours of continuous discharge, as set forth on the Cover Sheet and as may be adjusted pursuant to Section 2.2(a)(i) and/or pursuant to Section 5 of Exhibit B.

**“Guaranteed Commercial Operation Date”** means the date set forth on the Cover Sheet, as such date may be extended pursuant to 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 minimum guaranteed Efficiency Rate of the Facility in each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

**"Guaranteed RA Amount"** means the Qualifying Capacity of the Facility based upon the Effective Capacity, as determined by the CPUC, *minus* Administrative NQC Reduction in the applicable Showing Month.

**"Guarantor"** means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody's, (d) has a tangible net worth of at least One Hundred Fifty Million Dollars (\$150,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

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

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

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

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

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

**"Initial Synchronization"** means the commencement of Trial Operations (as defined in the CAISO Tariff).

**"Installed Capacity"** means the lesser of (a) P<sub>MAX</sub>, and (b) maximum dependable operating capacity of the Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Facility Meter Point by the Facility Meter and adjusted for Electrical Losses to the Delivery Point (to the extent such Electrical Losses are not already reflected in the Facility Meter measurements), that achieves Commercial Operation, as evidenced by a certificate

substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B, but in either case (a) or (b) up to but not in excess of the Guaranteed Capacity.

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

“**Inter-SC Trade**” has the meaning set forth in the CAISO Tariff.

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

“**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 the Interconnection Facilities interconnect with the Transmission System pursuant to the Interconnection Agreement, which point is identified in Exhibit A.

“**Interest Rate**” has the meaning set forth in Section 8.2.

“**Investment Grade Credit Rating**” means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody’s.

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

“**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 kilowatt measured in alternating current, unless expressly states in terms of direct current.

“**kWh**” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

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

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

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

**“Local Capacity Area Resource”** has the meaning set forth in the CAISO Tariff.

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

**“Losses”** means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes and Renewable Energy Incentives (calculated on an after tax basis), and the Parties agree that Seller’s lost revenue under this Agreement resulting from a Buyer Event of Default are direct damages and may be included in Seller’s determination of its Losses.

**“Marketable Emission Trading Credits”** means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

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

**“Maximum Charging Capacity”** means the highest level at which the Facility may be charged, expressed in MW and as set forth in Exhibit Q.

**“Maximum Discharging Capacity”** means the highest level at which the Facility may be discharged, expressed in MW and as set forth 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, 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 Capacity Availability”** has the meaning set forth in Exhibit P.

**“Monthly Capacity Payment”** means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.

**“Monthly Expected Available Capacity Report”** has the meaning set forth in Section 4.10(a).

**“Moody’s”** means Moody’s Investors Service, Inc., or its successor.



“**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.

“**NERC**” means the North American Electric Reliability Corporation, or any successor entity performing similar functions.

“**Net Qualifying Capacity**” or “**NQC**” has the meaning set forth in the CAISO Tariff.

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

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

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

“**Notification Deadline**” in respect of a Showing Month shall be [REDACTED]

“**NP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

“**Operating Restrictions**” means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

“**Outage Schedule**” has the meaning set forth in Section 4.12(a)(i).

“**Partial Capacity Deliverability Status**” or “**PCDS**” has the meaning set forth in the CAISO Tariff.

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

“**Performance Security**” means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth 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 one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) At least [REDACTED] of experience in the ownership and operations of energy generation or storage facilities similar to the Facility or has retained a third-party with such experience to operate the Facility.

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

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

“**PMAX**” means the applicable CAISO-certified maximum operating level of the Facility.

“**PMIN**” means the applicable CAISO-certified minimum operating level of the Facility.

“**PNode**” has the meaning set forth in the CAISO Tariff.

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

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

“**Portfolio Financing Entity**” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“**Pre-Deliverability Period**” has the meaning set forth in Section 2.2(b).

“**Prevailing Wage Requirement**” has the meaning set forth in Section 13.4.

“**Product**” has the meaning set forth on the Cover Sheet.

“**Progress Report**” means a progress report including the items set forth in Exhibit E.

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

they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

**“Qualifying Capacity”** has the meaning set forth in the CAISO Tariff.

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

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

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

**“RA Guarantee Date”** means

**“RA Penalties”** means the Tier 1 RA penalties assessed against load serving entities by the CPUC for RA deficiencies that are not replaced or cured, as established by the CPUC in the Resource Adequacy Rulings and subsequently incorporated into the annual Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings that is issued by the CPUC Energy Division, or any replacement or successor documentation established by the CPUC Energy Division to reflect RA penalties that are established by the CPUC and assessed against load serving entities for RA deficiencies.

**“RA Shortfall Amount”** means

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

**“Ramp Rate”** means the ability of the Facility to change between power output levels, expressed in MW<sub>AC</sub>/min.

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



**“Receiving Party”** has the meaning set forth in Section 18.2.

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

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

**“Renewable Energy Incentives”** means: (a) any federal, state, or local tax benefits, credits or other incentives associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended), investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the production of renewable energy and/or operation of, construction of, investments in or ownership of the Facility; (b) any federal, state, or local cash payments, grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

**“Replacement RA”** means Resource Adequacy Benefits, if any, equivalent to in all respects to those that would have been provided by the Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, including, as applicable, Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, including any RAR counting rules, and any Local RAR, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits such consent not to be unreasonably withheld, conditioned or delayed.

**“Requested Confidential Information”** has the meaning set forth in Section 18.2.

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

**“Resource Adequacy Capacity”** or **“RA Capacity”** has the meaning set forth in the CAISO Tariff.

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

**“Resource Adequacy Resource”** has the meaning set forth in the CAISO Tariff.

**“Resource Adequacy Rulings”** means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by the CPUC or the CAISO,

however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

**“Resource Category”** means the categories 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.

**“S&P”** means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

**“SCADA Systems”** means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

**“Schedule”** has the meaning set forth in the CAISO Tariff, and **“Scheduled”** and **“Scheduling”** have a corollary meaning.

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

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

**“Security Interest”** has the meaning set forth in Section 8.9.

**“Seller”** has the meaning set forth on the Cover Sheet.

**“Seller’s Indemnified Parties”** has the meaning set forth in Section 16.1(b).

**“Seller Initiated Test”** has the meaning set forth in Section 4.4(c).

**“Settlement Amount”** means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages unless such damages are part of a Party’s Gains, Losses or Costs as those terms are explicitly defined herein.

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

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

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

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

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

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

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

**“Station Use”** means the Energy that is used within the Facility while idle to power certain lights, motors, temperature control systems, control systems and other ancillary electrical loads that are necessary for operation of the Facility (or as otherwise defined by the retail energy provider and CAISO Tariff). Any energy that is used within the Facility to power certain lights, motors, temperature control systems, control systems and other ancillary electrical loads that are necessary for operation of the Facility during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice is not Station Use;



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

**“Subsequent Purchaser”** means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

**“Supplementary Capacity Test Protocol”** has the meaning set forth in Exhibit O.

**“Supply Plan”** has the meaning set forth in the CAISO Tariff.

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

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

**“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 any (i) federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit, including the ITC, specific to investments in renewable energy facilities and/or energy storage facilities and (ii) any refundable credit, grant, or other cash payment in lieu of an incentive described in clause (i).

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

**“Termination Payment”** has the meaning set forth in Section 11.3(b).

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



**“Transmission Planning Process”** or **“TPP”** has the meaning set forth in the CAISO Tariff.

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

**“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.

**“Transmission System Outage”** means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

**“Ultimate Parent”** means Aypa Power Holdings, LP a Limited Partnership registered in Delaware.

**“Unplanned Outage”** means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof, which period is not a Planned Outage.

**1.2 Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or

reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

## **ARTICLE 2 TERM; CONDITIONS PRECEDENT**

### **2.1 Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”); *provided*, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

### **2.2 Pre-Deliverability Allocation Date Termination**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(d) [REDACTED]

**2.3 Commercial Operation; Conditions Precedent.** Seller shall provide Notice to Buyer of the expected Commercial Operation Date at least sixty (60) days in advance of such date. Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving

Commercial Operation. Following Buyer's receipt of such Notice, Buyer shall have five (5) Business Days to approve or reject on a reasonable basis (including identification of the conditions precedent set forth below in this Section 2.3 that Seller has failed to meet) Seller's request for confirmation of Commercial Operation, which, if confirmed, shall be deemed to have occurred as of the date of such Notice. If Buyer fails to respond to Seller's Notice within such five (5) Business Day period, Buyer will be deemed to have approved Seller's request for confirmation of Commercial Operation. Upon Buyer's approval (or deemed approval) of Seller's achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date.

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity and Efficiency Rate on the Commercial Operation Date;

(b) Seller or its Affiliate has executed an Interconnection Agreement with the Transmission Provider, which shall be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(c) All required Network Upgrades have been completed and placed in service as necessary to allow the Facility to qualify as Full Capacity Deliverability Status or Partial Capacity Deliverability Status;

(d) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(e) Seller has obtained CAISO Certification for the Facility;

(f) Seller has made available to Buyer's Scheduling Coordinator all real-time telemetry data reasonably necessary for Buyer's Scheduling Coordinator to perform its duties as Buyer's Scheduling Coordinator, including the relevant operational data for the Facility.

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

(h) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied (or if not capable of being satisfied before the Commercial Operation Date, within one hundred eighty (180) days of the Commercial Operation Date) and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(h) Seller has Site Control;

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



(j) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1; and

(f) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Daily Delay Damages and Commercial Operation Delay Damages.

**2.4 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 agrees to regularly scheduled telephonic or video conferenced meetings (unless otherwise agreed to by the Parties) between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in 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. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

**2.5 Remedial Action Plan.** If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date (including any extension thereof); *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

**2.6 Pre-Commercial Operation Actions.** The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller's delivery of an Availability Notice for the Commercial Operation Date, and Buyer's delivery of a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date.

## ARTICLE 3 PURCHASE AND SALE

**3.1 Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and shall have the exclusive right to the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes from any other resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or the CAISO pursuant to this Agreement or as otherwise required by Law. At its sole discretion, Buyer may during the Delivery Term re-sell all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder, including under Section 5.2. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues.

**3.2 Discharging Energy.** Subject to the terms and conditions of this Agreement, Seller commits to make available the Discharging Energy to Buyer during the Delivery Term, and Buyer shall have the exclusive rights to all such Discharging Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

**3.3 Capacity Attributes.** Seller shall request Full Capacity Deliverability Status for the Facility's Guaranteed Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, Seller shall maintain eligibility Full Capacity Deliverability Status or Partial Capacity Deliverability Status for the Installed Capacity of the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

### **3.4 Ancillary Services.**

(a) Ancillary Services. Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing during the Delivery Term consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff. Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services and the Operating Restrictions herein and without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with conducting such additional CAISO Certification.

### **3.5 Resource Adequacy Failure.**

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

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to [REDACTED]

(c) If Seller anticipates that it will have an RA Shortfall Month, Seller may, provide Replacement RA in the amount of the RA Shortfall Amount; *provided*, that any Replacement RA is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit M at least [REDACTED] before the RA Shortfall Month.

**3.6 Buyer's Re-Sale of Product.** Buyer shall have the exclusive right in its sole discretion to convey, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, re-sale or remarketing of the Product, or any part of the Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's costs, obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

**3.7 Compliance Expenditure Cap.** If a change in Laws occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Capacity Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be

required to bear during the Contract Term to comply with all of such obligations shall be capped at [REDACTED] in the aggregate over the Contract Term of the Agreement (“**Compliance Expenditure Cap**”);

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “**Compliance Actions**.”

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of [REDACTED] in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses; *provided*, Compliance Actions shall not include any requirement of Seller to increase the storage capacity beyond the Guaranteed Capacity.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed [REDACTED] (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.7 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

#### **ARTICLE 4 OBLIGATIONS AND DELIVERIES**

**4.1 Delivery.** Subject to the provisions of this Agreement, including Section 4.9(a), commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Discharging Energy to the Delivery Point, including any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility’s

operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Charging Energy to the Delivery Point (including the cost of Charging Energy itself) and delivery of Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and Imbalance Energy charges. The Charging Energy and Discharging Energy will be scheduled to the CAISO by Buyer in accordance with Exhibit D.

**4.2 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.

**4.3 Storage Availability and Efficiency Rate.**

(a) During the Delivery Term, the Facility shall maintain a Monthly Capacity Availability during each month of no less than the Guaranteed Availability, which Monthly Capacity Availability shall be calculated in accordance with Exhibit P. If the Monthly Capacity Availability during any month is less than the Guaranteed Availability, then Buyer's Monthly Capacity Payment shall be calculated by reference to the Availability Adjustment (as determined in accordance with Exhibit C).

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

**4.4 Facility Testing.**

(a) Capacity Tests. Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests. Buyer shall (i) comply with all reasonable Seller health and safety policies and procedures which have been provided by Seller to Buyer and instructions while present at the Site, and (ii) shall conduct itself in a manner that will not unreasonably interfere with the operation of the Facility or other activities of Seller and its subcontractors on the Site. Buyer acknowledges that it will be escorted at all times while on the Site. Alternatively, to the extent that any Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests.

(ii) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Capacity Test varies from the then-current Effective Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate determined pursuant to such Capacity Test shall become the new Effective Capacity and/or Efficiency Rate, as applicable, at the

beginning of the day following the completion of the test for all purposes under this Agreement until a revised Effective Capacity and/or Efficiency Rate, as applicable, is determined pursuant to a subsequent Capacity Test.

(b) Additional Testing. Seller shall conduct such additional testing as necessary to ensure the Facility is functioning properly and the Facility is able to respond to Dispatch Notices pursuant to Section 4.6(b).

(c) Any testing of the Facility requested by Buyer after the Commercial Operation Capacity Tests, and all required annual tests pursuant to Section B of the section headed “Capacity Test Notice and Frequency” in Exhibit O, shall be deemed Buyer-instructed dispatches of the Facility (“**Buyer Dispatched Test**”). Any test of the Facility that is not a Buyer Dispatched Test, including all tests conducted prior to Commercial Operation, any Commercial Operation Capacity Test, any Capacity Test conducted if the Effective Capacity immediately prior to such Capacity Test is below seventy percent (70%) of the Installed Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest) shall be deemed a “**Seller Initiated Test**”. For all Seller Initiated Tests, Seller shall (i) be liable for all CAISO costs and charges for associated Charging Energy, and (ii) be entitled to any CAISO revenues associated with Discharging Energy. The Facility shall be deemed unavailable during any Seller Initiated Test. Any Buyer Dispatched Test shall be deemed an Excused Event for the purposes of calculating the Monthly Capacity Availability and count towards throughput limits in the Operating Restrictions.

(i) For any Seller Initiated Test other than a Capacity Test required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Dispatch Notices shall be issued during any Seller Initiated Test. Dispatch Notices may be issued during a Buyer Dispatched Test as reasonably necessary to implement the applicable test.

#### **4.5 Testing Costs and Revenues.**

(a) Buyer shall be responsible for paying for all Charging Energy, shall be liable for all CAISO costs, and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test. Seller shall be responsible for paying for all Energy to charge the Facility and shall be liable for all CAISO costs, and entitled to all CAISO revenues associated with a Seller Initiated Test. Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the Discharging Energy associated with such Seller Initiated Test.

(b) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Capacity Test.

(c) Except as set forth in Sections 4.5(a) and (b) and 16.1(b), all other costs of any testing of the Facility shall be borne by Seller.

#### **4.6 Facility Operations.**

(a) Seller shall operate the Facility in accordance with Prudent Operating Practices.

(b) During the Delivery Term, Seller shall maintain SCADA Systems, communications links, and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice (“**Automated Dispatches**”). In the event of the failure or inability of the Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer’s review and comment. During any period during which the Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Dispatch Notices (“**Alternative Dispatches**”); provided that Buyer is not obligated to accept such Alternative Dispatches if the Alternative Dispatches do not provide comparable functionality for the purpose of dispatching the Facility in the Day-Ahead Market and Real-Time Market.

(c) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 4.6(c) shall be provided to Buyer within fifteen (15) days of Buyer’s request.

(d) Seller shall maintain accurate records with respect to all Capacity Tests.

(e) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.

**4.7 Dispatch Notices.** Buyer shall have the right to dispatch the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to the Operating Restrictions, each Dispatch Notice shall be effective unless and until such Dispatch Notice is modified by the CAISO, any Governmental Authority, Buyer or Buyer’s SC. If Automated Dispatches are not possible for reasons beyond Buyer’s control, Alternative Dispatches may be provided pursuant to Section 4.6(b).


**4.8 Facility Unavailability to Receive Dispatch Notices.** To the extent the Facility is unable to receive or respond to Dispatch Notices either through Automated Dispatches or

Alternative Dispatches during any Settlement Interval or Settlement Period, then as an exclusive remedy, the time period corresponding to such Settlement Interval or Settlement Period shall be deemed unavailable for purposes of calculating the Monthly Capacity Availability except to the extent that the Facility is unable to receive or respond to Dispatch Notices due to any circumstances at the high-voltage side of the Delivery Point or beyond that point or such failure is caused by Buyer


#### **4.9 Energy Management.**

(a) Charging Generally. Upon receipt of a valid Charging Notice, Seller shall take all action necessary to deliver the Charging Energy to the Facility from the Delivery Point. Seller shall maintain, repair or replace equipment in Seller's possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all costs and charges of delivering the Charging Energy to the Delivery Point, including all CAISO costs and charges associated with Charging Energy.

(b) Charging Notices. Buyer shall have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Charging Notices to be issued, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this Agreement shall be effective unless and until Buyer, Buyer's SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice



(c) No Unauthorized Charging. Seller shall not charge the Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from the CAISO, the PTO, Transmission Provider or any other Governmental Authority. If, during the Delivery Term, Seller charges the Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.9(c), then (i) Seller shall pay to Buyer all Energy costs associated with such charging of the Facility, and (ii) Buyer shall be entitled to discharge such Energy and shall be entitled to all of the benefits (including Product) associated with such discharge



(d) Discharging Notices. Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Discharging Notices to be issued, subject to availability of the Facility



and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement shall be effective unless and until Buyer, Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice [REDACTED]

(e) No Unauthorized Discharging. Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the PTO, the Transmission Provider or any other Governmental Authority.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Facility other than as permitted hereunder, or as is expressly addressed in this Section 4.9, it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom, and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11 [REDACTED]

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer or Buyer's SC, and Seller shall have no liability for violation of this Section 4.9 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch or Seller negligently or intentionally fails to accurately communicate to Buyer the Facility's availability, Seller shall be responsible for all CAISO charges and penalties resulting from such deviations (in addition to any Buyer remedy related to overcharging of the Facility as set forth in Section 4.9(c)); [REDACTED]

(h) Pre-Commercial Operation Date Period. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Facility.

(i) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Agreement or any Dispatch Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions.

(j) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy used to serve Station Use during periods in which the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice), (ii) Energy supplied from Charging Energy or Discharging Energy during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice shall not be considered Station Use, (iii) Station Use may be supplied over the same circuit as Charging Energy and Discharging Energy, and (iv) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties or charges for Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use (other than that supplied from Charging Energy or Discharging Energy as provided in clause (ii) or over the same circuit as Charging Energy and Discharging Energy as provided in clause (iii)) is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties or charges.

#### **4.10 Capacity Availability Notice**

(a) No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Available Capacity for each day of the following month in a form substantially similar to Exhibit F ("**Monthly Expected Available Capacity Report**").

(b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with CAISO scheduling practices, Seller shall provide Buyer and the SC (if applicable) with a non-binding hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (the "**Availability Notice**"). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in Exhibit G, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.

(c) Seller shall notify Buyer and the SC (if applicable) as soon as practicable with an updated Monthly Expected Available Capacity Report and Availability Notice, as applicable, if the Available Capacity of the Facility changes or is expected to change after Buyer's receipt of a Monthly Expected Available Capacity Report or Availability Notice. Seller shall

accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices.

**4.11 [Reserved].**

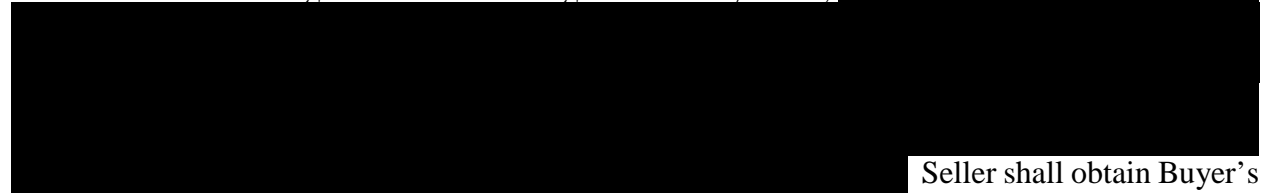
**4.12 Outages**

(a) Planned Outages.

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller's schedule of proposed Planned Outages ("**Outage Schedule**") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Within twenty (20) days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer's reasonable requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than ninety (90) days advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 4.12(a)(i); *provided*, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff and Seller shall reimburse Buyer for any cost Buyer incurs in connection therewith (including substitute Capacity Attributes as required by the CAISO). Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

(b) No Planned Outages During Summer Months. Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term.



Seller shall obtain Buyer's consent, which shall not be unreasonably withheld, prior to scheduling any Planned Outages as set forth in this Section 4.12(b). In the event Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(c) Planned Outage Timing. To the extent commercially reasonable, Seller shall schedule maintenance outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii)

otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.

(d) Notice of Unplanned Outages. Seller shall promptly notify Buyer's Scheduling Coordinator electronically following the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. To the extent there is an Unplanned Outage greater than twenty (20) MW, Seller shall, in addition to notice through telemetry, notify Buyer by telephoning Buyer's Scheduling Coordinator as soon as practical in accordance with Prudent Operating Practices. Seller, Buyer and Buyer's Scheduling Coordinator shall develop and agree to a detailed outage communications protocol at least thirty (30) days prior to COD.

(e) Inspection. In the event of an Unplanned [REDACTED], Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller's safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Facility.

(f) Reports of Outages. Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws. Seller shall also report all Unplanned Outages or Planned Outages in the Daily Operating Report.

## ARTICLE 5 TAXES, GOVERNMENTAL COSTS

**5.1** Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Buyer's income, revenue, receipts or employees). Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees) or on Charging Energy prior to its delivery to Seller. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes [REDACTED]

**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*, neither Party shall be obligated to incur any financial or

operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

## **ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY**

### **6.1 Maintenance of the Facility.**

(a) Seller shall, as between Seller and Buyer, be solely responsible for the operation, inspection, maintenance and repair of the Facility, and any portion thereof, in accordance with applicable Law and Prudent Operating Practices. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer's scheduling representative upon reasonable request. Nothing herein shall limit Seller's right to replace or augment existing batteries and other equipment to maintain the capacity of the Facility.

(b) Seller shall use commercially reasonable efforts to promptly make all necessary repairs to the Facility, and any portion thereof, and to take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Guaranteed Availability and the Guaranteed Efficiency Rate).

**6.2 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 Buyer's emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility or suspending the supply of Discharging Energy to the Delivery Point.

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

## **ARTICLE 7 METERING**

**7.1 Metering.** Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter. The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses and Station Use, as applicable, from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall separately meter all Station Use. Metering shall be consistent with the Metering Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface - Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility.

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

## **ARTICLE 8 INVOICING AND PAYMENT; CREDIT**

**8.1 Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product within ten (10) days after the end of the prior monthly delivery period. Each invoice shall reflect (a) records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy, Discharging Energy, and the amount of Replacement RA delivered to Buyer (if any) (but excluding any missing interval data that is not then-available from CAISO) and (ii) Seller's records of metered data, including data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably

possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

**8.2 Payment.** Buyer shall make payment to Seller of Monthly Capacity Payments for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days of Buyer's receipt of Seller's invoices; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

**8.3 Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars (\$10,000).

**8.4 Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a Facility Meter inaccuracy sufficient to require a payment adjustment; *provided, however*, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by the CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

**8.5 Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall

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

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

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

**8.8 Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer in the amount set forth in the Cover Sheet on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the



unused portion of the Performance Security. [REDACTED]

[REDACTED] If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

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

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

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

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

[REDACTED]



**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 in 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) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, invoices sent pursuant to Section 8.1 and Notices of outages or other scheduling or dispatch information or requests and Replacement RA Notices, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

**ARTICLE 10**  
**FORCE MAJEURE**

**10.1 Definition.**

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii)

(iv) a Curtailment Order, except to the extent such Curtailment Order is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility unless caused by a Force Majeure Event; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) events otherwise constituting a Force Majeure Event that prevents Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under this Agreement; or (ix) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

**10.2 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. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall

not (a) suspend or excuse the obligation of a Party to make any payments due hereunder except as provided above, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Section 4 of Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) after all applicable extensions of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

**10.3 Notice for Force Majeure.** Within [REDACTED] of the claiming Party's knowledge of a Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the claiming Party's knowledge of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice constitutes a waiver of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

**10.4 Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any further liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

## **ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION**

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

(a) with respect to a Party (the "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 Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.5, (B) failures related to the Monthly Capacity Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P, and (C) failure to maintain the Guaranteed Efficiency Rate that does not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Exhibit C), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

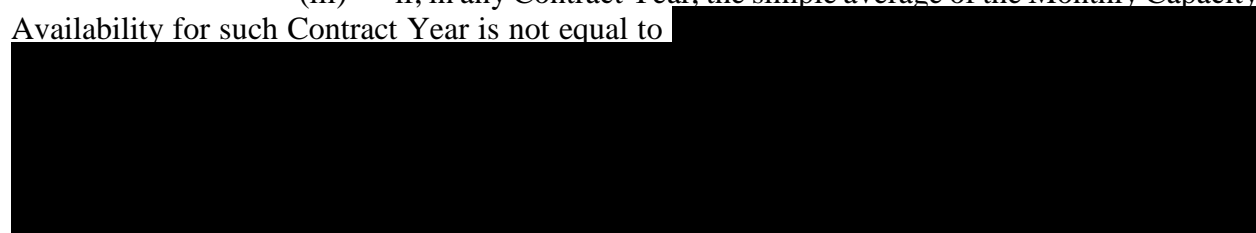
(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point that was not discharged by the Facility;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any Contract Year, the simple average of the Monthly Capacity Availability for such Contract Year is not equal to



[REDACTED]

(iv) if, Seller fails to maintain an average Efficiency Rate equal to or greater than the Minimum Efficiency Rate over a rolling twelve (12) month period [REDACTED]

(v) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4 that demonstrates a reasonable plan for completing the Facility by the Guaranteed Commercial Operation Date as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(vi) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

(vii) if, Seller fails to maintain an Effective Capacity equal to [REDACTED]

[REDACTED]

(viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within [REDACTED] after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

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

- (A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;
- (B) the issuer of such Letter of Credit becomes Bankrupt;
- (C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
- (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
- (E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
- (G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

**11.2 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), or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;
- (c) to withhold any payments due to the Defaulting Party under this Agreement;
- (d) to suspend performance; and
- (e) to exercise any other right or remedy available at law or in equity, including on and after the Commercial Operation Date with respect to a Seller Event of Default, specific performance or injunctive relief, except to the extent such remedies are expressly limited under

this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

**11.3 Damage Payment; Termination Payment.** If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date as a result of a Seller Event of Default prior to the Commercial Operation Date, then the Damage Payment shall, subject to Section 11.9, be owed to Buyer and shall be equal to the entire Development Security amount and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(b) Termination Payment. The payment owed by Seller as the Defaulting Party to Buyer for a Terminated Transaction occurring after the Commercial Operation Date or by Buyer as the Defaulting Party to Seller at any time, ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

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

**11.4 Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the



Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

**11.5 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 Seller 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 the termination, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price [REDACTED]

[REDACTED], and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6. [REDACTED]

**11.7 Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy herein, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

**11.8 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.

**11.9 Seller Pre-COD Liability.** Unless and until the Facility has achieved Commercial

Operation, Seller's aggregate liability for any and all reasons, including liabilities for payment of Delay Damages and the Damage Payment [REDACTED]

**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

**12.1 No Consequential Damages.** EXCEPT TO THE EXTENT (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

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

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

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, OR RENEWABLE ENERGY INCENTIVES DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF COMMERCIALY REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE LOSS OR RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.3(d), 3.5, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, and EXHIBIT C, THE PARTIES ACKNOWLEDGE

THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES; COVENANTS**

**13.1 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 each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its

terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) As of the Effective Date, neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

**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.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim and affirmatively waives immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in Law and under

the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; *provided, however,* that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

**13.3 General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

**13.4 Seller’s Covenants.** Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) Compliance with Laws. To the extent applicable to Seller or the Facility, Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees. Seller shall not discriminate against any employee or applicant for employment on the basis of the fact or perception of that person's race, color, religion, ancestry, national origin, age, sex (including pregnancy, childbirth or related medical conditions), legally protected medical condition, family care status, veteran status, sexual orientation, gender identity, transgender status, domestic partner status, marital status, physical or mental disability, or AIDS/HIV status.

(b) Seller or its Affiliate shall obtain and maintain any and all permits and approvals necessary for the construction and operation of the Facility, including without limitation, environmental clearance under CEQA or other environmental law, as applicable, from the local jurisdiction where the Facility is or will be constructed when needed in connection with Seller’s obligations hereunder.

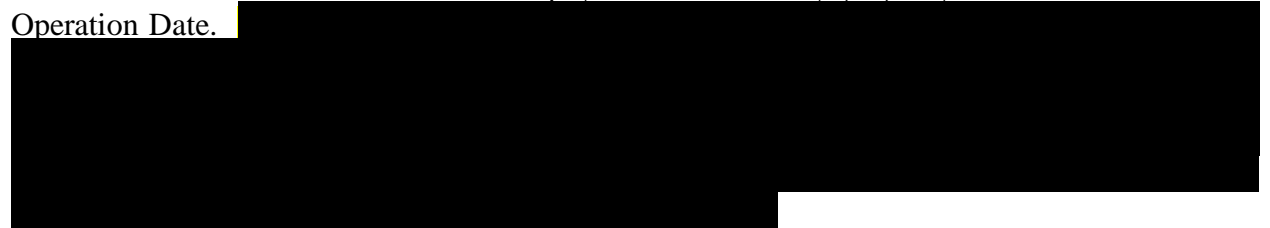
(c) Seller or its Affiliate shall maintain Site Control throughout the Delivery Term.

**13.5 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. Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller's obligations under this Section 13.5 will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

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

**13.7 Community Benefits.** Seller pledges to deliver one hundred thousand dollars (\$100,000) to Buyer so that Buyer may direct such amount to community benefits initiatives that directly benefit stakeholders in Buyer's service area. Buyer shall have sole discretion to determine which initiatives will be funded and will provide Seller Notice describing the initiatives Buyer intends to fund. Seller shall make this payment within sixty (60) days after the Commercial Operation Date.



## ARTICLE 14 ASSIGNMENT

**14.1 General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer's consent and will not be subject to Section 14.2 or Section 14.3 if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer shall reasonably cooperate with Seller or any Lender, to execute or arrange for the delivery of certificates, consents (subject to Section 14.2), opinions, and estoppels reasonably requested by Seller or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the Lender's security interest and such other provisions as may be reasonable requested by Seller, such Lender or potential Lender; *provided, however*, Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. The assigning Party shall pay the other Party's reasonable expenses associated with the preparation, review, execution and delivery of documents

in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys' fees.

**14.2 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 without the consent of Buyer. In connection with any financing or refinancing of the Facility, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"), which shall be substantially in the form of Exhibit T. Seller shall pay Buyer's reasonable expenses, including attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing of the Facility. Buyer shall have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to materially modify this Agreement.

**14.3 Permitted Assignment by Seller.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, or any other conflict of interest Law:

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:

(i) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(ii) Seller has provided Buyer a written agreement signed by the Affiliate to which Seller wishes to assign its interests that provides that such Affiliate will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment.

(b) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to any Person succeeding to all, or substantially all, of the assets of Seller (whether voluntary or by operation of law), if, and only if:

(i) The assignee is a Permitted Transferee;


(ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

(c) Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and confirmed by Buyer which confirmation shall not be unreasonably withheld, conditioned or delayed.

**14.4 Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

**14.5 Permitted Assignment by Buyer.** Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has creditworthiness that is equal to or better than an Investment Grade Credit Rating ("**Limited Assignee**") of Buyer's right to receive Product and Buyer's obligation to make payments to Seller, subject to execution of an assignment agreement between and among Seller, Buyer, and Limited Assignee upon terms and conditions mutually agreed, including that the limited assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement. Buyer may make such assignment by delivering Notice upon not less than thirty (30) days prior to such proposed assignment. Subject to the foregoing, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including, but not limited to, information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer.



## ARTICLE 15 DISPUTE RESOLUTION

**15.1 Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of San Diego, California.

**15.2 Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. If the Parties are unable to resolve a dispute arising



hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law in or equity.

**15.3 Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

## **ARTICLE 16 INDEMNIFICATION**

### **16.1 Indemnification.**

(a) Seller agrees to indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "**Buyer's Indemnified Parties**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Seller or its Affiliates, directors, officers, employees, or agents.

[REDACTED]

[REDACTED]

(d) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its own sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

**16.2 Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which an indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the

Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; *provided*, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## **ARTICLE 17 INSURANCE**

### **17.1 Insurance.**

(a) 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 obligations under this Agreement and including Buyer as an additional insured. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Seller, if it has employees, shall maintain Employers' Liability insurance with limits of not 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 an additional insured and contain standard cross-liability and severability of interest provisions.

(e) 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.

(f) Umbrella Liability Insurance. Seller shall maintain or cause to be maintained an umbrella liability policy with a limit of liability of [REDACTED] per occurrence and in the aggregate. Such insurance shall be in excess of the General Liability, Employer's Liability, and Business Auto Insurance coverages. Seller may choose any combination of primary, excess or umbrella liability policies to meet the insurance limits required under Sections 17.1(a), 17.1(b) and 17.1(d) above.

(g) 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, [REDACTED]

[REDACTED] 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; [REDACTED]

(i) 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 (i)(i) and (i)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(i).

(j) Evidence of Insurance. Within ten (10) days after Execution of this Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit

of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and 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; and (iv) information that the recipient independently developed without a violation of this Agreement.

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

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

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("**Requested Confidential Information**"), Buyer shall as soon as practical notify

Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer and Buyer's Indemnified Parties from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer or Buyer's Indemnified Parties for Buyer's refusal to disclose any Requested Confidential Information.

**18.3 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 Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s) and potential lenders), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party or is otherwise bound by a duty of confidentiality with respect to such Confidential Information.

**18.5 Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release. 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.** Except as otherwise explicitly permitted herein, this Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.

**19.3 No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

**19.4 No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

**19.5 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 an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words “execution,” “signed,” “signature,” and words of like import in this Agreement shall be deemed to

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

**19.9 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, and Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or its constituent members, in connection with this Agreement.

**19.11 Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

**19.12 Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code of 1986, as amended.

**19.13 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 Further Assurances.** Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those

provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

*[Signatures on following page]*



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

**EUISMOD PROJECT I LLC**

**SAN DIEGO COMMUNITY POWER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### FACILITY DESCRIPTION

**Site Name:** Euismod Storage

**Site includes all or some of the following APNs:** [26110321, 26110320, 26110317, 26110329](#)

**County:** Kern

**CEQA Lead Agency:** Kern County

**Zip Code:** 93560

**Latitude and Longitude:**

**Facility Description:** A 200 MWAC 4-hour (800 MWh) battery energy storage facility, located in Kern County, in the state of California.

**Interconnection Point:** Whirlwind Substation

**Facility Meter:** See [Exhibit R](#)

**Facility Metering Points:** See [Exhibit R](#)

**P-node:** If not available at the Effective Date, the PNode shall be updated prior to the Commercial Operation Date to reflect the PNode corresponding to the Facility's Interconnection Point with the CAISO Grid.

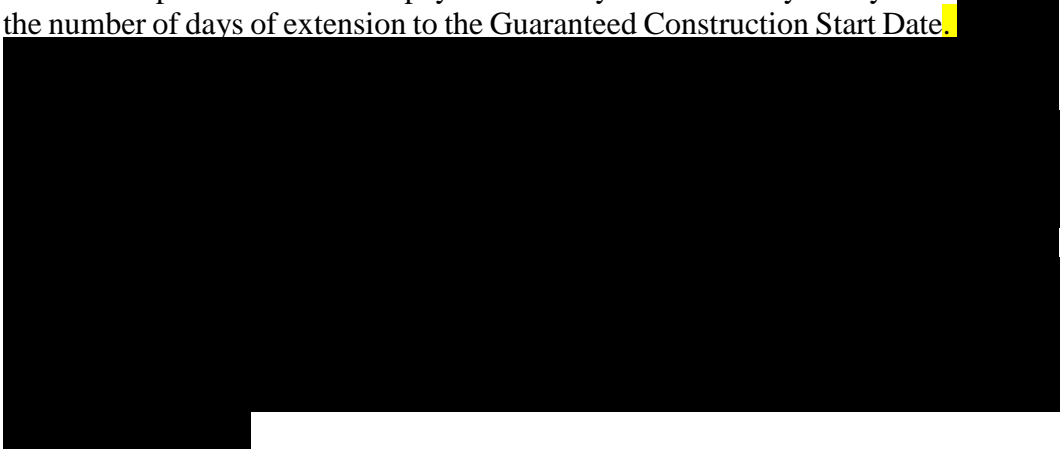
**Transmission Provider:** Southern California Edison

**Additional Information:** Site Plan provided below.

## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

- a. **“Construction Start”** will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date, as may be extended by Seller’s payment of Daily Delay Damages pursuant to Section 1(b) of this Exhibit B and/or a Development Cure Period pursuant to Section 4 of this Exhibit B.
- b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages (which such payment may not be in the form of a draw on any Letter of Credit) in advance to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. If Seller elects to extend the Guaranteed Construction Start Date, on or before the date that is ten (10) days prior to the then-current (including any previous extensions) Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date.
- 

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. The “**Commercial Operation Date**” shall be the date on which Commercial Operation is achieved.

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

b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages (which such payment may not be in the form of a draw on any Letter of Credit) in advance to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] of extensions by such payment of Commercial Operation Delay Damages. If Seller elects to extend the Guaranteed Commercial Operation Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller may provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date.



If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b) of Exhibit B.

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

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, both be extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:
- a. a Force Majeure Event occurs; or
  - b. the Interconnection Facilities or Reliability Network Upgrades are not complete [REDACTED]  
[REDACTED] or
  - c. Buyer has not made all necessary arrangements to receive the Product at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(c) above) shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(c) above) shall not exceed [REDACTED]. Notwithstanding anything to the contrary, no Development Cure Period extension shall be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required for a Force Majeure Event, if applicable, or as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity such that the Installed Capacity is up to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to achieve an Installed Capacity that is 100% of the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to [REDACTED].

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

**EXHIBIT C**  
**COMPENSATION**

(a) Monthly Capacity Payment. [REDACTED]

[REDACTED] Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If the Effective Capacity is adjusted pursuant to a Capacity Test effective as of a day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Capacity is applicable.

(b) Availability Adjustment. The “Availability Adjustment” (or “AA”) is calculated as follows:

(i) If the Monthly Capacity Availability is greater than or equal to the Guaranteed Availability, then:

$$AA = 100\%$$

[REDACTED] If the Monthly Capacity Availability is less than the Guaranteed Availability, [REDACTED]

[REDACTED] If the Monthly Capacity Availability is less than the Guaranteed Availability, [REDACTED]

(iv) If the Monthly Capacity Availability is [REDACTED], then:

$$AA = 0$$

(c) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate(s) applicable to such month is/are less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by *multiplying* (i) the total Charging Energy for such month, *by* (ii) the percentage amount by which such applicable Efficiency Rate(s) is/are less than the Guaranteed Efficiency Rate, *by* (iii) Buyer’s average cost of procuring Charging Energy for such month, which amount Seller shall set off against amounts payable by Buyer in the applicable monthly invoice.

(d) Tax Credits. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, and be entitled to all benefit, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.



## EXHIBIT D

### SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt (as applicable) of Charging Energy, Discharging Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility. Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real time or other CAISO market basis that may develop after the Effective Date, as determined by Buyer. Buyer (or its SC) shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as applicable to Buyer as the Scheduling Coordinator for the Facility.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including Charging Energy, penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including Discharging Energy, credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO Dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Delivery Point and Charging Energy delivered to the Delivery Point; *provided, however*, Seller shall assume all liability and reimburse Buyer for any and all CAISO penalties (i) incurred by Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility), or (iii) to the extent arising as a result of Seller's failure to comply with a timely Curtailment Order if such failure results in incremental costs to Buyer. [REDACTED]

[REDACTED] 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 shall review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices in respect of performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

(e) 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 Data File and Resource Data Template. Seller shall provide all the data to Buyer or Buyer's SC that is required for the CAISO's Master File and Resource Data Template and the CPUC's RA Resource Master Database (or successor data systems) for the Facility consistent with this Agreement and Buyer or Buyer's SC shall promptly provide such data to CAISO or the CPUC, as applicable. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that

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

(h) 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 reasonably likely to affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Prevailing wage reports as required by Law.
12. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

**EXHIBIT F**

**FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT**

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

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert 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**

**FORM OF DAILY AVAILABILITY NOTICE**

Trading Day: \_\_\_\_\_

Station: \_\_\_\_\_

Issued By: \_\_\_\_\_

Unit: \_\_\_\_\_

Issued At: \_\_\_\_\_

Unit 100% Available No Restrictions: \_\_\_\_\_

Hour Ending	Available Capacity			Comments
	(MW)			
1:00				
2:00				
3:00				
4:00				
5:00				
6:00				
7:00				
8:00				
9:00				
10:00				
11:00				
12:00				
13:00				
14:00				
15:00				
16:00				
17:00				
18:00				
19:00				
20:00				
21:00				
22:00				
23:00				
0:00				

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT H**

**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification (“**Certification**”) of Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] (“**Engineer**”) to San Diego Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

1. The Facility is fully operational, reliable, interconnected, fully integrated and synchronized with the Transmission System in accordance with the Interconnection Agreement.
2. The Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority.
3. The commissioning of the equipment has been completed in accordance with the applicable material requirements of the manufacturers’ specifications.
4. The Facility’s Installed Capacity is no less than ninety-five percent (95%) of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
5. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on \_\_\_[DATE]\_\_\_\_.
6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on \_\_\_\_\_[DATE]\_\_\_\_\_.
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on \_\_\_\_\_[DATE]\_\_\_\_\_.
8. Seller has segregated and separately metered Station Use to the extent required in accordance with the retail service provider’s tariff, and any such meter(s) have the same or greater level of accuracy as is required under the retail service provider’s tariff.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT I**

**FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE**

This certification (“**Certification**”) of Capacity and Efficiency Rate Test results is delivered by [licensed professional engineer] (“**Engineer**”) to San Diego Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify that a Capacity Test conducted on [Date] demonstrated (i) an [Installed or Effective] Capacity of \_\_ MW AC to the Delivery Point at four (4) hours of continuous discharge, (ii) a Battery Charging Factor of \_\_%, (iii) a Battery Discharging Factor of \_\_%, and (iv) an Efficiency Rate of \_\_%, all in accordance with the testing procedures, requirements and protocols set forth in Section 4.4 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_



**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 Energy Storage Service Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (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:

\_\_\_\_\_  
(such description shall amend the description of the Site in Exhibit A of the Agreement.)

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the \_\_\_ day of \_\_\_\_\_.

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT K**

**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:  
Bank Ref.:  
Amount: US\$[XXXXXXXXXX]  
Expiry Date:

Beneficiary:

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

Ladies and Gentlemen:

By the order of \_\_\_\_\_ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (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. \$[XXXXXXXX] (United States Dollars [XXXXXX] 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. [XXXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

This Letter of Credit may only be terminated upon one hundred twenty (120) days' prior written notice from Issuer to Beneficiary by registered mail or overnight courier service that Issuer elects not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not governed by the UCP shall be governed by the laws of the State of New York. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-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. [XXXXXXXX] (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 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 Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “**ESSA**”) dated as of [\_\_\_\_\_] 20\_\_\_\_.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the ESSA, as required by Section 8.8 of the ESSA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the ESSA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the ESSA.

#### Agreement

**1. Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESSA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESSA (the “**Guaranteed Amount**”). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESSA, Guarantor shall promptly pay such amount as required herein.

**2. Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the ESSA. If Seller fails to pay any Guaranteed Amount as required pursuant to the ESSA for ten (10) Business Days following Seller’s receipt of Buyer’s Notice of such failure (the “**Demand Notice**”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “**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 ten (10) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

**3. Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the ESSA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by, any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount,
- (ii) any amendment, modification or other alteration of the ESSA,
- (iii) any indemnity agreement Seller may have from any party,
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount,
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including, but not limited to, any rejection or other discharge of Seller's obligations under the ESSA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding,
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever,
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding,
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the ESSA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the ESSA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the ESSA, or
- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

*provided* that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the ESSA, but that are expressly waived under any provision of this Guaranty).

**4. Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the ESSA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the ESSA;

(iii) subject to Section 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

**5. Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

**6. Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*][*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the

aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

**7. Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first-class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at   
Attn:   
Fax:

If delivered to Guarantor, to it at   
Attn:   
Fax:

**8. Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Diego, California.

**9. Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the ESSA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which



when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

*[Signatures on next page]*

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

GUARANTOR:

[\_\_\_\_\_]

By:\_\_\_\_\_

Printed Name:\_\_\_\_\_

Title:\_\_\_\_\_

BUYER:

[\_\_\_\_\_]

By:\_\_\_\_\_

Printed Name:\_\_\_\_\_

Title:\_\_\_\_\_

By:\_\_\_\_\_

Printed Name:\_\_\_\_\_

Title:\_\_\_\_\_

## EXHIBIT M

### FORM OF REPLACEMENT RA NOTICE

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

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

#### **Unit Information<sup>1</sup>**

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		

<sup>1</sup> To be repeated for each unit if more than one.

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT N**

**NOTICES**

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

<p>Euismod Project I LLC          (“Seller”)</p>	<p><b>SAN DIEGO COMMUNITY POWER</b>          (“Buyer”)</p>
<p><b>With additional Notices of an Event of Default to:</b>          c/o Aypa Power Development LLC          Street: 11801 Domain Blvd, Suite 450          City: Austin, TX 78758</p> <p>Attn: General Counsel          Phone:          Facsimile:          Email: legal@aypa.com</p>	<p><b>With additional Notices of an Event of Default to:</b>          Attn: Veera Tyagi, General Counsel          PO Box 12716          San Diego, CA 92112</p> <p>Email: vtyagi@sdcommunitypower.org</p>
<p><b>Emergency Contact:</b>          Attn: Dan Santelli          Phone: 607-351-7347          Email: dsantelli@aypa.com</p>	<p><b>Emergency Contact:</b>          Attn: Byron Vosburg, Director of Power Services          Phone: (619) 880-6545          Email: bvosburg@sdcommunitypower.org</p>

## EXHIBIT O

### CAPACITY AND EFFICIENCY RATE TESTS

#### Capacity Test Notice and Frequency

A. Commercial Operation Capacity Test(s). Upon no less than [REDACTED] prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Commercial Operation Capacity Test(s).

B. Subsequent Capacity Tests. Following the Commercial Operation Date, at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. In addition to the annual capacity test, if Buyer has reason to believe that the Effective Capacity or the Efficiency Rate is materially less than shown by the most recent test results, Buyer shall have the right to require a Capacity Test at any time upon no less than ten (10) Business Days prior Notice to Seller. Seller shall have the right to run a retest of any Capacity Test at any time upon ten (10) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Capacity and Efficiency Rate. No later than [REDACTED] following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

#### Capacity Test Procedures

##### PART I. GENERAL.

A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

B. Conditions Prior to Testing.

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

equivalent data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

## PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

***Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the Guaranteed Capacity; provided, for all purposes of this Agreement, the amount of Installed Capacity shall never be deemed to exceed the Guaranteed Capacity, and all SOC measurements associated with a Capacity Test shall be based on the Installed Capacity without taking into account any capacity that exceeds the Guaranteed Capacity.***

- A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.
  - (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
  - (2) Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed [REDACTED]
- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:
  - (1) Time;
  - (2) The amount of Discharging Energy to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);



(3) Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter); and

(4) Stored Energy Level (MWh).

C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg) near the horizontal centerline of the Facility; and

(3) Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

(1) That the CT successfully started;

(2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;

(3) The maximum sustained charging level for the amount of time necessary to reach 100% SOC [REDACTED]

(4) Amount of time between the Facility's electrical output going from 0 to the maximum sustained discharging level registered during the CT for purposes of calculating the ramp rate (with the parties acknowledging this this value may be effectively instantaneous and unmeasurable with precision);

(5) Amount of time between the Facility's electrical input going from 0 to the maximum sustained charging level registered during the CT (for purposes of calculating the ramp rate);

(6) Amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC. [REDACTED]

(7) Amount of Discharging Energy, registered at the Facility Meter, to go from 100% SOC to 0% SOC. [REDACTED]

E. Test Conditions.

(1) General. At all times during a CT, the Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions,

and all operating protocols recommended, required or established by the manufacturer for the Facility.

- (2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within ten (10) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
- (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
- (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor. If Buyer does not accept or reject the CT results within such [REDACTED] the CT will be deemed accepted. If either Party reasonably rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

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

and requirements applicable to Capacity Tests based on the then current design of the Facility (“**Supplementary 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 Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Capacity and Efficiency Rate. The Effective Capacity and Efficiency Rate shall be updated as follows:

- (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Capacity, which shall be expressed in MW AC, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.
- (2) The total amount of Discharging Energy (as reported under Section II.D(7) above) divided by the total amount of Charging Energy (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Capacity and Efficiency Rate Test**

• Procedure:

- (1) System Starting State: The Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the SOC.
- (3) Command a real power charge that results in an AC power of Facility’s maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC [REDACTED]
- (4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) the amount of time necessary to reach 100% SOC [REDACTED]

[REDACTED] Such data point shall be used for purposes of calculation of the Battery Charging Factor.

- (5) Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC. [REDACTED]
- (6) Following a rest period of no more than one (1) hour (unless agreed otherwise), command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, or (b) the Facility has reached 0% SOC.
- (7) Record and store the SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation Capacity Test) for four (4) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for the purposes of calculating the Battery Discharging Factor.
- (8) Record and store the Discharging Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity. [REDACTED]
- (9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Part III.A.6 until the Facility has reached a 0% SOC pursuant to either Part III.A.7 or Part III.A.9, as applicable. [REDACTED]

- Test Results:

- (1) The resulting Effective Capacity measurement is the sum of the total Discharging Energy at the Facility Meter divided by four (4) hours.
- (2) The total amount of Discharging Energy (as reported under Section III.A(10) above) divided by the total amount of Charging Energy (as reported under Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

## **B. AGC Discharge Test**

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's maximum discharging level within 2 seconds.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  - (1) Record the Facility active power level at the Facility Meter.
  - (2) Command the Facility to follow a simulated CAISO RIG signal of P<sub>MAX</sub> at .95 power factor for ten (10) minutes.
  - (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

## **C. AGC Charge Test**

- Purpose: This test will demonstrate the AGC charge capability to achieve the facility's full charging level within 2 seconds.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  - (1) Record the Facility active power level at the Facility Meter.
  - (2) Command the Facility to follow a simulated CAISO RIG signal of P<sub>MAX</sub> at .95 power factor for ten (10) minutes.
  - (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

## **D. Reactive Power Production Test**

- Purpose: This test will demonstrate the reactive power production capability of the Facility.

- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
  - (1) Record the Facility reactive power level at the Facility Meter.
  - (2) Command the Facility to follow 15 MW for ten (10) minutes.
  - (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

**E. Reactive Power Consumption Test**

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
  - (1) Record the Facility reactive power level at the Facility Meter.
  - (2) Command the Facility to follow 15 MW for ten (10) minutes.
  - (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

**EXHIBIT P**

**FACILITY AVAILABILITY CALCULATION**

Monthly Capacity Availability Calculation. Seller shall calculate the “Monthly Capacity Availability” for a given month of the Delivery Term using the formula set forth below:

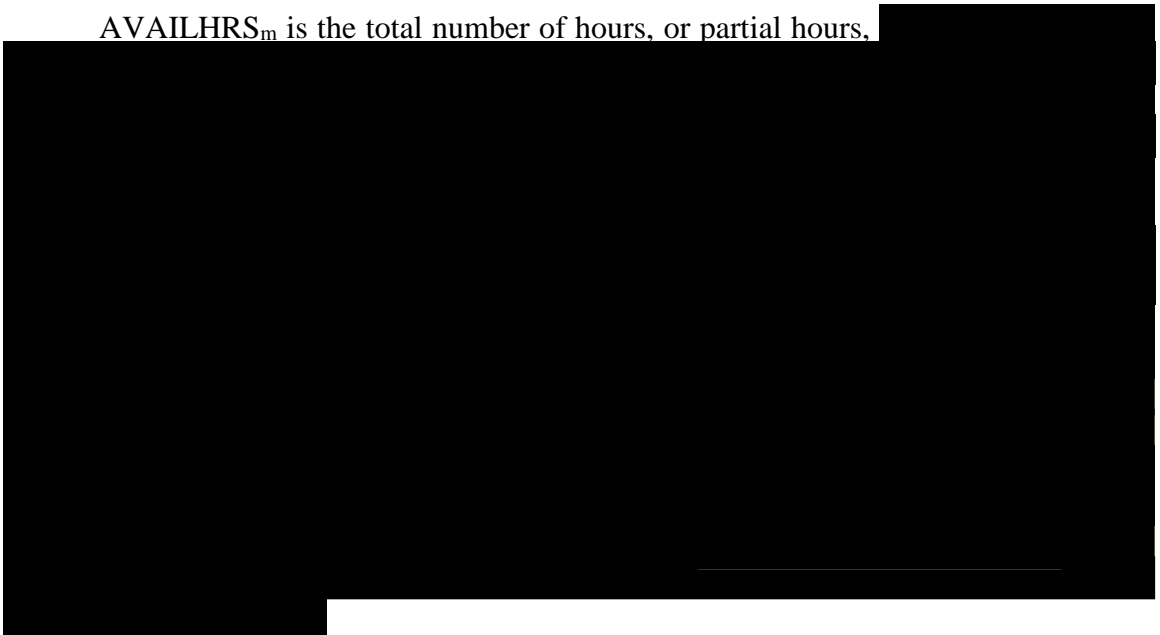
$$\text{Monthly Capacity Availability (\%)} = \frac{[\text{AVAILHRS}_m + \text{EXCUSEDHRS}_m]}{[\text{MONTHRS}_m]}$$

Where:

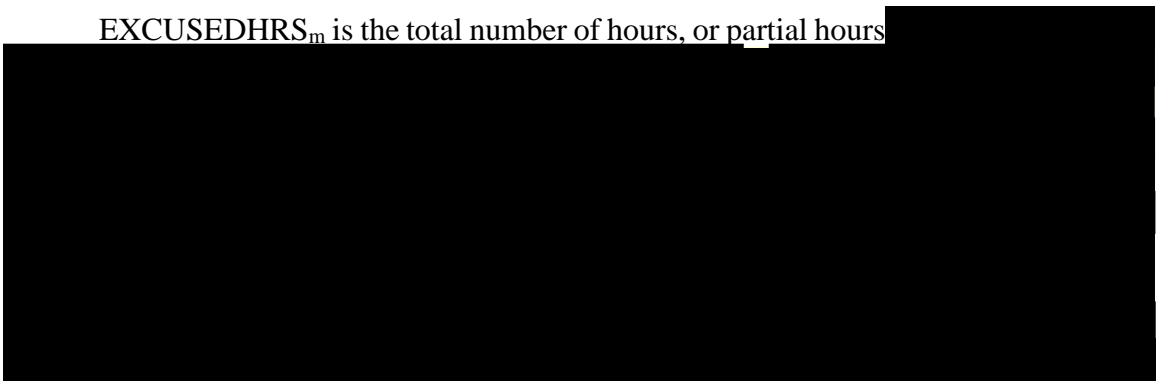
$m$  = relevant month “m” in which Monthly Capacity Availability is calculated;

MONTHRS<sub>m</sub> is the total number of hours for the rolling twelve (12) month period;

AVAILHRS<sub>m</sub> is the total number of hours, or partial hours,



EXCUSEDHRS<sub>m</sub> is the total number of hours, or partial hours



[REDACTED]

[REDACTED]



## EXHIBIT Q

### OPERATING RESTRICTIONS

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

<b>File Update Date:</b>	
<b>Technology:</b>	Battery Energy Storage
<b>Storage Unit Name:</b>	Euismod Storage
<b>A. Total Unit Dispatchable Range Information</b>	
Interconnect Voltage (kV)	220
Maximum State of Charge (SOC) during Charging	100%
Minimum State of Charge (SOC) during Discharging	0%
Maximum Stored Energy Level (MWh):	800
Minimum Stored Energy Level (MWh):	0
Maximum Charging Capacity (MW):	200
Maximum Discharging Capacity (MW):	200
<b>B. Maximum Throughput</b>	
Maximum Daily Throughput:	
Maximum Annual Throughput:	
<b>C. Charge and Discharge Rates</b>	
	<b>Ramp Rate (MW/minute) Description</b>
Energy	
<b>D. Ancillary Services</b>	
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:	Yes

**EXHIBIT R**  
**METERING DIAGRAM**

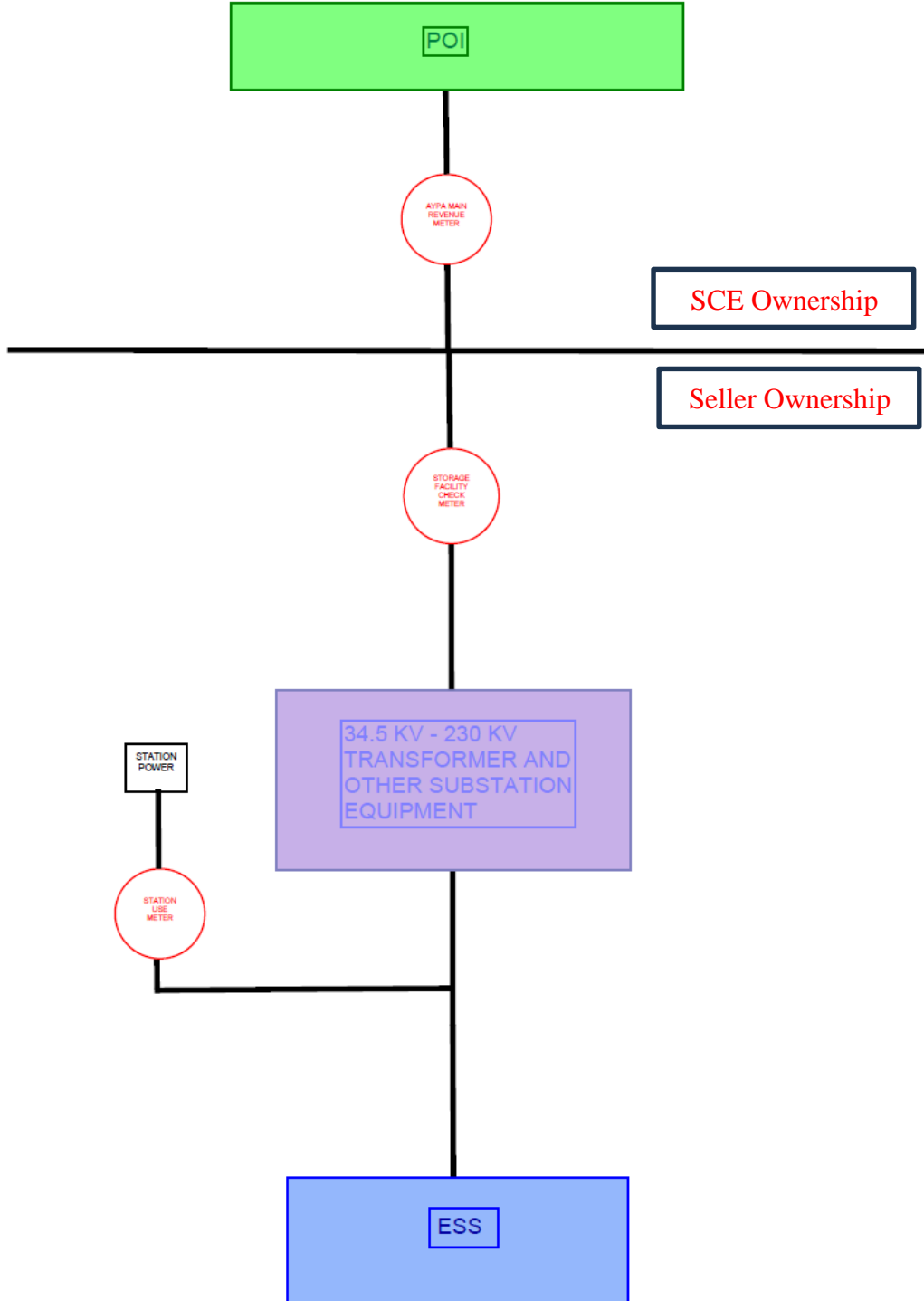


Exhibit R - 1

## EXHIBIT S

### SAMPLE SUPPLIER DIVERSITY SURVEY

Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "Not Applicable" or "Decline to State."

Pursuant to Proposition 209, SDCP does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact your participation in any future SDCP solicitation selection process. Responses are collected for informational and reporting purposes only pursuant to Senate Bill (SB) 255.

\*Required

1. Business Name\*
2. Email Address\*
3. Where is your business located/headquartered?
4. Is your business certified under General Order 156 (GO 156)? GO 156 is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises (WMDVLGBTBs) 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](http://www.thesupplierclearinghouse.com)\*

Yes

No

Qualified as a WMDVLGBTB but not GO 156 certified

5. If you answered "yes" to Question 4, when does your certification expire?
6. If you answered "yes" or "qualified, but not certified" to Question 4, in which categories are you certified or qualified? Please choose all that apply.

Minority Owned

Women Owned

LGBT Owned

Disabled Veteran Owned

Small Business Enterprise, as defined by 8(d) of the Small Business Act

7. If your business is a minority-owned business enterprise, what GO156 certification or qualification does your business fall under?

Black American

- Hispanic American
- Asian Pacific American
- Native American

8. Please list the Standardized Industrial Code (SIC) of the products and services your business offers. Search for your SIC in the “Commodity Codes” search bar, here: <https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>.

9. If certified under GO 156, please list your annual business revenue as reported to the CPUC Supplier Clearinghouse. You may check your CPUC Supplier Clearinghouse status here: <https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>.

10. If your business is qualified, but not GO 156 certified, please identify the reasons for not completing the certification process?

11. If your business has used GO 156 certified subcontractors for your SDCP contract, please include a list of your subcontractor business names, if the subcontract is for products or services, and the anticipated subcontract amount. Example: Electrical Design Technology, Inc.; products (batteries); \$100,000.

12. If applicable, please describe any hiring policies your business has for using small, local, and/or economically disadvantaged subcontractors or for using subcontractors that qualify for the GO 156 Supplier Clearinghouse.

13. Does your business have a history of using apprenticeship programs, local-hires, union labor, or multi-trade project labor agreements? Local hires can be defined as labor-sourced from within SDCP’s service area.

- Yes, apprenticeship programs in this recent contract with SDCP
- Yes, local labor in this recent contract with SDCP
- Yes, union labor in this recent contract with SDCP
- Yes, multi-trade PLA in this recent contract with SDCP
- Yes, apprenticeship programs but not in this contract with SDCP
- Yes, history of local hire but not in this contract with SDCP
- Yes, history of union labor but not in this contract with SDCP
- Yes, history of multi-trade PLA but not in this contract with SDCP
- Uses California-based labor, but not local to SDCP’s service areas
- None of the above
- Not applicable

14. Are you a small business? Please refer to the Small Business Association’ Size Standards tool for more information: <https://www.sba.gov/sizestandards>.

- Yes

No

15. If you answered “yes” to Question 14, please describe your history with labor agreements, union labor, multi-trade labor, apprenticeship labor, or how many local workers/businesses you employ for your contract with SDCP.

16. Is there any additional feedback that you would like to provide to SDCP at this time?

17. Does the bidder have formal initiatives to promote diversity, equity, and inclusion among its workforce?

18. If the answer to question 33 is “Yes”, please explain and provide supporting documentation.

19. Has the bidder adopted formal Environmental, Social, and Governance (ESG) goals?

20. If the answer to question 36 is “Yes”, please explain and provide supporting documentation.

## EXHIBIT T

### FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) San Diego Community Power, a California joint powers authority (“SDCP”), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (“Project Company”), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, “Collateral Agent”). SDCP, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”<sup>1</sup> Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the ESSA (as defined below).

### RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and SDCP have entered into that certain Energy Storage Service Agreement, dated as of *[Date]* *[List all amendments as contemplated by Section 3.4]* (the “ESSA”), pursuant to which Project Company will develop, construct, commission, test and operate the Facility (the “Project”) and sell the Product to SDCP, and SDCP will purchase the Product from Project Company;
- B. To support Project Company’s obligations under the ESSA, Project Company has agreed to provide to SDCP certain collateral, which may include Performance Security and Development Security and other collateral described in the ESSA (collectively, the “ESSA Collateral”);
- C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto (the “Lenders”) and Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the ESSA, including rights to receive payments under or with respect to the ESSA and all payments due and to become due to Project Company under or with respect to the ESSA whether as contractual obligations, damages, indemnity payments or otherwise, and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the ESSA that SDCP and the other Parties shall have executed and delivered this Consent.

## AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

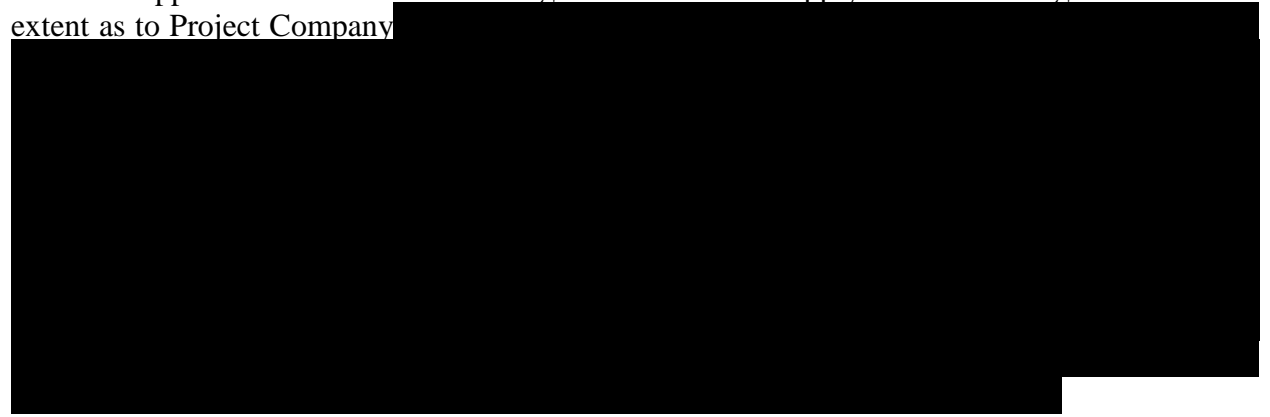
### SECTION 1. CONSENT TO ASSIGNMENT, ETC.

#### 1.1 Consent and Agreement.

SDCP hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the ESSA (subject to SDCP's rights and defenses under the ESSA and the terms of this Consent) and accepts any such exercise; *provided*, insofar as Collateral Agent exercises any such rights under the ESSA or makes any claims with respect to payments or other obligations under the ESSA, the terms and conditions of the ESSA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company



#### 1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that SDCP is authorized to act in accordance with Collateral Agent's instructions, and that SDCP shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

#### 1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the ESSA, or upon the occurrence or non-occurrence of any event or condition under the ESSA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable SDCP to terminate or suspend its performance under the ESSA (a "ESSA Default"), SDCP will not cancel, terminate or suspend the ESSA or its performance under the ESSA until it first

gives written notice of such ESSA Default to Collateral Agent and affords Collateral Agent the right to cure such ESSA Default within the greater of (a) the applicable cure period under the ESSA, which cure period shall run concurrently with that afforded Project Company under the ESSA and (b) [REDACTED]. In addition, if Collateral Agent gives SDCP such prior written notice of Collateral Agent's intention to cure such ESSA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such ESSA Default) and is diligently proceeding to cure such ESSA Default, notwithstanding the applicable cure period under the ESSA, Collateral Agent shall have a period of [REDACTED] (or, if such ESSA Default is for failure by Project Company to pay an amount to SDCP which is due and payable under the ESSA [or for failure by Project Company to provide ESSA Collateral, [REDACTED]] from Collateral Agent's receipt of the notice of such ESSA Default from SDCP to cure such ESSA Default; *provided*, (a) if possession of the Project is necessary to cure any such non-monetary ESSA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the ESSA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the ESSA Default, to complete such proceedings and cure such ESSA Default, and (b) if Collateral Agent is prohibited from curing any such ESSA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing an ESSA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide SDCP with reports concerning the status of efforts to cure an ESSA Default upon SDCP's reasonable request.

#### 1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a "Financing Document Default Notice") SDCP that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the ESSA, and, subject to Sections 1.7(b) and 1.7(c) below, SDCP and Substitute Owner will recognize each other as counterparties under the ESSA and will continue to perform their respective obligations (including those obligations accruing to SDCP and Project Company prior to the existence of the Substitute Owner) under the ESSA in favor of each other in accordance with the terms thereof; *provided*, before SDCP is required to recognize the Substitute Owner other than the Collateral Agent, such Substitute Owner must (i) be a permitted assignee under the ESSA or (ii) have demonstrated to SDCP's reasonable satisfaction that the Substitute Owner is a Permitted Transferee. For the avoidance of doubt, Collateral Agent shall be deemed a Permitted Transferee. For purposes of the foregoing, SDCP shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the ESSA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

#### 1.5 Replacement Agreements.



Subject to Section 1.7, if the ESSA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, or otherwise terminated other than for a default which could have been cured by Collateral Agent as provided in Section 1.3, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) (“Replacement Owner”), SDCP shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another having the same as the terms of the ESSA (subject to any conforming changes necessitated by the substitution of the parties and other changes as the parties may mutually agree) with respect to the remaining Term (“Replacement ESSA”); *provided*, before SDCP is required to enter into a Replacement ESSA, the Replacement Owner must have demonstrated to SDCP’s reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, SDCP is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement ESSA, to the extent SDCP is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the ESSA, SDCP may, subject to Section 1.3, suspend performance of its obligations under such Replacement ESSA, unless and until all ESSA Defaults of Project Company under the ESSA or Replacement ESSA have been cured.

#### 1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the ESSA and a Replacement ESSA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Project is transferred; *provided*, the proposed transferee shall have demonstrated to SDCP’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

#### 1.7 Assumption of Obligations.

##### (a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing all of the obligations of Project Company, Substitute Owner or Replacement Owner under the ESSA or Replacement ESSA, as applicable, including posting and collateral assignment of the ESSA Collateral. Upon such assignment and the cure of any outstanding ESSA Default, and payment of all other amounts due and payable to SDCP in respect of the ESSA or such Replacement ESSA, the transferor shall be released from any further liability under the ESSA or Replacement ESSA, as applicable.

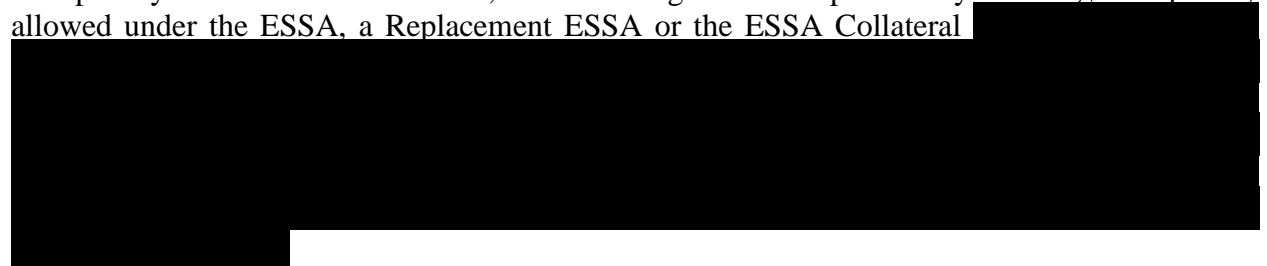
##### (b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the ESSA, including posting and collateral

assignment of the ESSA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the ESSA.

(c) No Liability.

SDCP acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the ESSA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner), the Financing Agreement or any other Financing Document, nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company's obligations under the ESSA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement ESSA, Collateral Agent shall not have any personal liability to SDCP under the ESSA or Replacement ESSA and the sole recourse of SDCP in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; *provided*, such limited recourse shall not limit SDCP's right to seek equitable or injunctive relief against Collateral Agent as expressly allowed under the ESSA, or SDCP's rights with respect to any offset rights expressly allowed under the ESSA, a Replacement ESSA or the ESSA Collateral



1.8 Delivery of Notices.

SDCP shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by SDCP to Project Company pursuant to the ESSA relating to (a) an ESSA Default by Project Company under the ESSA, (b) any claim regarding Force Majeure by SDCP under the ESSA, (c) any notice of dispute under the ESSA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy SDCP's oblig

+ation to give Collateral Agent a notice of ESSA Default under Section 1.3. Collateral Agent shall deliver to SDCP, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

1.9 Confirmations.

SDCP will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the ESSA (including the performance of same by Project Company);

*provided*, such confirmation may be limited to matters of which SDCP is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of SDCP under the ESSA as between SDCP and Project Company.

#### 1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until SDCP receives a Financing Document Default Notice, SDCP shall deal exclusively with Project Company in connection with the performance of SDCP's obligations under the ESSA. From and after such time as SDCP receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement ESSA is entered into or the ESSA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, SDCP shall, until Collateral Agent confirms to SDCP in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of SDCP's obligations under the ESSA, and SDCP may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

#### 1.11 No Amendments.

To the extent permitted by Laws, SDCP agrees that it will not, without Project Company obtaining prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the ESSA (b) terminate or suspend its performance under the ESSA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the ESSA by Project Company.

### SECTION 2. PAYMENTS UNDER THE ESSA

#### 2.1 Payments.

Unless and until SDCP receives written notice to the contrary from Collateral Agent, SDCP will make all payments to be made by it to Project Company under or by reason of the ESSA directly to Project Company. SDCP, Project Company, and Collateral Agent acknowledge that SDCP will be deemed to be in compliance with the payment terms of the ESSA to the extent that SDCP makes payments in accordance with Collateral Agent's instructions.<sup>1</sup>

### SECTION 3. REPRESENTATIONS AND WARRANTIES OF SDCP

SDCP makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

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

### 3.1 Organization.

SDCP is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in its jurisdiction. SDCP has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the ESSA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby. All governmental approvals necessary for the execution, delivery and performance by SDCP of its obligations under the ESSA have been obtained and are in full force and effect, except those governmental approvals routinely obtained during the ordinary course of business during the execution of the Project.

### 3.2 Authorization.

The execution, delivery and performance by SDCP of this Consent and the ESSA have been duly authorized by all necessary corporate or other action on the part of SDCP and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of SDCP which, if not obtained, will prevent SDCP from performing its obligations hereunder or under the ESSA except approvals or consents which have previously been obtained and which are in full force and effect.

### 3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the ESSA is in full force and effect, have been duly executed and delivered on behalf of SDCP by the appropriate officers of SDCP, and constitute the legal, valid and binding obligation of SDCP, enforceable against SDCP in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### 3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither SDCP nor, to SDCP's knowledge, Project Company, is in default of any of its obligations under the ESSA; (b) SDCP and, to SDCP's knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the ESSA; (c) to SDCP's knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either SDCP or Project Company to terminate or suspend its obligations under the ESSA; (d) the ESSA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto; and (e) no event of Force Majeure exists under the ESSA.

### 3.5 No Previous Assignments.

SDCP has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the ESSA, except as previously disclosed in writing and consented to by SDCP.

### 3.6 No Litigation.

There is no litigation, action, suit, proceeding or investigation at law or in equity by or before any governmental authority, arbitral tribunal or other body now pending or, to the knowledge of SDCP, threatened (in writing) against or affecting SDCP that (i) questions the validity, binding effect or enforceability hereof or of the ESSA, or any action taken or to be taken pursuant hereto or thereto or any transactions contemplated hereby or thereby, (ii) could have a materially adverse effect on the performance of the obligations hereof or of the ESSA or the condition (financial or otherwise), business, or operation of SDCP, or (iii) could materially modify or otherwise have a materially adverse effect on any required approvals, filings or consents which have previously been obtained or made.

## SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of Collateral Agent and SDCP:

### 4.1 Organization.

Project Company is a *[Legal Status of Seller]* duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the ESSA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the ESSA to Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

### 4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### 4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's knowledge, SDCP, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's knowledge, SDCP, has complied with all conditions precedent to the effectiveness of its obligations under the ESSA; (c) to Project Company's knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either SDCP or Project Company to terminate or suspend its obligations under the ESSA; and (d) the ESSA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

#### 4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the ESSA.

### SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of SDCP and Project Company:

#### 5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

#### 5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### SECTION 6. MISCELLANEOUS

#### 6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the ESSA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to SDCP or Project Company, in accordance with *[Notice Section of the ESSA]* of the ESSA, (b) if to Collateral Agent, to *[Collateral Agent Name]*, *[Collateral Agent Address]*, Attn: *[Collateral Agent Contact Information]*, Telephone: *[\_\_\_]*, Fax: *[\_\_\_]*, and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

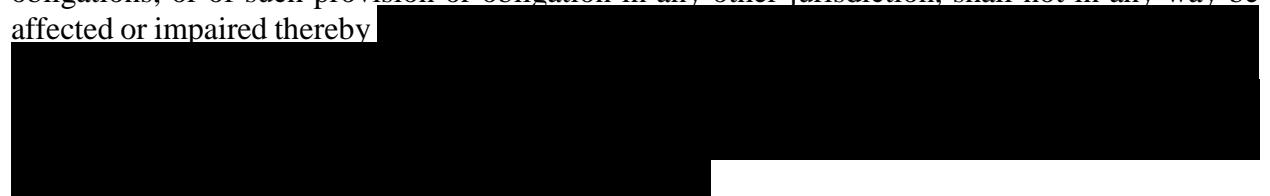
(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the ESSA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, (a) the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby



6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by SDCP, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party's obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until SDCP has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the ESSA or any Replacement ESSA, its obligations under such ESSA or Replacement ESSA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

SDCP hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.



This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

6.13 Interpretation.

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

*[Remainder of Page Left Intentionally Blank.]*

IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

<p><i>[NAME OF PROJECT COMPANY],</i>  <i>[Legal Status of Project Company].</i></p>		<p>SAN DIEGO COMMUNITY POWER,  a California joint powers authority.</p>
<p><b>By:</b>  _____  <i>[Name]</i>  <i>[Title]</i>  Date: _____</p>		<p><b>By:</b>  _____  <i>[Name]</i>  <i>[Title]</i>  Date: _____</p>
<p><i>[NAME OF COLLATERAL AGENT],</i>  <i>[Legal Status of Collateral Agent].</i></p> <p>By:  _____  <i>[Name]</i>  <i>[Title]</i>  Date: _____</p>		

## **SCHEDULE A**

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

**SCHEDULE B**

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



## SAN DIEGO COMMUNITY POWER Staff Report – Item 15

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To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services; and  
Andrea Torres, Senior Portfolio Manager, Power Services; and Asikeh Kanu, Portfolio Manager, Power Services

Via: Karin Burns, Chief Executive Officer

Subject: Financially Settled Toll and Energy Storage Agreement with MRP Pacifica Marketing LLC for a thermal resource including 51.25 MW of Resource Adequacy and a co-located 52 MWh Battery Storage (“Border Project”)

Date: May 23, 2024

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### RECOMMENDATION

Approve the proposed Financially Settled Toll and Energy Storage Agreement with MRP Pacifica Marketing LLC for the Border Project and authorize the CEO to execute the agreement.

### BACKGROUND

As San Diego Community Power (SDCP) strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term contracts of at least 10 years in duration are integral components of its energy supply portfolio. Long-term contracts provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term contract that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term contracts lock in energy and capacity supply, as well as energy arbitrage capability around which SDCP can build its power supply portfolio while also providing power supply cost certainty around which SDCP can develop its pro forma financial model.

In D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, Incremental generation facilities that will achieve commercial operation during 2023 through 2026.



The proposed contract is for resource adequacy from 51.25 MW of an existing natural gas simple cycle facility with MRP Pacifica Marketing LLC (“MRP”). The contract originated from SDCP’s Local RFI. SDCP has reached terms mutually agreeable to both parties.

## ANALYSIS AND DISCUSSION

Staff negotiated the attached financially settled toll and energy storage agreement for the purchase of a financial hedge and capacity attributes from a 51.25 MW combustion turbine (CT) along with a 52 MWAC 1-hour (52 MWh) battery energy storage (BESS) facility in Otay Mesa, California.

The grid-charged BESS facility will operate on a (24/7) basis providing grid reliability. In 2023 the associated legacy plant was operational for just under 400 hours (4.5% of potential run hours). The BESS is expected to significantly decrease the operation of the legacy plant. Further, SDCP is increasing efforts to target and encourage local project development for its generation portfolio. This hybrid resource will satisfy a portion of SDCP’s local, flex, and 24/7 RA compliance needs. SDCP also expects a certain amount of technology diversity among its power supply to creatively develop local projects in order to help mitigate risks and provide a portfolio approach to its power procurement.

Below is additional information regarding MRP Pacifica Marketing LLC and the proposed Financially Settled Toll and Energy Storage Agreement.

### Background on MRP:

- Middle River Power LLC (“MRP”) will serve as the asset manager for the Border Project. MRP was formed in 2016 with over 6 GW of generation under management, including 380 MW of battery energy storage.
- MRP Pacifica Marketing LLC is a wholly owned subsidiary of MRP Golden, LLC, which was founded in 2023 to be an ESG-focused investment manager and has since made substantial investments in the U.S. renewable energy sector.

### Contract Overview – Border Project

- Project: 52 MWAC 1-hr (52 MWh) battery energy storage facility constructed on the site of an existing 51.25 MW CT peaker plant
- Project location: Otay Mesa (San Diego)
- Guaranteed Commercial Operation date: January 1, 2026
- Contract term: 15 years
- Pricing: Fixed pricing with no escalation
- SDCP would receive financial compensation in the event of seller’s failure to successfully achieve certain development milestones as well as seller’s failure to deliver local capacity.

### Community Benefits and Workforce Development:



- The project is estimated to create over 20 construction jobs.
- MRP will enter into an engineering, procurement and construction (EPC) contract to build the battery facility utilizing a Project Labor Agreement.
- The project has committed to contribute \$125,000 to a community benefit fund to benefit SDCP customers.

## **COMMITTEE REVIEW**

The ECWG recommended the project for further negotiation. On February 16, 2024, the ECWG reviewed the most recently negotiated contract terms and recommended that staff move forward with presentation of this contract to the Board.

## **FISCAL IMPACT**

The competitive toll and capacity pricing of the agreement are confidential, but the long-term purchase of local capacity and the financial toll will provide SDCP with significant value and cost certainty over the term of this agreement.

## **ATTACHMENTS**

Attachment A: Financially Settled Toll and Energy Storage Agreement with MRP Pacifica Market LLC



**FINANCIALLY SETTLED TOLL AND ENERGY STORAGE AGREEMENT**

**COVER SHEET – BORDER**

**Seller:** MRP Pacifica Marketing LLC, a Delaware limited liability company

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

**Effective Date:** May \_\_\_\_, 2024

**Facility Descriptions:** a natural gas-fired power plant with a nameplate capacity of 51 MW and a battery energy storage system (BESS) with a nameplate capacity of 52 MW, co-located in San Diego, California, as further described in Exhibit A (the “**Facility**”).

<b>RA Contract Quantity:</b>	51.25 MW
<b>RA Reservation Price:</b>	[REDACTED]
<b>RA Reservation Payment:</b>	[REDACTED]
<b>Guaranteed RA Availability:</b>	[REDACTED]
<b>Energy Contract Quantity:</b>	52 MW
<b>Energy Reservation Price:</b>	[REDACTED]
<b>Energy Reservation Payment:</b>	[REDACTED]
<b>Energy Rate:</b>	Per Exhibit O

<b>Milestone</b>	<b>Completion Date</b>
<b>Energy Start Date</b>	Commercial Operation Date
<b>Expected Commercial Operation Date</b>	6/1/2026
<b>System RA Start Date</b>	1/1/2026
<b>Local RA Start Date</b>	1/1/2026
<b>Local Area</b>	San Diego-Imperial Valley



<b>Gas Turbine Specifications</b>	
<b>Generating Capacity (MW)</b>	51
<b>Daily Start Limit</b>	2
<b>Guaranteed Heat Rate</b>	[REDACTED]
<b>Annual Run Hour Limit</b>	[REDACTED]
<b>Point of Interconnection</b>	Border Substation 69 kV
<b>Thermal Resource PNode</b>	POD_BORDER_6_UNITA1- APND

<b>BESS Specifications</b>	
<b>Storage Contract Capacity (MW/1 hr. discharge)</b>	52 MW
<b>Storage Energy (MWh)</b>	52 MWh
<b>Guaranteed Storage Availability</b>	[REDACTED]
<b>Guaranteed Efficiency Rate</b>	[REDACTED]
<b>Minimum Efficiency Rate</b>	[REDACTED]
<b>Annual Cycle Limit</b>	[REDACTED]
<b>Point of Interconnection</b>	Border Substation 69 kV
<b>BESS Resource PNode</b>	To be provided prior to COD

**Delivery Term:** Fifteen (15) Contract Years following the System RA Start Date.

**Product:**

- Capacity Attributes
- Facility Energy
- Ancillary Services

**Scheduling Coordinator:** Seller or Seller's agent

**Seller Payment Security:**

Development Security: [REDACTED]  
Performance Security: [REDACTED]

**Special Provisions:**

Right of First Offer. If Seller proposes to increase the energy storage capacity of the BESS Resource above 52 MW (the “**Additional Storage Capacity**”) to take effect during the Term, Buyer shall have a right to make the first offer to contract for to the purchase of discharging energy, resource adequacy benefits, and ancillary services associated with such Additional Storage Capacity. Prior to offering to sell the Additional Storage Capacity to a third party, Seller shall first provide Buyer with Notice of intent to market the energy products from the proposed Additional Storage Capacity for sale (the “**ROFO Notice**”). Buyer shall have [REDACTED] after receipt of the ROFO Notice (“**ROFO Response Period**”) to provide Seller with a written offer (the “**ROFO Offer**”) to purchase the energy products from such Additional Storage Capacity. If the Parties do not execute a contract or amend this Agreement for Buyer to purchase the energy products from such Additional Storage Capacity within [REDACTED] following the submission of the ROFO Offer, or if Buyer fails provide Seller the ROFO Offer within the ROFO Response Period, then the terms of this paragraph shall no longer apply and Buyer shall have no further rights with respect to such Additional Storage Capacity.

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## FINANCIALLY SETTLED TOLL AND ENERGY STORAGE AGREEMENT

This Financially Settled Toll and Energy Storage Agreement (“**Agreement**”) is entered into as of 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, Seller or its Affiliates owns and operates the Thermal Resource;

WHEREAS, Seller or its Affiliates intends to, develop, design, permit, construct, own, and operate the BESS Resource; 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 3.8(c).

“**Additional Storage Capacity**” has the meaning set forth on the Cover Sheet.

“**Administrative NOC Reduction**” means a reduction in the maximum achievable Net Qualifying Capacity of the Facility due to a reduction that has been generally applied to resources materially similar to the Facility in terms of type, market and operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including any methodology that incorporates fleet averages or other average outage rates.

“**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 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**” has the meaning set forth in the CAISO Tariff.

“**Annual Cycle Limit**” means the maximum number of times the BESS Resource can be Cycled each Contract Year as set forth on the Cover Sheet.

“**Annual Run Hour Limit**” means the maximum number of hours the Thermal Resource can be operated each year as set forth on the Cover Sheet.

“**Available**” means that the BESS Resource is available either to be charged or discharged.

“**Availability Adjustment Factor**” has the meaning set forth in Exhibit E.

“**Availability Assessment Hours**” has the meaning set forth in the CAISO Tariff.

“**Availability Incentive Payments**” has the meaning set forth in the CAISO Tariff.

“**Availability Standards**” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“**Bankrupt**” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of 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.

“**BESS Planned Outage**” means a period during which the BESS Resource is either in whole or in part not capable of providing service due to planned maintenances that has been scheduled in advanced in accordance with Exhibit G-1.

“**BESS Resource**” means the battery energy storage plant identified in Exhibit A as the “BESS Resource” at the Facility as further described in Exhibit A.

“**BESS Resource Meters**” means the meters used to measure Charging Energy and the Discharging Energy.

“**BESS Resource Metering Points**” means the location or locations of the BESS Resource Meters.



**“BESS Resource PNode”** means the BESS Resource PNode identified on the Cover Sheet, as such location may be redesignated from time to time by the CAISO.

**“Business Day”** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 AM and ends at 5:00 PM Pacific Prevailing Time (PPT).

**“Buyer”** has the meaning set forth on the Cover Sheet.

**“Buyer Default”** means an Event of Default of Buyer.

**“CAISO”** means the California Independent System Operator Corporation.

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

**“CAISO Tariff”** means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures (as such term is defined in Appendix A to the CAISO Tariff), 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; provided that if there is a conflict between the BPMs, the CAISO Operating Agreement (as such term is defined in Appendix A to the CAISO Tariff) or the Operating Procedures, on the one hand, and the CAISO Tariff, on the other hand, the CAISO Tariff will control.

**“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 accept at or deliver to the applicable Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

**“Carbon Emission Regulations”** means those regulations that may be adopted from time to time by the State of California pertaining to limiting, taxing, charging for or otherwise regulating carbon dioxide emissions including, but not limited to, the California Cap and Trade Program (Title 17 California Code of Regulations Sections 95801-96022).

**“Change of Control”** means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

- (a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Financing Party (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

**“Charging Energy”** means the Energy delivered to the BESS Resource from the CAISO Grid pursuant to a Charging Notice as measured at the BESS Resource Metering Point by the BESS Resource Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

**“Charging Notice”** means the operating instruction, and any subsequent updates, given by the SC or the CAISO to the Facility, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh, provided that any such operating instruction shall be in accordance with the Operating Procedures. For the avoidance of doubt, any Buyer request to initiate a Storage Capacity Test shall not be considered a Charging Notice.

**“CIRA Tool”** means the CAISO Customer Interface for resource adequacy.

**“CO2e”** has the meaning set forth in Title 17 of the California Code of Regulations § 95802 as the same may be amended or modified from time to time.

**“COD Delay Damages”** means [REDACTED]

**“COD Delay Period”** has the meaning set forth in Exhibit B.

**“Collateral Assignment Agreement”** has the meaning set forth in Section 14.2.

**“Commercial Operation”** means the conditions for commercial operation of the BESS Resource set forth in Exhibit B have been satisfied.

**“Commercial Operation Capacity Test”** has the meaning set forth in Exhibit D.

**“Commercial Operation Date”** means the date on which Commercial Operation is achieved and the conditions set forth in Section 2.2 have been satisfied.

**“Compliance Action”** has the meaning set forth in Section 3.8(a).

**“Compliance Costs”** has the meaning set forth in Section 3.8(a).

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.8(a).

**“Compliance Showings”** means the (a) the compliance or advisory showings (or similar or successor showings) that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO), and (b) if applicable, the Local RAR compliance or advisory showings (or similar or successor showings) that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO), in each case of (a) and (b) pursuant to the Resource Adequacy Rulings, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

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

**“Contract Price”** has the meaning set forth in Section 8.1.

**“Contract Term”** has the meaning set forth in Section 2.1(a).

**“Contract Year”** means a period of twelve (12) consecutive months beginning on the System RA Start Date or an anniversary thereof and ending at midnight at the end of the day prior to the applicable anniversary of such System RA Start 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 Capacity”** has the meaning set forth in the CAISO Tariff.

**“CPM Capacity Payment”** has the meaning set forth in the CAISO Tariff.

**“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 Filing Guide”** is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

**“CPUC System RA Penalty”** means the System RA Penalties assessed against load-serving entities by the CPUC for Resource Adequacy Requirement deficiencies that are not replaced or cured, as established in the Resource Adequacy Rulings and subsequently incorporated into the annual “Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings” that is issued by the CPUC Energy Division, which is expected to be updated annually, or any replacement or successor documentation established by the CPUC Energy Division to reflect Resource Adequacy Requirement penalties that are established by the CPUC and assessed against load-serving entities for Resource Adequacy Requirement deficiencies.

**“Credit Rating”** means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“**Cycle**” means each time that the total MWhs discharged from the BESS Resource equals the Maximum Stored Energy Level for the BESS Resource as set forth in Exhibit A.

“**Daily Start Limit**” means the maximum number of times the Thermal Resource can be started each day as set forth on the Cover Sheet.

“**Damage Payment**” means the dollar amount that equals the amount of the Development Security.

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

“**Dealer**” means an entity or person that buys or sells power and takes title to the power at some point.

“**Deemed Delivered RA**” means, for the applicable Showing Month, the amount of Net Qualifying Capacity, expressed in MW, that the Facility would have been able to deliver as Resource Adequacy Benefits, but for (a) a Force Majeure Event as provided in Section 10.1, (b) Thermal Planned Outages permitted by the terms of this Agreement to the extent such Thermal Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Thermal Resource; or (c) the acts or omissions of Buyer.

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

“**Delivered RA**” means an amount, expressed in MW, calculated for the applicable Showing Month as the sum of (a) the amount of the Net Qualifying Capacity of the Facility for such Showing Month able to be shown on Buyer’s monthly or annual Resource Adequacy Plan to the CAISO and CPUC and able to be counted as Resource Adequacy Benefits by both the CAISO and CPUC, (b) Deemed Delivered RA and (c) Replacement RA.

“**Delivery Point**” shall mean the Thermal Resource PNode or the BESS Resource PNode, as applicable.

“**Delivery Term**” has the meaning set forth on the Cover Sheet.

“**Development Cure Period**” has the meaning set forth in Exhibit B.

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

“**Discharging Energy**” means all Energy delivered to the Delivery Point from the BESS Resource, net of the Electrical Losses, as measured at the BESS Resource Metering Point by the BESS Resource Meter. All Discharging Energy will have originally been delivered to the BESS Resource from the CAISO Grid as Charging Energy.

“**Discharging Notice**” means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Procedures.

“**Disclosing Party**” has the meaning set forth in Section 18.2.

“**Dispatchable Energy**” means all Energy delivered by the Thermal Resource.

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

“**Efficiency Rate**” means the round-trip efficiency of the BESS Resource determined in accordance with Exhibit C.

“**Effective Date**” has the meaning set forth on the Cover Sheet.

“**Electrical Losses**” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, losses of Energy along with all transmission or transformation losses between the Delivery Point and the Facility.



“**Energy**” means alternating current electrical energy measured in MWh.

“**Energy Contract Quantity**” has the meaning set forth on the Cover Sheet.

“**Energy Meter**” means the meters used to measure Charging Energy, Discharging Energy and Dispatchable Energy, as applicable.

“**Energy Rate**” has the meaning set forth on the Cover Sheet.

“**Energy Reservation Payment**” has the meaning set forth on the Cover Sheet.

“**Energy Reservation Price**” has the meaning set forth on the Cover Sheet.

“**Energy Start Date**” has the meaning set forth on the Cover Sheet.

“**Environmental Attributes**” means any and all environmental characteristics, environmental claims, environmental credits, environmental benefits, environmental emissions reductions, environmental offsets, environmental allowances and environmental allocations, existing now or in the future, howsoever characterized, denominated, measured or entitled, attributable to the generation, storage or discharge of Energy from the Facility.

“**Excused Event**” has the meaning set forth in Exhibit E.

“**Expected Commercial Operation Date**” has the meaning set forth on the Cover Sheet.

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

**“Facility”** means the energy generation and storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy generation and storage facility), located at the Site and related generation, storage and mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), and as such generation and storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement. This equipment includes but is not limited to gas turbine engines, transformers, batteries, fire suppression, thermal management, enclosures, and inverters.

**“Facility Energy”** means the Discharging Energy and the Dispatchable Energy.

**“FERC”** means the Federal Energy Regulatory Commission.

**“Financial Security”** means the Development Security or the Performance Security, as applicable.

**“Financing Party”** means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage and/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.

**“Flexible Capacity Category”** shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

**“Flexible Ramping Product”** has the meaning set forth in the CAISO Tariff.

**“Forecasting Agreement”** has the meaning set forth in Section 2.4(a).

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

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

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

**“Gas Distribution Utility”** has the meaning set forth in Exhibit O.

**“Gas Utility Receipt Point”** has the meaning set forth in Exhibit O.

**“Gas Meter”** means the meters used to measure the natural gas supplied to the Thermal Resource.

**“Governmental Approval”** means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include (i) with respect to Seller, those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the use and operation of the Facility and (ii) with respect to Buyer, those federal licenses and state market participation agreements necessary or appropriate to take delivery of and resell electricity.

**“Governmental Authority”** means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, quasi 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.

**“Guaranteed Commercial Operation Date”** has the meaning set forth in Exhibit B.

**“Guaranteed Efficiency Rate”** means the percentage specified on the Cover Sheet.

**“Guaranteed Heat Rate”** has the meaning set forth on the Cover Sheet.

**“Guaranteed RA Availability”** has the meaning set forth on the Cover Sheet.

**“Guaranteed RA Amount”** means the RA Contract Quantity, less any reduction in the Facility’s Net Qualifying Capacity resulting from an Administrative NQC Reduction excluding reductions resulting from (i) a violation of the CAISO Tariff by Seller, or (ii) Unplanned Outage(s) under subsection (i) of the definition of Unplanned Outages.

**“Guaranteed Storage Availability”** has the meaning set forth on the Cover Sheet.

**“Heat Rate”** has the meaning set forth in Exhibit C.

**“Heat Rate Liquidated Damages”** has the meaning set forth in Exhibit C.

**“Hold-Back Capacity”** has the meaning set forth in Section 4.5.

**“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).

**“Installed Capacity”** has the meaning set forth in Exhibit M.

**“Interconnection Agreement”** means the interconnection agreements among Seller (or Seller’s Affiliate), the CAISO, and the Participating Transmission Owner, pursuant to which (i) the Thermal Resource will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Thermal Resource that is no less than the RA Contract Quantity, (ii) the BESS Resource will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the BESS Resource that is no less than the Energy Contract Quantity, provided that such interconnection capacity may be maintained through a combination of rights under the Interconnection Agreement dedicated to the BESS Resource and under an Interconnection Agreement shared with the Thermal Resource, and pursuant to which the applicable Interconnection Facilities and any other Interconnection Facilities have or will be constructed, operated and maintained during the Delivery Term.

**“Interconnection Delays”** means any delay in achieving Commercial Operation due to any delay in obtaining the Interconnection Agreement or completing the Interconnection Facilities under the Interconnection Agreement provided that in either case Seller has taken commercially reasonable actions to obtain the Interconnection Agreement and cause the applicable Interconnection Facilities to be completed.

**“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.

**“Interest Rate”** has the meaning set forth in Section 8.3.

**“Investment Grade Credit Rating”** means a Credit Rating of (i) BBB- or higher by S&P and Baa3 or higher by Moody’s if the Person is rated by both agencies, or (ii) a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody’s if the Person is rated by only one of the agencies.

**“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, 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.

**“Letter(s) of Credit”** means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank, or U.S. branch of a foreign bank, with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation



of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit I.

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

“**Limited Assignee**” has the meaning set forth in Section 14.4.

“**Local RA Start Date**” has the meaning set forth on the Cover Sheet.

“**Local RAR**” means the local Resource Adequacy Requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

“**Local RAR Attributes**” means, with respect to the Facility, any and all Resource Adequacy Benefits of the Facility, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction over Local RAR that can be counted toward Buyer’s Local RAR.

“**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, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. 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., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes.

“**Major Subcontractor**” means [REDACTED]

“**Minimum Efficiency Rate**” means the percentage specified on the Cover Sheet.

“**Monthly RA Availability**” has the meaning set forth in Exhibit F.

“**Monthly Storage Availability**” has the meaning set forth in Exhibit E.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Must Offer Obligations**” means the obligation to bid or cause the SC to bid the applicable resource into the CAISO Markets in order for the applicable resource to qualify to deliver Resource Adequacy Benefits.

“**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.

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**Non-Availability Charges**” 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 email in accordance with Article 9.

“**Notification Deadline**” means thirty (30) days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month, provided that for the Showing Months of August and September, the Notification Deadline means sixty (60) days before the relevant deadline for the corresponding Compliance Showing.

“**Operating Procedures**” means those rules, requirements, and procedures developed pursuant to Section 2.2 consistent with Exhibit H, as the same may be modified from time to time in accordance with this Agreement.

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

“**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 for the Facility is set forth in Exhibit A.

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

“**Performance Security**” means (i) cash or (ii) a Letter of Credit, in either case in the amount set forth on the Cover Sheet for “Performance Security.”

“**Permitted Transferee**” means (i) any Affiliate of Seller, (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s; and

(b) At least three (3) years of experience in the ownership and operations of facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility; or

(iii) or any other entity approved in writing by Buyer acting reasonably and in good faith.

“**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.

“**Prevailing Wage Requirement**” has the meaning set forth in Section 13.4.

“**Price Lock Transaction**” has the meaning set forth in Exhibit O.

“**Product**” has the meaning set forth on the Cover Sheet.

“**Prudent Industry 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 or standalone storage facilities 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 Industry 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 or stand-alone storage in the Western United States. Prudent Industry 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.

“**Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**RA Availability Cure Plan**” has the meaning set forth in Section 11.1(b).

“**RA Contract Quantity**” has the meaning set forth on the Cover Sheet.

“**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 4.18(b).

“**RA Product**” has the meaning set forth in Section 4.2(a).

“**RA Reservation Payment**” has the meaning set forth on the Cover Sheet.

“**RA Shortfall**” means, for a given Showing Month, the difference, expressed in kW, of (a) the Guaranteed RA Amount minus (b) Delivered RA. If the result of the calculation is a negative number, the RA Shortfall shall be deemed to be zero kW for such Showing Month.

“**RA Shortfall Month**” means, for purposes of calculating an RA Deficiency Amount under Section 4.18(b), any month during the Delivery Term during which there is a RA Shortfall.

**“Receiving Party”** has the meaning set forth in Section 18.2.

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

**“Replacement RA”** means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month, including, as applicable, Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, and any Local RAR; provided that any Replacement RA capacity must be communicated by Seller to Buyer with Replacement RA product information in a Notice to Buyer no later than the Notification Deadline.

**“Replacement Unit”** has the meaning set forth in Section 4.3.

**“Requested Confidential Information”** has the meaning set forth in Section 18.2.

**“Resource Adequacy Benefits”** means the rights and privileges attached to the Facility associated with the RA Contract Quantity that satisfy any entity’s Resource Adequacy Requirements, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

**“Resource Adequacy Plan”** has the meaning set forth in the CAISO Tariff.

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

**“Resource Adequacy Resource”** has the meaning set forth in the CAISO Tariff.

**“Resource Adequacy Rulings”** means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 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 decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC, and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

**“Resource Category”** shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

**“Resource Start”** has the meaning set forth in Exhibit O.

**“ROFO Notice”** has the meaning set forth on the Cover Sheet.

“**ROFO Offer**” has the meaning set forth on the Cover Sheet.

“**ROFO Response Period**” has the meaning set forth on the Cover Sheet.

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

“**SC Agreement**” has the meaning set forth in Section 2.3(a).

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

“**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.

“**Seller**” has the meaning set forth on the Cover Sheet.

“**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).

“**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 point of interconnection, 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.

“**Shared Facilities Agreement**” has the meaning set forth in Section 6.3.

“**Showing Month**” means the calendar month of the Delivery Term that is the subject of the 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 Compliance Showing made in June is for the Showing Month of August.

“**Shown Unit**” means the Thermal Resource, the BESS Resource, or any Replacement Unit, as applicable.

“**Site**” means the applicable real property on which the Facility is or will be located, as further described in Exhibit A.

“**Standalone Energy Storage Incentives**” means: (a) all federal, state, or local Tax Credits or other Tax benefits associated with the construction or ownership of the BESS Resource

(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 BESS Resources; and (c) any other form of incentive relating in any way to the BESS Resources that is not an Environmental Attribute associated with Charging Energy.

**“Start Fee”** has the meaning set forth in Exhibit O.

**“Station Power”** means:

(a) The Energy produced or discharged by the Facility that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) the Energy produced or discharged by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

**“Storage Availability Cure Plan”** has the meaning set forth in Section 11.1(b)(iii).

**“Storage Capacity”** means the maximum dependable capability of the BESS Resource to discharge Energy at a particular moment.

**“Storage Capacity Test”** means any test or retest of the capacity of the BESS Resource conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.11 and Exhibit D.

**“Storage Contract Capacity”** has the meaning set forth on the Cover Sheet.

**“Storage Energy”** means the total quantity of electric energy measured in MWh that can be stored by the BESS Resource as set forth on the Cover Sheet.

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

**“Subsequent Buyer”** means the purchaser of RA Product from Buyer in a re-sale of RA Product by Buyer.

**“Substitute Capacity”** means “RA Substitute Capacity” as defined in the CAISO Tariff.

**“Substitute Capacity Request”** has the meaning set forth in Section 4.5(b).

**“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.

**“System RA Start Date”** has the meaning set forth in the Cover Sheet.

“**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.

“**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**” has the meaning set forth in Section 3.6.

“**Thermal Planned Outage**” means a period during which the Thermal Resource is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Exhibit G-2.

“**Thermal Resource**” means the natural gas-fired turbine electricity generating power plant at the Facility as described in Exhibit A.

“**Thermal Resource PNode**” means the Thermal Resource PNode identified on the Cover Sheet, as such location may be redesignated from time to time by the CAISO.

“**Transmission Provider**” means any entity or entities transmitting or transporting Facility Energy on behalf of Seller or Buyer from the applicable 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 Points.

“**Ultimate Parent**” means MRP Golden Finance, LLC, a Delaware limited liability company.

“**Unavailable**” means that the BESS Resource is not available to be charged nor to be discharged.

“**Unplanned Outage**” means a period during which Seller is prevented from making Facility Energy available at the applicable Delivery Point due to (i) the need to maintain or repair a component of the BESS Resource and/or Thermal Resource, or (ii) any outage of the Transmission System, in each of case (i) and (ii) which period is not a BESS Planned Outage or Thermal Planned Outage.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that 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 work 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 Industry Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Industry 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.

(m) Buyer acknowledges that, as of the Effect Date, the Facility is (or will be) owned by two of Seller’s Affiliates (each, an “**Owner**”), one of which owns the Thermal Resource



and one of which will own the BESS Resource. Throughout the Contract Term Seller will maintain such agreements with the Owners and other instruments as are necessary for Seller to perform its obligations under this Agreement. References to Seller in this Agreement will include, as the context requires, Seller and/or the Owners.

(n) Notwithstanding anything to the contrary contained in this Agreement, for U.S. federal income tax purposes, the Parties intend that this Agreement will be treated as a service contract within the meaning of, and for the purposes of, Section 7701(e) of the Internal Revenue Code of 1986, as amended.

## **ARTICLE 2**

### **TERM; COMMERCIAL OPERATION; OPTIMIZATION SERVICES**

#### **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**”).

(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 and obligations shall remain in full force and effect for five (5) years following the termination of this Agreement.

**2.2 Conditions Precedent.** The Commercial Operation Date shall not occur until the following conditions have been satisfied:

(a) Seller has delivered to Buyer (i) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit L and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit M setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and/or a Participating Load Agreement and a Meter Service Agreement for the BESS Resource 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 (or its Affiliate or a third party transmission entity, if a sharing arrangement permitted by this Agreement is in effect) 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 required for operation of the BESS Resource have been obtained (or if not obtained, applied for and reasonably expected to be received within 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 obtained all real property rights, including Site Control, required for the operation of the BESS Resource during the Delivery Term, and Seller has provided evidence of such rights to Buyer;

(f) Insurance requirements for the Facility pursuant to Article 17 have been met, with evidence provided in writing to Buyer; and

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

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

At least ninety (90) days prior to the Commercial Operation Date, Seller shall deliver Notice to Buyer of the anticipated Commercial Operation Date and the proposed Operating Procedures, which Operating Procedures shall be consistent with, and no less restrictive than, the technical, operational and decision-making parameters or procedures described in Exhibit H. The Parties shall meet periodically upon the written request of either Party, but in any event no less than once per Contract Year, to evaluate potential changes to the Operating Procedures.

### 2.3 Scheduling Services.



(b) During the Delivery Period, Seller's designee under the SC Agreement shall be responsible for performing all obligations under this Agreement that are appropriate or required to be performed by a Scheduling Coordinator. Buyer shall provide guidance and direction directly to the Scheduling Coordinator to optimize the dispatch of the Facility and schedule natural gas, and Buyer's instructions shall be controlling. During the Delivery Period, Seller shall take, or cause the Facility's SC to take, all necessary steps to qualify itself and the Facility in such other manner identified and approved by the CAISO and CPUC that permits Seller to sell and deliver any and all Resource Adequacy Benefits and other Capacity Attributes to Buyer. In addition to the requirements of Exhibit N, Seller shall cause the Facility's SC to comply, with all applicable CAISO Tariff provisions, CPUC Decisions and all other applicable rules, requirements or Laws, including any bidding of the Facility to meet any Must Offer Obligations, in order to deliver or maintain the right to deliver Resource Adequacy Benefits and other Capacity Attributes to Buyer.

(c) Seller and Buyer shall conduct meetings on a quarterly basis or as otherwise reasonably requested by Buyer to discuss the overall performance of the provider under the SC Agreement. Based on the information exchanged during such discussions, Seller shall use commercially reasonable efforts to implement any changes to the overall strategy or performance objectives identified in this meeting.

(d) If Buyer determines that the Scheduling Coordinator is not performing its obligations under the SC Agreement to Buyer's reasonable satisfaction, Buyer shall have the right to request that Seller replace the Scheduling Coordinator. Following receipt of such Notice, Seller shall use reasonable commercial efforts to identify an alternate service provider and negotiate a new SC Agreement but shall not enter into the new SC Agreement until and unless Buyer has approved such agreement in writing, such approval not to be unreasonably withheld conditioned or delayed. Following such approval, Seller shall use reasonable commercial efforts to promptly terminate the existing SC Agreement such that the new SC Agreement starts on termination of the existing SC Agreement. Buyer shall be liable for the termination penalties under the SC Agreement, except to the extent arising due to the negligence or willful misconduct of Seller, provided, however that (i) Seller shall use reasonable commercial efforts to minimize any penalties and enforce any rights to terminate for cause and without liability to Buyer and (ii) if the existing SC Agreement is terminated at Buyer's direction without cause, notwithstanding any provision to the contrary herein, Buyer's maximum liability for any associated termination penalty shall not exceed an amount equal to the monthly recurring fees under SC Agreement for the six (6) month period following termination of the SC Agreement.

#### 2.4 **Forecasting Services.**

(a)



(b) In connection with any bidding, dispatch or other decisions based on forecast market conditions, Seller shall be permitted to rely on any advice, recommendations and guidance received from the provider under the Forecasting Agreement. Buyer may provide guidance and direction directly to Seller concerning actions the Scheduling Coordinator should take to optimize the dispatch of the Facility, in which case Buyer's instructions shall be controlling. Seller shall have no liability to Buyer as a result of following instructions received from Buyer or following any advice, recommendations or guidance from the provider under the Forecasting Agreement except to the extent resulting from Seller's gross negligence or intentional misconduct.

(c) Seller and Buyer shall conduct meetings on a quarterly basis or as otherwise reasonably requested by Buyer to discuss the overall performance of the provider under the Forecasting Agreement. Based on the information exchanged during such discussions, Seller shall use commercially reasonable efforts to implement any changes to the overall strategy or

performance objectives identified in this meeting.

2.5 **Financial Responsibility for Scheduling and Forecasting Services.**



(b) The Parties acknowledge and agree that Seller will not be directly performing SC services. Seller shall not be responsible for the financial results of Buyer's dispatch instructions to the SC but shall be responsible for the SC's failure to implement such instructions in accordance with the requirements of this Agreement, including Prudent Industry Practice and the requirements of the CAISO Tariff. Seller will use reasonable efforts to ensure that the SC Agreement has a provision identifying Buyer as a third-party beneficiary of the SC Agreement and entitling Buyer to have direct recourse against the SC for remedies, including breach of contract and indemnification.

**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 all the Product associated with the Facility at the Contract Price, and Seller shall supply and deliver to Buyer all the Product associated with the Facility. During the Delivery Term, Buyer will have exclusive rights, subject to compliance with the Operating Procedures, to offer, bid, or otherwise submit the Product from the Facility for sale in the available markets, and retain and receive any and all related revenues.

(a) **Facility Energy.** Buyer's right to schedule Facility Energy shall not commence until the Energy Start Date and is limited to the maximum quantity of Energy that can be produced by the Energy Contract Quantity. Buyer may elect to schedule any combination of Dispatchable Energy and Discharging Energy, but the total quantity may not exceed the Energy Contract Quantity in any hour.

(b) **Ancillary Services.** Buyer's right to schedule Ancillary Services and Flexible Ramping Product from the Thermal Resource shall not commence until the Energy Start Date and Buyer's right to schedule Ancillary Services and Flexible Ramping Product from the BESS Resource shall not commence until the Commercial Operation Date. Further, Buyer's right to schedule Ancillary Services and Flexible Ramping Product is limited to the Ancillary Services and Flexible Ramping Product that can be provided from Energy from the applicable resource under the CAISO Tariff without modifying the Facility and in no event greater than the Energy Contract Quantity. Such right specifically excludes any Ancillary Services and Flexible Ramping

Product that interfere or conflict with the ability to supply the Resources Adequacy Benefits. Buyer may elect to schedule Ancillary Services and Flexible Ramping Product from any combination of Dispatchable Energy and Discharging Energy, but the total quantity may not exceed the quantity of Ancillary Services and Flexible Ramping Product that can be provided from the Energy Contract Quantity in any hour.

(c) Environmental Attributes. Seller shall own all Environmental Attributes associated with (i) the generation of electricity by the Thermal Resource and (ii) the Charging Energy.

3.2 Ownership of Standalone Energy Storage Incentives. Seller shall own and may assign or sell, in its sole discretion, all right, title and interest to any Standalone Energy Storage Incentives associated with or resulting from the development, installation, ownership or operation of the Facility or the production, sale, purchase or use of the Charging Energy or Discharging Energy, in each case that currently exist or as may become available due to any change in Law.

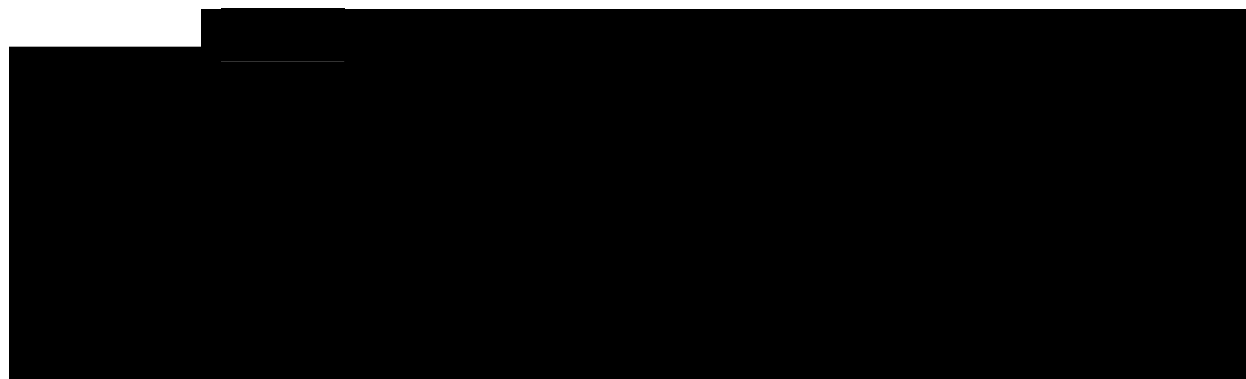
3.3 Capacity Attributes. Throughout the Delivery Term, Seller shall transfer to Buyer, and Buyer may in its sole discretion assign or sell all right, title and interest to any Capacity Attributes associated with or resulting from the development, installation, ownership or operation of the Facility or the production, sale, purchase or use of the Facility Energy, in each case that currently exist or as may become available due to any change in Law.

3.4 Energy Rate and Start Fee. During the Delivery Term, Buyer shall pay the Energy Rate to Seller for all Dispatchable Energy and the Start Fee for each Resource Start pursuant to the invoicing and payment provisions set forth in Article 8.

3.5 Reservation Payment. During each month of the Delivery Term, Buyer shall pay the monthly RA Reservation Payment and, following the Energy Start Date, the Energy Reservation Payment, to Seller pursuant to the invoicing and payment provisions set forth in Article 8.

3.6 Test Energy. To the extent any electricity is dispatched from the Facility prior to the Commercial Operation Date ("Test Energy"), dispatch of such Test Energy shall not be evidence that Commercial Operation has been achieved or that the BESS Resource has been placed in service.

3.7 Emissions.



[REDACTED]

[REDACTED]

3.8 Change in Law.

(a)

[REDACTED] (the

“Compliance Expenditure Cap”);

(b) If the Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated Compliance Costs.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

(e) If Buyer does not pay the Compliance Costs in excess of the Compliance

Expenditure Cap, or if it is not possible for Seller to achieve compliance with a change in Law through the payment or incurrence of costs, then Seller shall be excused from the corresponding Compliance Actions under this Agreement and may, without liability to Buyer or any reduction in Buyer's payment obligations, suspend performance under this Agreement, including obligations to offer, schedule or dispatch the Facility and any Products, to the extent performance is restricted by the change in Law.

#### **ARTICLE 4 OBLIGATIONS AND DELIVERIES**

4.1 **Product Delivery**. Subject to the provisions of this Agreement, during the Delivery Term:

(a) Seller shall supply and deliver the Product to Buyer, and Buyer shall accept and pay for the Product, in accordance with the terms of this Agreement; provided, however, that with respect to Facility Energy and any Ancillary Services, such Products shall be delivered into the CAISO markets directly in accordance with this Agreement. Notwithstanding anything herein to the contrary, Seller shall have no obligation to deliver any Resource Adequacy Benefits prior to the System RA Start Date, to deliver any Local RAR Attributes prior to the Local RA Start Date, or to make the BESS Resource available prior to the Commercial Operation Date.

(b) Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with Station Power.

(c) Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with: (i) the delivery of Charging Energy to the Delivery Point for the BESS Resource (including the cost of the Charging Energy itself and associated Electrical Losses), and (ii) the acceptance and transmission of Discharging Energy and Dispatchable Energy at and from the applicable Delivery Point, including without limitation, transmission costs and transmission line losses with regard to (i) and (ii). Charging Energy, Discharging Energy, Dispatchable Energy, Resource Adequacy Benefits and other Products will be Scheduled and, as applicable, delivered to the CAISO by the Scheduling Coordinator.

4.2 **Transfer of Resource Adequacy Benefits**.

(a) Seller shall transfer the Resource Adequacy Benefits and, if applicable, Replacement RA from Replacement Units (the "**RA Product**") to Buyer by submitting Supply Plans to CAISO for the Shown Unit(s).

(b) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the CAISO Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the CAISO Tariff and CPUC requirements to identify and confirm the RA Product delivered in accordance with Buyer's instructions for each Showing Month of the Delivery Term.

(c) If CAISO rejects the Supply Plan or the Resource Adequacy Plan with respect to any part of the RA Product for the Facility in any Showing Month, the Parties shall

confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan for validation before the applicable deadline for the Showing Month.

(d) The RA Product is received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the RA Product for such Showing Month, has been accepted for the RA Product from the Shown Unit(s) by CAISO. Seller has failed to transfer the RA Product under this Section 4.2 if (i) Buyer has elected to submit the RA Product from the Shown Unit(s) in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO due to the acts or omissions of Seller notwithstanding performance of the Parties' obligations in Section 4.2(c) or (ii) Seller fails to submit the volume of RA Product for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month. Seller will not have failed to properly transfer the RA Product if Buyer fails or chooses not to submit the Shown Unit(s) and the RA Product in its Resource Adequacy Plan with the CPUC or CAISO.

(e) Hold-Back Capacity, if any, is deemed RA Product received by Buyer, unless utilized under Section 4.5 as Substitute Capacity, then RA Product is considered received according to the requirements therein.

(f) To the extent Seller reduces deliveries of Product pursuant to Section 4.8 prior to the Facility being included in the applicable Supply Plan and does not elect to provide Replacement RA, Buyer shall be responsible for the costs associated with procuring Substitute Capacity to the extent Buyer directs Seller to include the Facility in the applicable Supply Plan. To the extent Seller reduces deliveries of Product either pursuant to Section 4.8 or otherwise after the Facility is included in the applicable Supply Plan Seller shall be responsible for the costs associated with procuring Substitute Capacity.

4.3 **Seller's Option To Provide Alternate Capacity.** If Seller is unable to provide the Resource Adequacy Benefits from the Facility for a Showing Month for any reason, including, without limitation, as provided in Section 4.8, then Seller may, at no cost to Buyer, provide Buyer with Replacement RA from one or more replacement units having the same Capacity Attributes as the Facility (each such unit, a "**Replacement Unit**") in an amount such that the total amount of RA Product provided to Buyer from the Facility and any Replacement Unit(s) for each Showing Month is not more than the RA Contract Quantity, provided that in each case:

(a) Seller shall notify Buyer in writing of its intent to provide Replacement RA and shall identify the proposed Replacement Units from which such Replacement RA shall be provided no later than the Notification Deadline for Buyer's Compliance Showings related to such Showing Month;

(b) The proposed Replacement Units must (i) be accepted by the CAISO, and (ii) otherwise satisfy the requirements of this Agreement;

(c) Seller shall, or shall cause the SC to submit, a Supply Plan for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Buyer's Compliance Showings;



(d) If Seller does not comply with the requirements of Sections 4.3(a), (b) and (c) for the applicable Showing Month and, if applicable, annual filing, then any such Replacement Units shall not be deemed a Replacement Unit for purposes of this Agreement for that Showing Month; and

(e) The designation of any Replacement Unit(s) by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

(f) In no event shall a Replacement Unit utilize coal or coal materials as a source of fuel. A Replacement Unit must be a specific resource that is connected directly to the CAISO-controlled grid or be under the operational control of CAISO. A Replacement Unit may not be an unspecified import.

(g) Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 4.3 and Buyer has approved such Replacement Units as consistent with this Agreement, then any such Replacement Units shall be deemed a Shown Unit for purposes of this Agreement for that Showing Month. Buyer's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

#### 4.4 **Buyer's Re-Sale of RA Product.**

(a) Buyer may re-sell all or part of the RA Product; provided that any such resale must not increase Seller's obligations hereunder other than as set forth in this Section 4.4. For any such resale, the Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of the Subsequent Buyer. Seller shall, or shall cause the Shown Unit's SC, to follow Buyer's instructions with respect to providing such resold RA Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Agreement. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold RA Product in a manner consistent with Buyer's rights under this Agreement. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Shown Unit's SC to comply with this Agreement, Seller will be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the RA Product.

(b) Buyer shall notify Seller in writing of any resale of RA Product and the Subsequent Buyer no later than two (2) Business Days before the deadline for the Compliance Showing for each Showing Month for which Buyer has resold the RA Product. Buyer shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the deadline for the Compliance Showing for each Showing Month for which Buyer has resold the RA Product.

(c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to direct the Seller or the Shown Unit's SC to offer, bid, or otherwise submit the RA Product for re-sale into such market, and Seller and the Shown Unit's SC shall comply with the Buyer's direction and Buyer shall retain and receive all revenues from such re-sale.

(d) Buyer shall have the exclusive right to direct the Seller or the Shown Unit's

SC to offer, bid, or otherwise submit the RA Product into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller and the Shown Unit's SC shall comply with the Buyer's direction and, to the extent that the CAISO designates the RA Product as CPM Capacity, Buyer shall be entitled to retain and receive the CPM Capacity Payment. Unless otherwise instructed by Buyer, (i) Seller shall not, and shall cause the Shown Unit's SC to not, offer any portion of the RA Product to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the RA Product as CPM Capacity, then Seller shall, and shall cause the Shown Unit's SC to, promptly (and in any event within one (1) Business Day of the time Seller receives notification from CAISO) notify Buyer of such designation, and if CAISO makes such a designation, Seller shall not, and shall cause the Shown Unit's SC to not, accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

#### 4.5 **Hold-Back and Substitute Capacity.**

(a) No later than three (3) Business Days before the relevant deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request in writing that Seller not list, or cause the Shown Unit's SC not to list, in the Shown Unit's Supply Plan a portion or all of the RA Product for such Showing Month ("**Hold-Back Capacity**"). The amount of RA Product that is the subject of Buyer's request for Hold-Back Capacity shall be deemed RA Product received by Buyer consistent with Section 4.2 for purposes of calculating the payments due hereunder, unless utilized under Section 4.5(b) as Substitute Capacity, then RA Product is considered received according to the requirements therein. Seller shall, or shall cause the Shown Unit's SC to, comply with Buyer's request under this Section 4.5.

(b) In any Showing Month in which Buyer has designated Hold-Back Capacity, Buyer may request, in writing, that Seller make the Hold-Back Capacity available for Buyer's use as Substitute Capacity within the respective Showing Month ("**Substitute Capacity Request**") with the following schedule:

(i) For Buyer's Substitute Capacity Requests that are to be scheduled with CAISO prior to the Showing Month (e.g., through the CAISO RA Substitute Capacity Assessment), the Substitute Capacity Request shall be received by Seller at least two (2) Business Days prior to the applicable CAISO scheduling deadline. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Buyer's request under this Section 4.5(b), provided that to the extent Seller is unable to provide the requested Substitute Capacity from the Facility due to a Thermal Planned Outage or a Forced Outage, Seller shall not have any liability for such failure.

(ii) For Buyer's Substitute Capacity Requests that are to be scheduled with CAISO after the commencement of the Showing Month, the Substitute Capacity Request shall be received by Seller at least five (5) Business Days before Buyer submits its Substitute Capacity in the CIRA Tool. Seller shall, or shall cause the Replacement Unit's Scheduling Coordinator to, comply with Buyer's request under this Section 4.5(b), provided that to the extent Seller is unable to provide the requested Substitute Capacity from the Facility due to a Thermal Planned Outage or a Forced Outage, Seller shall not have any liability for such failure.

4.6 **Gas Supply.** Seller shall be responsible for the supply of natural gas for the Thermal Resource in accordance with Exhibit O.

#### 4.7 Charging Energy Management.

(a) Generally. Buyer shall be solely responsible, at its sole cost, for procuring Charging Energy. Buyer shall be solely responsible, at its sole cost, for arranging transmission and wheeling required to deliver Charging Energy to the Delivery Point for the BESS Resource and to accept Discharging Energy at the Delivery Point for the BESS Resource. Except as expressly set forth in this Agreement, including Sections 4.7(c) and (e) and Section 4.11(b), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the BESS Resource. 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. The BESS Resource will have the capability to be charged seven (7) days per week and twenty-four (24) hours per day (including holidays), through Charging Notices sent electronically, provided, that the right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement including the Operating Procedures; provided, however, that the sole and exclusive remedy for any failure of the BESS Resource to be available is the Availability Adjustment Factor. Each Charging Notice issued in accordance with this Agreement will be effective unless and until the Buyer or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice. Seller shall comply with all Charging Notices, subject to the requirements and limitations set forth in this Agreement. 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). Notwithstanding the foregoing, Buyer shall be solely responsible for causing sufficient Charging Notices to be issued to (i) support any Discharging Notices and (ii) ensure the eligibility of the Resource Adequacy Benefits for purchase and sale under the CAISO market rules, and (iii) otherwise participating in any CAISO markets.

(c) No Unauthorized Charging. Seller shall not charge the BESS Resource during the Delivery Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO. If, during the Contract Term, Seller (i) charges the BESS Resource to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the BESS Resource in violation of the first sentence of this Section 4.7(c), then (x) Seller shall be responsible for all Energy costs associated with such charging of the BESS Resource, (y) Buyer shall not be required to pay for such Energy, and (z) Buyer shall be entitled to discharge such Energy and entitled to the Product associated with discharging such Energy.

(d) Discharging Notices. Buyer will have the right to discharge the BESS Resource 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 provided, however, that the sole and exclusive remedy for any failure of the BESS Resource to be available is the Availability Adjustment Factor. 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 or CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) No Unauthorized Discharging. Seller shall not discharge the BESS Resource during the Delivery Term other than pursuant to a valid Discharging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from the CAISO. If, during the Delivery Term, Seller (i) discharges the BESS Resource other than as provided for in the Discharging Notice or (ii) discharges the BESS Resource in violation of the first sentence of this Section 4.7(e), then (x) Seller shall be responsible for all Energy costs associated with such discharging of the BESS Resource, (y) Buyer shall not be required to pay for the Charging Energy that was discharged, and (z) Buyer shall be entitled to the Product associated with such discharge.

(f) Scheduling Charging Energy and Discharging Energy. Seller (or Seller's SC) shall schedule Charging Energy and Discharging Energy in accordance with the Charging Notices and Discharging Notices, subject to the requirements of this Agreement. In the event that Seller (or Seller's SC) fails to schedule the Charging Energy or Discharging Energy in accordance with Buyer's instructions and the requirements of this Agreement, the payment amounts owed to Buyer by Seller shall equal the net revenue Buyer would have received had Seller (or Seller's SC) properly Scheduled the Charging Energy or Discharging Energy, as applicable. Payment of such amount shall be Seller's sole and exclusive liability for any failure to schedule the Charging Energy or Discharging Energy, except as provided in Exhibit N.

(g) Coordination Regarding Commissioning and Storage Capacity Tests. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause the BESS Resources to be charged or discharged. Seller shall have exclusive rights to test, charge and discharge the BESS Resource. 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. Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the BESS Resource testing for periods prior to the Commercial Operation Date. Both prior to and after the Commercial Operation Date, (i) Buyer shall reasonably coordinate and cooperate with Seller with respect to BESS Resource commissioning and Storage Capacity Tests, and (ii) Seller shall reasonably coordinate and cooperate with Buyer with respect to BESS Resource commissioning and Storage Capacity Tests so as to minimize direct and opportunity costs to the Buyer associated with such activities.

#### 4.8 **Reduction in Deliveries.**

(a) Facility Maintenance. Seller will deliver to Buyer the expected schedule for performing maintenance on the Facility in accordance with Exhibits G-1 and G-2. Seller shall be permitted to reduce deliveries of Product during a BESS Planned Outage or Thermal Planned Outage.

(b) Unplanned Outage. Seller shall be permitted to reduce deliveries of Product during any Unplanned Outage.

(c) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(d) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.9 **RA Availability.**

(a) During the Delivery Term, the Facility shall maintain a Monthly RA Availability during each month of no less than the Guaranteed RA Availability, which Monthly RA Availability shall be calculated in accordance with Exhibit F.

(b) If the Monthly RA Availability during any month is less than the Guaranteed RA Availability, then Buyer's payment for the Product shall be calculated by reference to the RA Availability Adjustment Factor as determined in accordance with Exhibit F.

(c) Subject to Section 4.18, the sole and exclusive remedy for any failure of the Facility to provide Resource Adequacy Benefits is the RA Availability Adjustment Factor. Buyer shall be solely responsible for procuring those Resource Adequacy Benefits that the Facility fails to provide under this Agreement.

4.10 **Storage Availability.**

(a) During the Delivery Term, the Facility shall maintain a Monthly Storage Availability during each month of no less than the Guaranteed Storage Availability, which Monthly Storage Availability shall be calculated in accordance with Exhibit E.

(b) If the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Buyer's payment for the Product shall be calculated by reference to the Availability Adjustment Factor (as determined in accordance with Exhibit E).

4.11 **Storage Capacity Tests.**

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit D. Thereafter, Seller and Buyer shall have the right to run retests of the Storage Capacity Test in accordance with Exhibit D.

(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 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 shall (i) not be entitled to the payment 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, Buyer shall (x) procure the associated Charging Energy, (y) be liable for all CAISO costs and charges for the associated Charging Energy, and (z) be entitled to any CAISO revenues associated with the associated Discharging Energy. No Charging Notices or Discharging Notices shall be issued during any Storage Capacity Test except as reasonably requested by Seller or Buyer to implement the applicable test.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit D. If the Effective Discharge Capacity determined pursuant to a Storage

Capacity Test varies from the then current Energy Contract Quantity, as applicable, then the Effective Discharge Capacity determined pursuant to a Storage Capacity Test (not to exceed the initial Energy Contract Quantity set forth on the Cover Sheet) shall become the new Energy Contract Quantity at the beginning of the day following the completion of the test for all purposes under this Agreement.

4.12 **Efficiency Guaranty.** On a monthly basis, if the Efficiency Rate of the BESS Resource is less than the Guaranteed Efficiency Rate, Seller shall reimburse Buyer for the incremental cost of purchasing Charging Energy calculated in accordance with Exhibit C.

4.13 **Heat Rate Guaranty.** In the event the Heat Rate is higher than the Guaranteed Heat Rate, Seller will owe Buyer Heat Rate Liquidated Damages in accordance with Exhibit C.

4.14 **Start, Run and Cycle Limits.** Buyer may not exceed the Daily Start Limit or Annual Run Hour Limit of the Thermal Resource or the Annual Cycle Limit of the BESS Resource.

4.15 **Interconnection Capacity.** Throughout the Delivery Term, Seller shall have and maintain interconnection capacity available or dedicated (a) to the Thermal Resource that is no less than the RA Contract Quantity, and (b) to the BESS Resource that is no less than the Storage Contract Capacity, provided that such interconnection capacity may be maintained through a combination of rights under the Interconnection Agreement dedicated to the BESS Resource and under an Interconnection Agreement shared with the Thermal Resource. Seller shall be responsible for all costs of interconnecting the Thermal Resource and the BESS Resource to the Transmission System. Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or the Gas Distribution Utility or under this Agreement resulting from Seller's breach of this Section 4.15. Buyer shall use commercially reasonable efforts to mitigate the damages from such breach.

4.16 **Title and Risk of Loss.** Notwithstanding any provision in this Agreement to the contrary, Buyer shall not have title or risk of loss related to any natural gas or Facility Energy.

4.17 **Notice of Outages.**

(a) **Notice of Unplanned Outages.** Seller shall notify Buyer promptly following the occurrence of an Unplanned Outage, or following Seller having knowledge that an Unplanned Outage will occur. Seller shall communicate to Buyer the estimated duration of an Unplanned Outage and use reasonable commercial efforts to update Buyer of any changes to the estimated direction thereof.

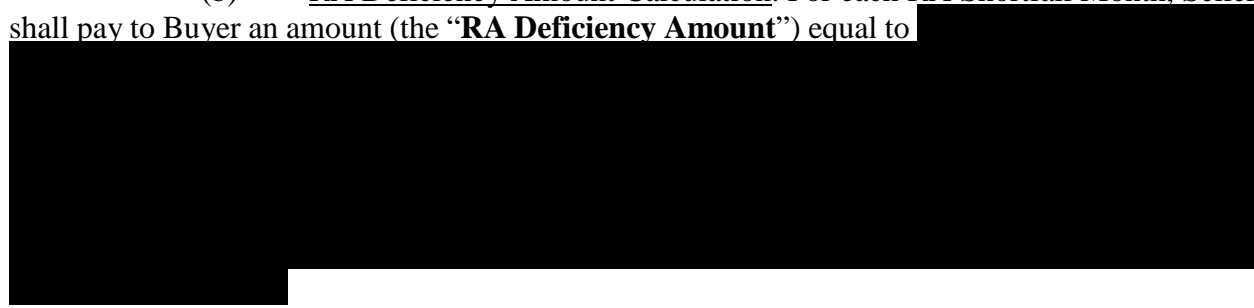
(b) **Facility Availability.** During the Delivery Term, Seller shall deliver to Buyer a schedule of the expected availability of the Facility on an hourly basis and shall update Buyer of a changes reasonably anticipated promptly following Seller's determination that changes are required.

4.18 **Resource Adequacy Failure**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall

pay to Buyer the RA Deficiency Amount as liquidated damages, in each case, as the sole remedy for any RA Shortfall.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to



## **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 Industry Practice relating to the operation and maintenance of the Facility, 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 action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit J 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, Dispatching Energy or Discharging Energy to Buyer.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements; *provided* that such Shared Facilities Agreements shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Energy Contract Quantity.

## **ARTICLE 7 METERING**

7.1 **Metering.** Seller shall obtain and maintain a CAISO Resource ID for the BESS Resource and the Thermal Resource. At Seller's expense, Seller shall install and maintain all necessary Energy Meters and telemetry required by the CAISO to deliver the Product. At Seller's expense, Seller shall install and maintain the Gas Meter as required for the Thermal Resource to receive natural gas service from the Gas Distribution Utility.

7.2 **Meter Verification.** If Seller has reason to believe there may be an Energy Meter or a Gas Meter malfunction, or upon Buyer's reasonable request, Seller shall test the Energy Meter or the Gas Meter. 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. Meter accuracy shall be determined based on CAISO or Gas Distribution Utility standards, as applicable. If a meter is inaccurate it shall be promptly repaired or replaced at Seller's expense. If the meter test was performed by Buyer's request and the meter(s) provided to be accurate, Buyer shall reimburse Seller for the costs and expenses associated with the test.

7.3 **Meter Adjustments.** If a meter provided to be inaccurate, the procedures used by the CAISO or the Gas Distribution Utility, as applicable, shall be used to adjust payments due hereunder. If no such procedures are applicable, Seller shall, acting reasonably and in good faith, determine when the inaccuracy first became effective and calculate the resulting adjustments. If Seller cannot reasonably determine when the inaccuracy first occurred, it will be assumed to have occurred halfway between the previous test and the current test (not to exceed 6 months).



**ARTICLE 8**  
**INVOICING AND PAYMENT; CREDIT**

8.1 **Contract Price.** The contract price (the “**Contract Price**”) shall be calculated monthly, in arrears, as follows:

- (a) The RA Reservation Payment, plus
- (b) The Energy Reservation Payment, plus
- (c) The product of (i) the Energy Rate and (ii) the Dispatchable Energy delivered in the applicable month; plus
- (d) The Start Fee for the applicable month; plus
- (e) Any costs incurred by Seller for natural gas arising from any failure of Dispatchable Energy to be generated in the quantities subject to a Price Lock Transaction as set forth in Exhibit O excluding any costs, charges or penalties incurred due to the Seller’s failure to perform its actions under this Agreement or Seller’s failure to comply with the tariffs, agreements or other requirements of the Gas Distribution Utility.

8.2 **Statements and Invoicing.** Seller shall deliver an invoice to Buyer within twenty (20) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of metered data, including the amount of Charging Energy, Discharging Energy and Dispatchable Energy delivered to Buyer (if any), the RA Reservation Payment, the Energy Reservation Payment and the total Contract Price; (b) reflect any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; (c) reflect any CAISO costs and revenues passed through to Buyer, (d) include any natural gas costs or revenues passed through to Buyer pursuant to Section 4.6 and (e) be in a format and contain detail reasonably acceptable to Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. The invoice shall be delivered by electronic mail in accordance with Exhibit J.

8.3 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit J, which may be updated by Seller by Notice hereunder; provided, however, that changes to invoice, payment, wire transfer and other banking information in the Agreement must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes to the Agreement. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. 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.

8.4 **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 five (5) 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.

8.5 **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 8.6, (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 except 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 8.3, accruing from the date on which the adjusted amount should have been due. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twelve (12) months from the date of the invoice.

8.6 **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 8.5. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.6 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.

8.7 **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, without limitation, liquidated damage payments under Exhibit B, CAISO Costs and Revenues calculated pursuant to Exhibit N, interest, payments, and credits shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

#### 8.8 **Payment Security.**

(a) **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. 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 (x) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (y) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (z) 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.

(b) **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, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the 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.

(c) **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 in, and lien on (and right to net against), and assignment of the Development Security and Performance Security to the extent provided in the form of cash, and any other cash collateral and cash equivalent collateral posted pursuant to Section 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 granted under this Section 8.8(c) in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

8.9 **Use of Financial Security.** 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 Financial Security provided by Seller, 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 Financial 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 Financial Security; and

(c) Liquidate the applicable Financial Security then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

## **ARTICLE 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 J 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 if sent by electronic mail at the time indicated by the time stamp upon delivery, except that if received after 5 PM Pacific Prevailing Time, it shall be deemed received on the next Business Day. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic mail, or any other mutually acceptable form of electronic communication, and shall be considered delivered upon successful completion of such transmission (or, in the case of electronic mail, if no notice of delivery failure is received). Notices of claimed breach of this Agreement or an Event of Default must concurrently be sent by hand delivery or overnight carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees.

## **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; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; epidemic; pandemic; 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 an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy storage capacity at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (v) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (vi) any action or inaction by Transmission Provider that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Reliability Network Upgrades except to the extent caused by a Force Majeure Event.

**10.2 Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. In addition, if a Force Majeure Event causes the Facility to be materially damaged such that returning the Facility to the full operational status that existing prior to the Force Majeure Event is reasonably expected to take more than twelve (12) months, Seller may terminate this Agreement upon Notice to Buyer. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Sections 2.1(b) and 10.4. 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, (b) suspend or excuse the obligation of Seller to achieve 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)(i) or (ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

10.3 **Notice for Force Majeure.** Within two (2) Business Days of the Party becoming aware of that a Force Majeure Event will impact the Party's performance under this Agreement, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks thereafter the claiming Party shall provide the other Party with Notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely Notice shall not constitute a waiver of the Force Majeure Event, but the relief granted shall be based on the date Notice is provided rather than the date of the Force Majeure Event. Upon written request from the other Party, the claiming Party shall provide documentation demonstrating to other Party's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from the claiming Party's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

10.4 **ROFO Following Force Majeure Event Termination.** In the event that this Agreement was terminated by Seller pursuant to Section 10.2 due to material damage to the Facility, and, within two (2) years following such termination Seller proposes to return the Facility to its full operational status, Buyer shall have a right of first offer to contract for any rights to discharging energy, resource adequacy benefits, ancillary services, and any other products from the Facility consistent with the terms and conditions of this Agreement [REDACTED]. Prior to offering to sell such products from the Facility to a third party, Seller shall first provide Buyer with Notice of intent to market such for sale. Buyer shall have [REDACTED] after receipt of the Notice to provide Seller with a written offer to purchase such products. If the Parties cannot reach an agreement and do not execute a contract to purchase the energy products from the Facility within [REDACTED] following Seller's receipt of Buyer's offer, or if Buyer fails provide Seller the offer within the required time period, then Seller will thereafter be free to market the products from the Facility for sale to a third party.

## 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;

(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 such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 14.1, 14.2, 14.3 or 14.4, as appropriate; 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) 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 COD Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(ii) the failure by Seller to maintain an average Efficiency Rate equal to or greater than the Minimum Efficiency Rate over any rolling twelve (12) month period;

(iii) if, in any Contract Year, the simple average of the Monthly Storage Availability for such Contract Year (calculated at the end of such Contract Year) is not equal to 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 such failure to maintain a simple average of Monthly Storage Availability for such Contract Year equal to at least [REDACTED]

(iv) if, in any Contract Year, the simple average of the Monthly RA Availability for such Contract Year (calculated at the end of such Contract Year) is not equal to 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 such failure to maintain a simple average of the Monthly RA Availability for such Contract Year equal at least [REDACTED]

[REDACTED]

(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) except to the extent excused by an Excused Event, if Seller fails to maintain an average Storage Capacity equal to at least [REDACTED] of the Storage Contract Capacity for more than [REDACTED] or

(vii) failure by Seller to provide and maintain Financial Security pursuant to Section 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish amounts in accordance with this Agreement.

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)(i)) subject to the limitations in Section 11.7, 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, that 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 termination of this Agreement and the Event of Default related thereto.

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for the Terminated Transaction owed pursuant to Section 11.2 (b)(ii) shall be the aggregate of the Settlement Amount 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. 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 the 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 the 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.** As soon as practicable after termination of this Agreement, 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 is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **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.

11.7 **Seller Pre-COD Liability Limitations.** Notwithstanding anything in this Agreement to the contrary, Seller's aggregate liability under this Agreement prior to the Commercial Operation Date, including liabilities for payment of COD Delay Damages and the Damage Payment, shall not exceed [REDACTED]

**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM A PARTY'S FRAUD OR INTENTIONAL MISREPRESENTATION, 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, 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) Seller has, or will have prior to the Delivery Term, all necessary Governmental Approvals to perform its obligations hereunder.

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, duly organized, validly existing and in good standing under the laws of California.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under

this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer has, or will have prior to the Delivery Term, all necessary Governmental Approvals to perform its obligations hereunder.

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 **Community Benefits.** Seller pledges to deliver one hundred twenty-five thousand dollars (\$125,000) to Buyer so that Buyer may direct such amount to community benefits initiatives that directly benefit stakeholders in Buyer's service area. Buyer and Seller shall identify

initiatives that are of mutual interest such as housing, education, workforce training, environmental stewardship, and habitat improvement. Buyer shall have discretion to determine which initiatives will be funded and will provide Seller Notice describing the initiatives Buyer intends to fund. Seller shall make this payment within sixty (60) days after the Commercial Operation Date, and (b) 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 13.5, 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 13.5 without the prior written consent of Seller.

13.6 **Supplier Diversity.** Seller acknowledges that Buyer will 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 using the form attached hereto as Exhibit Q.

13.7 **Economic Impacts Report.** During the first year following the Commercial Operation Date, Buyer may request that Seller prepare and deliver a single written report describing the Facility's local economic impact. No later than thirty (30) days after written request from Buyer for such written report, Seller will provide Buyer a written report describing the Facility's local economic impact through the Commercial Operation Date, including expenditures for construction labor and capital expenditures for procurement of locally-supplied equipment, and number of construction jobs created. Seller may aggregate such information as necessary or appropriate to protect confidential, proprietary or commercially-sensitive information and the written report shall be treated as Confidential Information under this Agreement.

## **ARTICLE 14 ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer's consent and will not be subject to Section 14.2 or Section 14.3 if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. The assigning Party shall pay the other Party's reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys' fees.

14.2 **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 or portion thereof. 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 Financing Party to agree upon a consent to collateral assignment of this Agreement (“**Collateral Assignment Agreement**”). The Collateral Assignment Agreement 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 Financing Party 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 Financing Party at the time such Notice is provided to Seller and the cure period of Financing Party shall not commence until Financing Party has received Notice of such Event of Default;

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

(i) The status of efforts by Seller or Financing Party 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 Financing Party 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) Financing Party will have the right to cure an Event of Default on behalf of Seller, only if Financing Party sends a Notice to Buyer before the later of (i) the expiration of any cure period, and (ii) fifteen (15) Business Days after Financing Party’s receipt of Notice of such Event of Default from Buyer, indicating Financing Party’s intention to cure. Financing Party 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 [REDACTED]

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

(e) Financing Party 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 Financing Party, directly or indirectly, takes possession of, or title to the Facility following Seller's bankruptcy or similar insolvency proceedings (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) and the Agreement is in effect at such time, Financing Party or its designee shall not disturb Buyer's rights and privileges arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Financing Party as set forth in the Collateral Assignment Agreement); provided, if Buyer advises Financing Party that Buyer will require that Financing Party cure (or cause to be cured) any Event of Default existing as of the possession date 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 Financing Party at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default (which are capable of being cured) to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings), or

(ii) Not assume this Agreement;

(g) If following Seller's bankruptcy or similar insolvency proceedings Financing Party elects to sell or transfer the Facility (after Financing Party directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Financing Party (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Financing Party shall cause the transferee or buyer to comply with the foregoing clause (f) 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.

(h) If this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith, Financing Party shall have the right to elect within one hundred eight (180) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller (or Financing Party or its designee that has title to the Facility) having the same terms as this Agreement for the remaining term thereof; provided that in the event a designee of Financing Party, 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 shall (i) meet the definition of Permitted Transferee and (ii) be an entity that Buyer is permitted to contract with under applicable Law.

14.3 **Permitted Assignment by Seller.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, or any other conflict of interest Law:

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:

(i) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(ii) Seller has provided Buyer a written agreement signed by the Affiliate to which Seller wishes to assign its interests that provides that such Affiliate will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment.

(b) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to any Person succeeding to all, or substantially all, of the assets of Seller (whether voluntary or by operation of law), if, and only if:

(i) The assignee is a Permitted Transferee;

(ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

(c) Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and confirmed by Buyer.

14.4 **Permitted Assignment by Buyer.** Buyer may make a limited assignment to an entity with an Investment Grade Credit Rating ("**Limited Assignee**") of Buyer's right to receive Product and Buyer's obligation to make payments to Seller, subject to execution of an assignment agreement between and among Seller, Buyer, and Limited Assignee upon terms and conditions mutually agreed, including that the limited assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement. Buyer may make such assignment by delivering Notice upon not less than thirty (30) days prior to such proposed assignment. Buyer shall pay Seller for any payments 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. Any failure by the Limited Assignee to make payments to Seller when due hereunder shall be a Buyer Event of Default if not cured within the applicable cure period specified herein. 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.



**ARTICLE 15  
DISPUTE RESOLUTION**

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of San Diego, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, 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 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

**ARTICLE 16  
INDEMNIFICATION**

16.1 **Indemnification.**

(a) Each Party (the "**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 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its own sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.**

(a) Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which an indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; *provided*, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

16.3 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

**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 bodily injury insurance, in a minimum amount of [REDACTED] per occurrence, and general aggregate of not less than [REDACTED], including contractual liability in said amount, including Buyer having additional insured status; and (ii) an umbrella/excess liability insurance liability policy in a minimum limit of liability of [REDACTED] each occurrence and in the 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/separation of insureds provisions.

(b) Employer's Liability Insurance. Seller shall maintain Employer's Liability insurance in a minimum amount not to 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 accident. 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.

(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.

(f) Operational 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 replacement value of the Facility; provided, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits that are usual and customary to similar risks. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.

(g) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date naming Seller (and Financing Party if any) as additional insured if coverage provided by Subcontractor, Pollution Legal Liability Insurance in the amount of [REDACTED] per event and in the aggregate with Seller as a named insured and Financing Party, if any, as an additional insured.

(h) Subcontractor Insurance. Seller shall require all of its Major Subcontractors to carry: (i) commercial general liability insurance with a combined single limit of coverage not less than [REDACTED] per occurrence/general aggregate; (ii) workers' compensation insurance and employer's liability coverage in accordance with applicable requirements of California Law; and (iii) business auto insurance for bodily injury and property damage with limits of [REDACTED] per accident. All Major Subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (h)(i) and (h)(iii). All Major Subcontractors shall provide a primary/non-contributory endorsement on commercial general liability and auto liability insurance, and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(h).

(i) Evidence of Insurance. Within sixty (60) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage except for ten (10) days for non-payment of premium. General Liability and Business Auto insurance shall be primary coverage without right of contribution from any insurance of Buyer. Umbrella/Excess Liability insurance shall be 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.

## **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; and (iv) information that the recipient independently developed without a violation of this Agreement.

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

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify written material with the word “Confidential”

and must clearly advise the Disclosing Party if any oral communication contains Confidential Information and should be treated as confidential.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing Notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer and Buyer’s Indemnified Parties from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer or Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information. The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of five (5) years following the date of termination of this Agreement.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations under this Article 18 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 in this Article 18. 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 Article 18 or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Financing Party(ies)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release.

## **ARTICLE 19 MISCELLANEOUS**

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior

agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly.

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 Financing Party 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 execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

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 advisors, contractors, consultants or employees of Buyer or Buyer's 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.** 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 to maximize benefits to Buyer, including: (i) modification of the description of Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; or (ii) submission of any reports, data, or other information required by Governmental Authorities; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement. 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 either Party may request that the other Party 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, provided, however that Seller shall have no obligation to agree to any amendment that results in an unreimbursed reduction of forecast revenue Seller expects to generate under this Agreement. 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 Section 15.2. 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.

*[Signatures on following page]*



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

**MRP PACIFICA MARKETING LLC,**  
**a Delaware limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SAN DIEGO COMMUNITY POWER, a**  
**California joint powers authority**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**FACILITY DESCRIPTION**

<b>Site Name</b>	
County	San Diego, CA
Site APNs	APN 646-130-58-00
Facility Type	Natural gas-fired plant and battery energy storage system (BESS)
Participating Transmission Owner	SDG&E
<b>Thermal Resource</b>	
Description	51 MW Simple Cycle Gas Turbine
Generating Capacity (MW)	51 MW
Conversion Rate	
Resource ID	BORDER_6_UNITA1
<b>BESS Resource</b>	
Type	Lithium Ion Battery Energy Storage System
Operating Characteristics	
Operating Procedures	See <u>Exhibit H</u>
Maximum Charging Capacity (MWh)	52
Maximum Discharging Capacity (MWh)	52
Maximum Stored Energy Level (MWh)	52
Resource ID	To be determined by CAISO

## EXHIBIT B

### FACILITY COMMERCIAL OPERATION

1. **Thermal Resource.** The Thermal Resource is operational.
2. **Reserved.**
3. **Commercial Operation of the BESS Resource.** “**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 L (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 Commercial Operation has been achieved. Subject to Buyer’s confirmation in Section 3(iii) of this Exhibit B, the “**Commercial Operation Date**” shall be the later of (x) the Expected Commercial Operation Date or (y) the date in the COD Certificate on which Seller confirmed to Buyer that Commercial Operation was achieved.
  - a. Seller shall cause Commercial Operation for the BESS Resource to occur by June 1, 2026 (as such date may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). 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 does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended pursuant to the Development Cure Period, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date, not to exceed [REDACTED] (the “**COD Delay Period**”).
  - c. If Commercial Operation is achieved during a month for which Seller has paid COD Delay Damages, Buyer shall repay to Seller the amount of COD Delay Damages paid to Buyer that are not owed by Seller for such month. Seller may include such amounts owed by Buyer in its invoices to Buyer hereunder.
  - d. The Parties agree that Buyer’s receipt of COD Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s failure to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2 (subject to the limitations in Section 11.7).
4. **Extension of the Guaranteed Commercial Operation Date.** The Guaranteed Commercial Operation Date shall, subject to Notice and documentation requirements set forth below, be automatically 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:

- a. Force Majeure Event;
- b. Interconnection Delays; and
- c. Event of Default of Buyer.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period, other than any delays due to Section 4(c) above, shall not exceed [REDACTED] for any reason, including a Force Majeure Event, and the cumulative extensions granted to the (i) Guaranteed Commercial Operation Date by Seller’s payment of COD Delay Damages pursuant to Section 3(c) of this Exhibit B, and (ii) any Development Cure Period(s), other than any delays due to clause 4(c) above, shall not exceed [REDACTED]. Seller shall provide prompt Notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide Notice within five (5) Business Days of Seller becoming aware of such delay.

5. **Failure to Reach Storage Contract Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have sixty (60) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit M hereto specifying the new Installed Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay Capacity Damages to Buyer, in an amount equal to [REDACTED] and the Storage Contract Capacity and other applicable portions of the Agreement, including the Storage Contract Capacity table in the Cover Sheet, shall be adjusted accordingly.

6. **Commercial Operation Conditions:** Commercial Operation of the BESS Resource shall occur once the following conditions are satisfied:

- a. The BESS Resource is fully operational and interconnected, fully integrated and synchronized with the Transmission System.
- b. Seller has installed equipment for the BESS Resource.
- c. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
- d. Seller has demonstrated functionality of the BESS Resource’s communication systems and automatic generation control (AGC) interface to operate the BESS Resource 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.


- e. The BESS Resource is fully capable of charging, storing and discharging energy and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable Operating Protocols.
- f. Authorization was received from the CAISO and the Participating Transmission Owner to operate the BESS Resource is parallel with the Transmission System.
- g. The PTO has provided documentation supporting Commercial Operation.
- h. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.

## EXHIBIT C

### EFFICIENCY GUARANTY

#### Thermal Resource Heat Rate Guaranty

**Heat Rate Testing:** The heat rate (“**Heat Rate**”) of the Thermal Resource shall be determined by performing thermal performance testing generally in accordance with the American Society of Mechanical Engineers’ Standard PTC 22 and Prudent Industry Practice. The Heat Rate will be first tested no later than thirty (30) days prior to the Energy Start Date and thereafter, the Heat Rate will be tested annually upon Buyer’s request. In addition, Buyer shall have the right to require a test or retest of the Heat Rate at any time upon no less than ten (10) Business Days prior written Notice to Seller if Buyer reasonably believes that the current Heat Rate has varied materially from the results of the most recent Heat Rate test. All costs or revenues associated with any Heat Rate test shall be borne by, or accrue to, Buyer, as applicable.

**Heat Rate Liquidated Damages:** In the event the Heat Rate is higher than the Guaranteed Heat Rate, Seller will pay to Buyer, as liquidated damages and not a penalty, the  the “**Heat Rate Liquidated Damages**”). Following any Heat Rate test demonstrating a Heat Rate higher than the Guaranteed Heat Rate, Heat Rate Liquidated Damages shall be calculated and reflected as a credit on the next monthly invoice in accordance with Section 8.2.

#### BESS Resource Efficiency Guaranty

##### **Efficiency Guaranty Testing:**

The “**Efficiency**” of the BESS Resource shall be calculated as follows:

$$Efficiency = \frac{MWh_{delivered} + \text{Stored Energy}_{end}}{MWh_{received} + \text{Stored Energy}_{start}}$$

Where:

- (i)  $MWh_{delivered}$  = all measured and recorded Discharging Energy delivered from the BESS Resource at the Metering Point for the Facility during the Measurement Period.
- (ii)  $MWh_{received}$  = all measured and recorded Charging Energy received during charging of the BESS Resource at the Metering Point for the Facility during the Measurement Period.

- (iii) Stored Energy<sub>end</sub> = available electric energy in the BESS Resource at the end of the Measurement Period.
- (iv) Stored Energy<sub>start</sub> = available electric energy in the BESS Resource at the start of the Measurement Period.
- (v) “Measurement Period” means a calendar month.

**Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate**

If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total Charging Energy for such month by (ii) the percentage amount by which the Efficiency Rate is less than the Guaranteed Efficiency Rate, by (iii) the simple average of the Day-Ahead Market locational marginal price for all the hours in which Charging Energy was provided in the applicable month, as published by the CAISO, for the Delivery Point for the BESS Resource, provided, that if the foregoing calculation results in a negative value, then no liquidated damages amount shall be owed by either Party.

## EXHIBIT D

### STORAGE CAPACITY TESTS

The “**Storage Capacity Test**,” or “CT,” shall be performed by Seller by maintaining Discharging Energy from the BESS Resource for one (1) hour and the “**Effective Discharge Capacity**” in megawatts (MW) shall be determined as the quotient of the aggregate quantity of Discharging Energy (MWh) at the end of the one (1) hour test period, as measured at the Delivery Point for the BESS Resource, divided by one (1); provided, however, that the Effective Discharge Capacity cannot exceed the Energy Contract Quantity set forth in the Cover Sheet.

#### **Capacity Test Notice and Frequency**

- A. **Commercial Operation Capacity Test(s)**. Upon no less than ten (10) Business Days’ prior Notice to Buyer, Seller shall schedule and complete a “**Commercial Operation Capacity Test**” prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test shall be performed in accordance with this Exhibit D and shall establish the Installed Capacity hereunder based on the actual capacity and capabilities of the BESS Resource determined by such Commercial Operation Capacity Test(s).
- B. **Subsequent Capacity Tests**. Following the Commercial Operation Date, at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days’ prior Notice to Buyer, Seller shall schedule and complete an Annual Storage Capacity Test (“**Annual Storage Capacity Test**”). In addition to the Annual Storage Capacity Test, if Buyer has a commercially-reasonable basis to believe that the Effective Discharge Capacity is materially less than shown by the most recent test results, Buyer shall have the right to require a Storage Capacity Test at any time upon no less than ten (10) Business Days prior Notice to Seller. Seller shall have the right to run up to three (3) retests 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 Industry Practice).
- C. **Test Results and Re-Setting of Effective Discharge Capacity**. 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 Energy Meter readings from the BESS Resource and plant log sheets verifying the operating conditions and output of the BESS Resource.

#### **Capacity Test Procedures**

##### PART I. GENERAL.

- A. Each Storage Capacity Test shall be conducted in accordance with Prudent Industry Practices, the Operating Procedures detailed at Exhibit H, and the provisions of this Exhibit D. Buyer or its representative may be present for the CT.
- B. Conditions Prior to Testing.



1. EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
2. Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data.
3. Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed BESS Resource equipment, including verification that all controls, set points, and instruments of the EMS are configured.

## PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

- A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit D, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Discharge Capacity resulting from such Storage Capacity Test, if applicable, will be made in accordance with this Exhibit D.
  1. Electrical output at maximum discharging level (MW) for one (1) hour; and
  2. Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the BESS Resource Meter (MW), as sustained until the SOC reaches 100%.
- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:
  1. Time;
  2. The amount of Discharging Energy to the BESS Resource Meters (kWh) (i.e., to each measurement device making up the BESS Resource Meter);
  3. Net electrical energy input from the BESS Resource Meters (kWh) (i.e., from each measurement device making up the BESS Resource Meter); and
  4. Stored Energy Level (MWh).
- C. Site Conditions. During each CT, the following conditions at the Site shall be measured

and recorded simultaneously at thirty (30) minute intervals:

1. Relative humidity (%);
2. Barometric pressure (inches Hg) near the horizontal centerline of the BESS Resource; and
3. Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

1. That the CT successfully started;
2. The maximum sustained discharging level for one (1) consecutive hour pursuant to A(1) above;
3. The maximum sustained charging level for two (2) consecutive hours (or such lesser time as is required to reach 100% SOC) pursuant to A(2) above;
4. Amount of time between the BESS Resources' electrical output going from 0 to the maximum sustained discharging level registered during the CT for purposes of calculating the ramp rate (with the parties acknowledging this value may be effectively instantaneous and unmeasurable with precision);
5. Amount of time between the BESS Resource's electrical input going from 0 to the maximum sustained charging level registered during the CT (for purposes of calculating the ramp rate);
6. Amount of Charging Energy, registered at the BESS Resource Meters, to go from 0% SOC to 100% SOC;
7. Amount of Discharging Energy, registered at the BESS Resource Meters, to go from 100% SOC to 0% SOC.

E. Test Conditions.

8. General. At all times during a CT, the BESS Resource shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the BESS Resource.
9. Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
10. Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The

instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Industry Practice and, as applicable, the CAISO Tariff.

- F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Discharge Capacity pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT subject to providing Buyer with five (5) Business Days' prior Notice, or such shorter period of time as the Parties may agree.
- G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
1. A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
  2. The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
  3. Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor. If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing BESS Resource construction, Seller shall, if applicable, deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit D with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then current design of the BESS Resource ("**Supplementary 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 Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit D.
- I. Adjustment to Effective Discharge Capacity. Based on each Storage Capacity Test, the Effective Discharge Capacity, which shall be expressed in MW AC, shall be updated to equal the total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first one (1) hour of discharge (up to, but not in excess of, the (a) the Storage Contract Capacity (in the case of a Commercial Operation Capacity Test) or

(b) the Installed Capacity (in the case of any other Capacity Test)).

### PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

#### A. Effective Discharge Capacity Test

Procedure:

1. System Starting State: The BESS Resource will be in the on-line state at 0% SOC.
2. Record the initial value of the SOC.
3. Command a real power charge that results in an AC power of BESS Resource's maximum charging level and continue charging until the earlier of (a) the BESS Resource has reached 100% SOC or (b) two (2) hours have elapsed since the Facility commenced charging.
4. Record and store the SOC after the BESS Resource earlier of (a) the Facility has reached 100% SOC or (b) two (2) hours of continuous charging.
5. Record and store the amount of Charging Energy, registered at the BESS Resource Meters, to go from 0% SOC to 100% SOC.
6. Following one (1) hour rest period, command a real power discharge that results in an AC power output of the BESS Resource's maximum discharging level and maintain the discharging state until the earlier of (a) the BESS Resource has discharged at the maximum discharging level for one (1) consecutive hour, or (b) the BESS Resource has reached 0% SOC.
7. Record and store the SOC after one (1) hour of continuous discharging.
8. Record and store the Discharging Energy as measured at the BESS Resource Meters. Such data point shall be used for purposes of calculation of the Effective Discharge Capacity.
9. If the BESS Resource has not reached 0% SOC pursuant to Section III.A.6, continue discharging the BESS Resource until it reaches a 0% SOC.
10. Record and store the Discharging Energy as measured at the BESS Resource Meters from the commencement of discharging pursuant to Part III.A.6 until the BESS Resource has reached a 0% SOC pursuant to either Part III.A.7 or Part III.A.9, as applicable.

Test Results:

The resulting Effective Discharge Capacity measurement is the sum of the total Discharging Energy at the BESS Resource Meters.

#### B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the BESS Resource's maximum discharging level within 1 second.
- System starting date: The BESS Resource will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  1. Record the BESS Resource active power level at the BESS Resource Meters.
  2. Command the BESS Resource to follow a simulated CAISO RIG signal of PMAX at .95 power factor for ten (10) minutes.
  3. Record and store the BESS Resource active power response (in seconds).
- System end state: The BESS Resource will be in the on-line state and at a commanded active power level of 0 MW.

### **C. AGC Charge Test**

- Purpose: This test will demonstrate the AGC charge capability to achieve the BESS Resource's full charging level within 1 second.
- System starting state: The BESS Resource will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The BESS Resource control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  1. Record the BESS Resource active power level at the BESS Resource Meters.
  2. Command the BESS Resource to follow a simulated CAISO RIG signal of PMAX at .95 power factor for ten (10) minutes.
  3. Record and store the BESS Resource active power response (in seconds).
- System end state: The BESS Resource will be in the on-line state and at a commanded active power level of 0 MW.

### **D. Reactive Power Production Test**

- Purpose: This test will demonstrate the reactive power production capability of the BESS Resource.
- System starting state: The BESS Resource will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.

#### Procedure:

1. Record the BESS Resource reactive power level at the BESS Resource Meters.

2. Command the BESS Resource to follow 15 MW for ten (10) minutes.
  3. Record and store the BESS Resource reactive power response.
- System end state: The BESS Resource will be in the on-line state and at a commanded reactive power level of 0 MVAR.

#### **E. Reactive Power Consumption Test**

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.
- System starting state: The BESS Resource will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The BESS Resource control system will be configured to follow an agreed-upon predefined reactive power profile.

#### Procedure:

1. Record the BESS Resource reactive power level at the BESS Resource Meters.
  2. Command the BESS Resource to follow 15 MW for ten (10) minutes.
  3. Record and store the BESS Resource reactive power response.
- System end state: The BESS Resource will be in the on-line state and at a commanded reactive power level of 0 MVAR.

**EXHIBIT E**

**STORAGE AVAILABILITY**

**1. Monthly Storage Availability**

(a) Calculation of Monthly Storage Availability. Seller shall calculate the “**Monthly Storage Availability**” in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{\text{Average Storage Capacity}}{\text{Storage Contract Capacity}}$$

where:

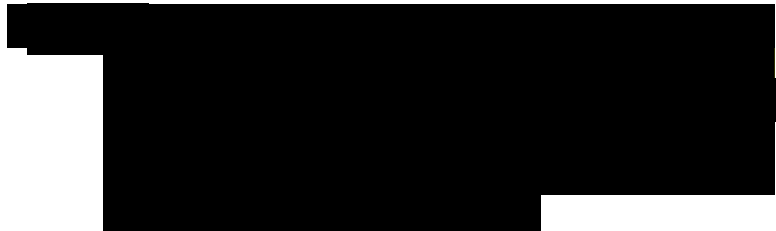
$$\text{Average Storage Capacity} = \frac{\sum \text{Hours Available Capacity}}{\text{Hours}}$$

Where:

Hours = All hours in the month

Available Capacity = for each hour of the month:

- (i) the capacity Seller reports to Buyer as being Available to be scheduled; and



If the BESS Resource is Unavailable for less than a full hour, the Available Capacity shall be the average capacity that was Available during that hour.

If the BESS Resource or any component thereof was previously deemed Unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the BESS Resource is Available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Product in the Day-Ahead Market (as defined in the CAISO Tariff), the BESS Resource will be deemed to be Available to the extent set forth in the revised Notice.

**2. Availability Adjustment Factor**

The applicable “**Availability Adjustment Factor**” or “**AAF**” is calculated as follows:

- (i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

$$AAF = 100\%$$

- (ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability, but [REDACTED], then:

$$AAF = [REDACTED]$$

- (iii) If the Monthly Storage Availability is [REDACTED], then:

$$AAF = 0$$



**EXHIBIT F**

**RA AVAILABILITY**

**1. Monthly RA Availability**

(a) Calculation of Monthly RA Availability. Seller shall calculate the “**Monthly RA Availability**” in a given Showing Month using the formula set forth below:

$$\text{Monthly RA Availability (\%)} = \frac{\text{Average RA Capacity}}{\text{Guaranteed RA Amount}}$$

where:

$$\text{Average RA Capacity} = \frac{\sum \text{Hours Available RA Capacity}}{\text{Hours}}$$

Where:

Hours = All Availability Assessment Hours for the Showing Month

Available RA Capacity = for each Availability Assessment Hour of the Showing Month, the lesser of the RA Contract Quantity and:

- (i) the total capacity Seller reports to Buyer as being available to be included in the Supply Plan from the Thermal Resource, plus any Replacement RA for such Availability Assessment Hour; plus



- (iii) any capacity for which Seller paid damages pursuant to Section 4.18.

If the Thermal Resource is unavailable for less than a full hour, the Available RA Capacity shall be the average capacity that was available during that hour.

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




**2. RA Availability Adjustment Factor**

The applicable “RA Availability Adjustment Factor” or “RAAAF” is calculated as follows:

- (i) If the Monthly RA Availability is greater than or equal to the Guaranteed RA Availability, then:

$$RAAAF = 100\%$$

- (ii) If the Monthly RA Availability is less than the Guaranteed RA Availability, but  then:

$$RAAAF = \frac{\text{Monthly RA Availability}}{\text{Guaranteed RA Availability}}$$

- (iii) If the Monthly RA Availability is , then:

$$RAAAF = 0$$


## EXHIBIT G-1

### BESS RESOURCE MAINTENANCE INTERVALS

#### 1.1. BESS Maintenance Plans

- (a) Not later than January 15, April 15, July 15 and October 15 of each Contract Year the Seller shall prepare and submit to the Buyer its proposed maintenance plan for the BESS Resource for the following twelve (12)-month period in a form reasonably agreed to by Buyer (a “**BESS Maintenance Plan**”) identifying any BESS Planned Outage(s) for that Contract Year; provided that the BESS Maintenance Plan for the first Contract Year shall be prepared and submitted by the Seller to the Buyer not later than sixty (60) days after the Commercial Operation Date.
- (b) If reasonably required in accordance with Prudent Industry Practices, Seller shall have the right, on no less than thirty (30) days advance Notice to Buyer, to change the BESS Maintenance Plan. Buyer may provide comments no later than ten (10) days after receiving Seller’s Notice of proposed changes to the BESS Maintenance Plan, and Seller shall use reasonable commercial efforts to accommodate such comments.

#### 1.2. BESS Planned Outages

- (a) 
- (b) The Parties shall coordinate, acting reasonably and in good faith, to establish reasonable maintenance schedules for the various components of the BESS Resource.
- (c) Seller and Buyer shall use reasonable commercial efforts to coordinate all forecasted maintenance to coincide with Buyer’s forecasted dispatch schedules to minimize any loss of revenue.

#### 1.3. Limited Generation Due to Maintenance

- (a) Maintenance may be performed while the BESS Resource is operating at reduced (limited) generation.
- (b) Maintenance may be performed on the BESS Resource, or a unit thereof, while the Thermal Resource, or unit(s) thereof, respectively, is operating.

1.4. Allowance for BESS Planned Outages

- (a) Outage periods for BESS Planned Outages shall not exceed [REDACTED]. This allowance may be used in increments of an hour or longer on a consecutive or non-consecutive basis. [REDACTED]

- (b) Any hours during which there is a BESS Planned Outage and Seller provides Replacement RA shall not be deducted from the hours allowed for BESS Planned Outages.


## EXHIBIT G-2

### THERMAL RESOURCE MAINTENANCE INTERVALS

#### 1.1. Thermal Maintenance Plans

- (a) Not later than January 15, April 15, July 15 and October 15 of each Contract Year the Seller shall prepare and submit to the Buyer its proposed maintenance plan for the Thermal Resource for the following twelve (12)-month period in a form reasonably agreed to by Buyer (a “**Thermal Maintenance Plan**”) identifying any Thermal Planned Outage(s) for that Contract Year; provided that the Thermal Maintenance Plan for the first Contract Year shall be prepared and submitted by the Seller to the Buyer not later than sixty (60) days after the System RA Start Date.
- (b) If reasonably required in accordance with Prudent Industry Practices, Seller shall have the right, on no less than thirty (30) days advance Notice to Buyer, change the Thermal Maintenance Plan. Buyer may provide comments no later than ten (10) days after receiving Seller’s Notice of proposed changes to the Thermal Maintenance Plan, and Seller shall use reasonable commercial efforts to accommodate such comments. Seller shall schedule all Thermal Planned Outages within the time period determined by the CAISO for the Thermal Resource, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an “Approved Maintenance Outage” under the CAISO Tariff.

#### 1.2. Scheduled Outages

- (a) 
- (b) The Parties shall coordinate, acting reasonably and in good faith, to establish reasonable maintenance schedules for the various components of the Thermal Resource.
- (c) Seller and Buyer shall use reasonable commercial efforts to coordinate all forecasted maintenance to coincide with Buyer’s forecasted dispatch schedules to minimize any loss of revenue.
- (d) To the extent commercially reasonable, Seller shall schedule maintenance outages (i) during periods in which CAISO does not require resource substitution or replacement, and (ii) otherwise in a manner to avoid reductions in Resource Adequacy Benefits available from the Thermal Resource to Buyer.

#### 1.3. Major Overhauls During Peak Summer Months

- (a) Major Overhauls may not be scheduled during [REDACTED]. As used herein “Major Overhaul” means a major overhaul or its equivalent as defined in the applicable original equipment manufacturer’s manual.

1.4. Limited Generation Due to Maintenance

- (a) Maintenance may be performed while the Thermal Resource is operating at reduced (limited) generation.
- (b) Maintenance may be performed on the Thermal Resource, or a unit thereof, while the BESS Resource, or unit(s) thereof, respectively, is operating.

1.5. Allowance for Thermal Planned Outages


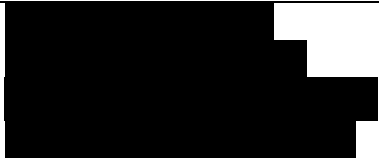
- (a) [REDACTED]
- (b) Any hours during which there is a Thermal Planned Outage and Seller provided Replacement RA shall not be deducted from the hours allowed for Thermal Planned Outages.

**EXHIBIT H**  
**OPERATING PROCEDURES**

The Thermal Resource shall be subject to the following technical operating restrictions:

	<b>Description</b>	<b>Value</b>	<b>Notes</b>
1.	Generating Capacity	51 MW	
2.	Daily Dispatch Limits	2 cycles per day	
3.	Start-up Ramp rate	20 MW/min	
4.	Interconnection Capacity Limit	52 MW	

The BESS Resource shall be subject to the following technical operating restrictions:

	<b>Description</b>	<b>Value</b>	<b>Notes</b>
1.	Storage Capacity	52 MW	
2.	Maximum Stored Energy Level	52 MWh	
4.	Maximum Charging Capacity	52 MW	
5.	Minimum Charging Capacity	0 MW	
6.	Maximum Discharging Capacity	52 MW	
7.	Minimum Discharging Capacity	0.1 MW	
8.	Maximum State of Charge (SOC) during Charging	100%	
9.	Minimum State of Charge (SOC) during Discharging	0%	
10.	Minimum Discharge Duration	1 hour	
11.	Minimum Charging Duration	1 hour	
12.	Daily Dispatch Limits		
13.	Start-up Ramp rate	60 MW/min	
14.	Charging energy source	CAISO Grid	
15.	Interconnection Capacity Limit	52 MW	

**EXHIBIT I**

**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:  
Bank Ref.:  
Amount: US\$[XXXXXXXXXX]  
Expiration Date:

Beneficiary:

[\_\_\_\_\_]

[\_\_\_\_\_]

Attn: [\_\_\_\_\_]

Ladies and Gentlemen:

By the order of [\_\_\_\_\_] (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of [\_\_\_\_\_], a [\_\_\_\_\_] (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Financially Settled Toll and Energy Storage Agreement dated as of \_\_\_\_\_ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by 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. [XXXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [*bank email address*] or (c) facsimile to [*bank fax number*] 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 the Beneficiary that all documents presented under and in compliance with



the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date on the then current Expiration Date, or such later date as may be specified in such notice. No presentation made under this Letter of Credit after such Expiration Date (as may be extended in such notice) will be honored.

This Letter of Credit is issued subject to the rules of the 'International Standby Practices 1998', International Chamber of Commerce Publication No. 590 ("ISP98") and, as to matters not addressed by ISP98, shall be governed and construed in accordance with the laws of state of California.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements (other than as set forth in the immediately prior paragraph), this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-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: [\_\_\_\_\_], Attn: [\_\_\_\_\_], [Insert Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

---

[Insert officer name]

[Insert officer title]

Exhibit A

Drawing Certificate

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [\_\_\_\_], a [\_\_\_\_], [Insert Address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of [\_\_\_\_], a [\_\_\_\_] (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Financially Settled Toll and Energy Storage 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 Buyer 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 [\_\_\_\_] 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 [\_\_\_\_] by wire transfer in immediately available funds to the following account:

[Specify account information]

[\_\_\_\_\_]

\_\_\_\_\_  
Name and Title of Authorized Representative

Date \_\_\_\_\_

**EXHIBIT J**

**NOTICES**

<b>MRP Pacifica Marketing LLC</b>	<b>San Diego Community Power</b>
<b>All Notices:</b> <a href="#">mailto:</a> Street: 200 W. Madison St., Suite 3810 City: Chicago, IL 60606 Attn: Kathleen Pokryfke Phone: 312-766-4551 Email: <a href="mailto:mrpgoldennotices@mrpgenco.com">mrpgoldennotices@mrpgenco.com</a>	<b>All Notices:</b> PO Box 12716  San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: <a href="mailto:bvosburg@sdcommunitypower.org">bvosburg@sdcommunitypower.org</a>
<b>Reference Numbers:</b> [REDACTED]	<b>Reference Numbers:</b> [REDACTED]
<b>Invoices:</b> Attn: Accounts Payable Phone: (312) 766-8510 Email: <a href="mailto:mrpgoldennotices@mrpgenco.com">mrpgoldennotices@mrpgenco.com</a>	<b>Invoices:</b> Attn: SDCP Settlements Phone: (619) 880-6545 Email: <a href="mailto:settlements@sdcommunitypower.org">settlements@sdcommunitypower.org</a>
<b>Scheduling:</b> Attn: CalPeak Power LLC Phone: (760)-530-2323 Email: <a href="mailto:calpeak_dist@tnsk.com">calpeak_dist@tnsk.com</a>	<b>Scheduling:</b> Tenaska Power Services Co. Attn: Kara Whillock Phone: (972) 333-6122 Email: <a href="mailto:kwhillock@tnsk.com">kwhillock@tnsk.com</a> Day Ahead: (817) 303-1115 Real Time: (817) 303-1852 Facsimile: (817) 303-1104
<b>Confirmations:</b> Attn: Phone: Email: <a href="mailto:mrpgoldennotices@mrpgenco.com">mrpgoldennotices@mrpgenco.com</a>	<b>Confirmations:</b> Attn: SDCP Settlements Phone: (619) 880-6545 Email: <a href="mailto:settlements@sdcommunitypower.org">settlements@sdcommunitypower.org</a>
<b>Payments:</b> Attn: Accounts Payable Phone: (312) 766-8510 Email: <a href="mailto:mrpgoldennotices@mrpgenco.com">mrpgoldennotices@mrpgenco.com</a>	<b>Payments:</b> Attn: Michael Maher Phone: (415) 526-3020 Email: <a href="mailto:mmaher@maher CPA.com">mmaher@maher CPA.com</a>
<b>Wire Transfer:</b> BNK: ABA: ACCT:	<b>Wire Transfer:</b> [REDACTED]
<b>Credit and Collections:</b> Attn: Kathleen Pokryfke Email: <a href="mailto:kpokryfke@mrpgenco.com">kpokryfke@mrpgenco.com</a> Phone: (312) 766-4551	<b>Credit and Collections:</b> Attn: SDCP Finance Phone: (619) 880-6545 Email: <a href="mailto:finance@sdcommunitypower.org">finance@sdcommunitypower.org</a>

<b>MRP Pacifica Marketing LLC</b>	<b>San Diego Community Power</b>
<b>With additional Notices of an Event of Default to:</b> Attn: General Counsel Phone: (312) 381-8559 Email: <a href="mailto:jdubinski@mrpgenco.com">jdubinski@mrpgenco.com</a>  Additional notices of an Event of Default to: Climate Edge Law Group Attn: Paul Lacourciere Email: <a href="mailto:paul@celawgroup.com">paul@celawgroup.com</a>	<b>With additional Notices of an Event of Default or Force Majeure Event to:</b>  Attn: Veera Tyagi General Counsel PO Box 12716 San Diego, CA 92112 Phone: Email: <a href="mailto:vtyagi@sdcommunitypower.org">vtyagi@sdcommunitypower.org</a>
<b>Emergency Contact:</b> Attn: CalPeak Power LLC Phone: (760)530-2323 Email: <a href="mailto:calpeak_dist@tnsk.com">calpeak_dist@tnsk.com</a>	<b>Emergency Contact:</b> Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: <a href="mailto:bvosburg@sdcommunitypower.org">bvosburg@sdcommunitypower.org</a>

**EXHIBIT K**  
**[RESERVED]**

## EXHIBIT L

### 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 Financially Settled Toll and Energy Storage Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between MRP Pacifica Marketing LLC (“**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 BESS Resource is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the BESS Resource with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
4. Seller has demonstrated functionality of the BESS Resource’s communication systems and automatic generation control (AGC) interface to operate the BESS Resource as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.
5. The BESS Resource 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.
6. Authorization to parallel the BESS Resource was obtained from the Participating Transmission Owner.
7. The Transmission Provider has granted any necessary approvals for Commercial Operation.
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT M**

**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 Financially Settled Toll and Energy Storage Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between MRP Pacifica Marketing LLC (“**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:

The Commercial Operation Capacity Test demonstrated a maximum dependable operating capability that can be sustained for one hour to discharge electric energy of \_\_ MW AC to the Delivery Point for the BESS Resource, in accordance with the testing procedures, requirements and protocols set forth in Section 4.11 and Exhibit D (the “**Installed Capacity**”).

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[*LICENSED PROFESSIONAL ENGINEER*]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_



## EXHIBIT N

### SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Notices. Seller (as the Facility's SC) shall use a web-based system through which Seller shall submit to 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 Buyer access to 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.

(b) Seller as Scheduling Coordinator for the Facility. During the Delivery Term, Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of the Product at the Delivery Point and for the purposes of conducting Storage Capacity Tests. As directed by Buyer, Seller (as the Facility's SC) shall submit Schedules and Supply Plans to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product, including on a day-ahead, hour-ahead, fifteen-minute market or real time basis.

(c) CAISO Costs and Revenues. Except during a Storage Capacity Test or as otherwise set forth below, Buyer shall be responsible for CAISO costs (including 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, or other credits in respect of the Product Scheduled or delivered from the Facility, provided, that Seller shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) to the extent such CAISO costs are due to Seller's failure to schedule the Charging Energy, Discharging Energy or Dispatchable Energy or submit Supply Plans in accordance with Buyer's instructions and the requirements of this Agreement. 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 resulting from compliance with Buyer's instructions. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account. Buyer shall use reasonable efforts to avoid submitting bids that cause Seller to incur Non-Availability Charges. 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 Seller 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 the Seller's responsibility. Subject to the foregoing, Seller shall pass through to Buyer all CAISO costs and revenues associated with the Facility, which shall be reflected as a credit on the monthly invoices provided to Buyer in accordance with the invoicing and payment provisions of Article 8, including the netting provisions of Section 8.7.

(d) CAISO Settlements. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility.

(e) Dispute Costs. Seller (as the Facility's SC) may be required to dispute CAISO settlements in respect of the Facility. If Buyer has directed Seller to dispute a CAISO settlement, Buyer agrees to pay Seller'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 Buyer with respect to the Facility.

(f) 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.

(g) NERC Reliability Standards. Seller (as Scheduling Coordinator) shall comply with NERC reliability standards.

(h) Audit Right. Buyer has the right, at its sole expense, during normal working hours, and after reasonable Notice, to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statements, charges, revenues, or costs passed through to Buyer in accordance with Seller or the SC providing Scheduling Coordinator services under this Agreement including the costs to procure any natural gas or Substitute Capacity on behalf of Buyer. If such examination reveals any material inaccuracy in any statement, the necessary adjustments shall be made promptly.

## EXHIBIT O

### ENERGY RATE CALCULATION

#### 1. Definitions.

As used in this Exhibit O, the following terms, when used herein when initial capitalization, shall have the meanings set forth below:

**“Conversion Rate”** means [REDACTED].

**“Gas Distribution Utility”** means San Diego Gas & Electric Company.

**“Gas Distribution Utility Receipt Point”** means SoCal City Gate.

**“Gas Price”** means the Price per MMBtu agreed upon pursuant to a Price Lock Transaction or, if either no Price Lock Transaction has been executed for the Delivery Period or the natural gas usage exceeds the quantity of natural gas subject to Price Lock Transaction, the Spot Price.

**“Price Lock Period”** means the period of time commencing on 00:00 on the Start Date and ending at 23:59 on the End Date, each as defined below.

**“Run Hours”** means the hours during which the Thermal Resource is, or is planned to be, operated.

**“Resource Start”** means a start of the Thermal Resource.

**“Spot Price”** means the price listed in Gas Daily Midpoint for the Gas Distribution Utility Receipt Point for the relevant day; provided, if there is no single price published for such location for such day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first day for which a price or range of prices is published that next precedes the relevant day; and (ii) the price (determined as stated above) for the first day for which a price or range of prices is published that next follows the relevant day.

**“Start Fee”** means [REDACTED]

**“Start-up Fuel”** means [REDACTED]

**“Trading Day”** means Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S. starting at 8:00 a.m. Pacific Prevailing Time and ending at 5:00 p.m. Pacific Prevailing Time.

#### 2. Natural Gas Supply.

a. Gas Utility Connection. Seller will, at its sole cost and expense, maintain the

interconnection of the Thermal Resource and gas meter to the Gas Distribution Utility.

b. Supply of Gas.

- i. Seller will cause the Scheduling Coordinator to procure a sufficient quantity of natural gas for the continuous operation of the Thermal Resource consistent with the dispatch schedule for the Thermal Resource and to deliver such natural gas to the Gas Utility Receipt Point; and
- ii. Seller will pay all costs associated with the procurement and delivery of natural gas to the Facility subject to Section 4 of this Exhibit O.

3. Price Lock Process.

- a. No later than ten (10) Business Days prior to the Energy Start Date, and thereafter no later than ten (10) Business Days prior to expiration of the applicable Price Lock Period, Buyer shall request that Seller provide a fixed energy price for a specified period of time (a "**Price Lock Transaction**"). The request shall include the following information:
  - i. The "**Start Date**", which in the case of the first Price Lock Transaction shall be the Energy Start Date and with respect to each subsequent Price Lock Transaction shall be the day after the End Date;
  - ii. The "**End Date**", which shall be no later than 36 months after the Start Date;
  - iii. The number of Resource Starts per day during the Price Lock Period;
  - iv. The number of Run Hours per day during the Price Lock Period.

Buyer may include in a single request up to three variations in the above information and may request that Seller use reasonable commercial efforts to secure quotes from a particular supplier.

- b. Following receipt of such request, Seller shall promptly, but in any event within one (1) Trading Day (as defined below), deliver to Buyer a quote for the Energy Rate to be used during the requested Price Lock Period along with an "Acceptance Deadline" by which the quote must be accepted; provided, Seller shall use commercially reasonable efforts to provide Buyer at least ninety (90) minutes to accept a quote. The quote will represent Seller's commercially reasonable efforts to secure the fixed price fuel for Dispatchable Energy and will include any natural gas transportation and distribution charges, credit charges, scheduling costs, or other adjustments to the market price based on verifiable costs to the Seller. Seller will deliver the quote via email in the following form:

Acceptance Deadline:

Start Date:

End Date:

Number of Resource Starts per Day:

Number of Run Hours Per Day:

Energy Rate: (\$/MWh)

Where the “**Energy Rate**” is calculated as follows:

$$\text{Price per MMBtu} \times \text{Conversion Rate}$$

*The foregoing represents an offer to fix the Energy Rate under that certain Financially Settled Toll and Energy Storage Agreement by and between San Diego Community Power and MRP Pacifica Marketing LLC dated as of \_\_\_\_\_. Neither Party has any obligation with respect to this offer until and unless Buyer accepts such offer in writing prior to the Acceptance Deadline in the form set forth in Exhibit P (a “**Price Lock Transaction Order**”). This offer expires without further action if it is not accepted in writing prior to the Acceptance Deadline.*

- c. Where Buyer has included in its request variations in the required information, the quote will indicate which variation it is applicable to. Seller will use commercially reasonable efforts to obtain and deliver to Buyer quotes from multiple suppliers and, if applicable, any supplier that Buyer has specifically requested quotes from. Notwithstanding the foregoing, Seller shall have no obligation to disclose to Buyer which supplier provided each quote.
  - d. If Buyer accepts the offer by delivering a Price Lock Transaction Order to Seller prior to the offer’s expiration, then the Price Lock Transaction Order will be used to calculate the Energy Rate under this Agreement for the Price Lock Period, subject to the usage limits set forth below. If the offer expires, Buyer may request that Seller provide a new quote during the same Trading Day and Seller will use reasonable commercial efforts to provide a new quote within that Trading Day.
4. **Usage Limits.** To the extent that the number of Resource Starts per Day or the Run Hours per Day exceeds the amount subject to a Price Lock Transaction, the Energy Rate and the Start Fee for such excess usage shall be calculated using the Spot Price. To the extent that the Resource Starts per Day or the Run Hours per Day is less than the MMBtu per Day amount subject to a Price Lock Transaction, Seller shall use commercially reasonable efforts to liquidate the associated natural gas consistent with Prudent Industry Practices and shall pass through to Buyer any resulting costs or revenues.
5. **Low Carbon Fuel.** Buyer and Seller agree to utilize low carbon fuels to the extent commercially reasonable at the Facility. Buyer has the option, but not the obligation, to request Seller to utilize low carbon fuels. Low carbon fuels include pipeline quality renewable natural gas and/or up to 30 percent (30%) hydrogen blended natural gas. Buyer shall give Seller sufficient time to procure low carbon fuels and comply with Local and State regulatory requirements in

accordance with Prudent Industry Practices. The costs and expenses associated with procuring, purchasing and delivering to the Facility low carbon fuels shall be passed through to Buyer. Seller may present to Buyer an Energy Rate based on the cost of such Low Carbon Fuel for consideration of the Price Lock.

**EXHIBIT P**

**FORM OF “PRICE LOCK TRANSACTION ORDER”**

This **PRICE LOCK TRANSACTION ORDER** (“**Order**”), is delivered by San Diego Community Power to MRP Pacifica Marketing LLC in accordance with the terms of that certain Financially Settled Toll and Energy Storage Agreement by and between San Diego Community Power, as Buyer, and MRP Pacifica Marketing LLC, as Seller, dated as of \_\_\_\_\_ (the “**Agreement**”). All capitalized terms used in this Order but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Exhibit O of the Agreement, Buyer accepts Seller’s offer to fix the Energy Rate as follows:

Seller’s Acceptance Deadline:

Date/Time of Buyer’s Acceptance:

Start Date:

End Date:

Number of Resource Starts per Day:

Number of Run Hours Per Day:

Energy Rate: (\$/MWh)

Buyer has caused this Order to be duly executed and delivered by a duly authorized representative on the date written below.

**SAN DIEGO COMMUNITY POWER**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT Q

### 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 (WMDVLGBTs) 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](http://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.theupplierclearinghouse.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.theupplierclearinghouse.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



## SAN DIEGO COMMUNITY POWER Staff Report – Item 16

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To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services; and  
Andrea Torres, Senior Portfolio Manager, Power Services; and Asikeh Kanu, Portfolio Manager, Power Services

Via: Karin Burns, Chief Executive Officer

Subject: Financially Settled Toll and Energy Storage Agreement with MRP Pacifica Marketing II LLC for a thermal resource including 48.04 MW of Resource Adequacy and a co-located 52 MWh Battery Storage (“Enterprise Project”)

Date: May 23, 2024

---

### RECOMMENDATION

Approve the proposed Financially Settled Toll and Energy Storage Agreement with MRP Pacifica Marketing II LLC for the Enterprise Project and authorize the CEO to execute the agreement.

### BACKGROUND

As San Diego Community Power (SDCP) strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term contracts of at least 10 years in duration are integral components of its energy supply portfolio. Long-term contracts provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term contract that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term contracts lock in energy and capacity supply, as well as energy arbitrage capability around which SDCP can build its power supply portfolio while also providing power supply cost certainty around which SDCP can develop its pro forma financial model.

In D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, Incremental generation facilities that will achieve commercial operation during 2023 through 2026.



The proposed contract is for resource adequacy from 48.04 MW of an existing natural gas simple cycle facility with MRP Pacifica Marketing LLC (“MRP”). The contract originated from SDCP’s Local RFI. SDCP has reached terms mutually agreeable to both parties.

## **ANALYSIS AND DISCUSSION**

Staff negotiated the attached financially settled toll and energy storage agreement for the purchase of a financial hedge and capacity attributes from a 48.04 MW combustion turbine (CT) along with a 52 MWAC 1-hour (52 MWh) battery energy storage (BESS) facility in Escondido, California.

The grid-charged BESS facility will operate on a (24/7) basis providing grid reliability. In 2023 the associated legacy plant was operational for just under 400 hours (4.5% of potential run hours). The BESS is expected to significantly decrease the operation of the legacy plant. Further, SDCP is increasing efforts to target and encourage local project development for its generation portfolio. This hybrid resource will satisfy a portion of SDCP’s local, flex, and 24/7 RA compliance needs. SDCP expects a certain amount of technology diversity among its power supply to creatively develop local projects in order to help mitigate risks and provide a portfolio approach to its power procurement.

Below is additional information regarding MRP Pacifica Marketing LLC and the proposed Financially Settled Toll and Energy Storage Agreement.

Background on MRP:

- Middle River Power LLC (“MRP”) will serve as the asset manager for the Enterprise Project. MRP was formed in 2016 with over 6 GW of generation under management, including 380 MW of battery energy storage.
- MRP Pacifica Marketing LLC is a wholly owned subsidiary of MRP Golden, LLC, which was founded in 2023 to be an ESG-focused investment manager and has since made substantial investments in the U.S. renewable energy sector.

Contract Overview – Enterprise Project

- Project: 52 MWAC 1-hr (52 MWh) battery energy storage facility constructed on the site of an existing 48.04 MW CT peaker plant
- Project location: Otay Mesa (San Diego)
- Guaranteed Commercial Operation date: December 1, 2026
- Contract term: 15 years
- Pricing: Fixed pricing with no escalation
- SDCP would receive financial compensation in the event of seller’s failure to successfully achieve certain development milestones as well as seller’s failure to deliver local capacity.

Community Benefits and Workforce Development:

- The project is estimated to create over 20 construction jobs.
- MRP will enter into an engineering, procurement and construction (EPC) contract to build the battery facility utilizing a Project Labor Agreement.
- The project has committed to contribute \$125,000 to a community benefit fund to benefit SDCP customers.

## **COMMITTEE REVIEW**

The ECWG recommended the project for further negotiation. On February 16, 2024, the ECWG reviewed the most recently negotiated contract terms and recommended that staff move forward with presentation of this contract to the Board.

## **FISCAL IMPACT**

The competitive toll and capacity pricing of the agreement are confidential, but the long-term purchase of local capacity and the financial toll will provide SDCP with significant value and cost certainty over the term of this agreement.

## **ATTACHMENTS**

Attachment A: Financially Settled Toll and Energy Storage Agreement with MRP Pacifica Market II LLC

**FINANCIALLY SETTLED TOLL AND ENERGY STORAGE AGREEMENT**

**COVER SHEET – ENTERPRISE**

**Seller:** MRP Pacifica Marketing II LLC, a Delaware limited liability company

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

**Effective Date:** May \_\_\_\_, 2024

**Facility Descriptions:** a natural gas-fired power plant with a nameplate capacity of 51 MW and a battery energy storage system (BESS) with a nameplate capacity of 52 MW, co-located in San Diego, California, as further described in Exhibit A (the “**Facility**”).

<b>RA Contract Quantity:</b>	48.04 MW
<b>RA Reservation Price:</b>	[REDACTED]
<b>RA Reservation Payment:</b>	[REDACTED]
<b>Guaranteed RA Availability:</b>	[REDACTED]
<b>Energy Contract Quantity:</b>	52 MW
<b>Energy Reservation Price:</b>	[REDACTED]
<b>Energy Reservation Payment:</b>	[REDACTED]
<b>Energy Rate:</b>	Per Exhibit O

<b>Milestone</b>	<b>Completion Date</b>
<b>Guaranteed Construction Start Date</b>	12/31/2024
<b>Energy Start Date</b>	Commercial Operation Date
<b>Expected Commercial Operation Date</b>	1/1/2026
<b>System RA Start Date</b>	1/1/2026
<b>Local RA Start Date</b>	1/1/2026



Performance Security: [REDACTED]

**Special Provisions:**

Right of First Offer. If Seller proposes to increase the energy storage capacity of the BESS Resource above 52 MW (the “**Additional Storage Capacity**”) to take effect during the Term, Buyer shall have a right to make the first offer to contract for to the purchase of discharging energy, resource adequacy benefits, and ancillary services associated with such Additional Storage Capacity. Prior to offering to sell the Additional Storage Capacity to a third party, Seller shall first provide Buyer with Notice of intent to market the energy products from the proposed Additional Storage Capacity for sale (the “**ROFO Notice**”). Buyer shall have [REDACTED] after receipt of the ROFO Notice (“**ROFO Response Period**”) to provide Seller with a written offer (the “**ROFO Offer**”) to purchase the energy products from such Additional Storage Capacity. If the Parties do not execute a contract or amend this Agreement for Buyer to purchase the energy products from such Additional Storage Capacity within [REDACTED] following the submission of the ROFO Offer, or if Buyer fails provide Seller the ROFO Offer within the ROFO Response Period, then the terms of this paragraph shall no longer apply and Buyer shall have no further rights with respect to such Additional Storage Capacity.



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## FINANCIALLY SETTLED TOLL AND ENERGY STORAGE AGREEMENT

This Financially Settled Toll and Energy Storage Agreement (“**Agreement**”) is entered into as of 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, Seller or its Affiliates owns and operates the Thermal Resource;

WHEREAS, Seller or its Affiliates intends to, develop, design, permit, construct, own, and operate the BESS Resource; 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 3.8(c).

“**Additional Storage Capacity**” has the meaning set forth on the Cover Sheet.

“**Administrative NQC Reduction**” means a reduction in the maximum achievable Net Qualifying Capacity of the Facility due to a reduction that has been generally applied to resources materially similar to the Facility in terms of type, market and operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including any methodology that incorporates fleet averages or other average outage rates.

“**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 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**” has the meaning set forth in the CAISO Tariff.

“**Annual Cycle Limit**” means the maximum number of times the BESS Resource can be Cycled each Contract Year as set forth on the Cover Sheet.

“**Annual Run Hour Limit**” means the maximum number of hours the Thermal Resource can be operated each year as set forth on the Cover Sheet.

“**Available**” means that the BESS Resource is available either to be charged or discharged.

“**Availability Adjustment Factor**” has the meaning set forth in Exhibit E.

“**Availability Assessment Hours**” has the meaning set forth in the CAISO Tariff.

“**Availability Incentive Payments**” has the meaning set forth in the CAISO Tariff.

“**Availability Standards**” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“**Bankrupt**” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of 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.

“**BESS Planned Outage**” means a period during which the BESS Resource is either in whole or in part not capable of providing service due to planned maintenances that has been scheduled in advanced in accordance with Exhibit G-1.

“**BESS Resource**” means the battery energy storage plant identified in Exhibit A as the “BESS Resource” at the Facility as further described in Exhibit A.

“**BESS Resource Meters**” means the meters used to measure Charging Energy and the Discharging Energy.

“**BESS Resource Metering Points**” means the location or locations of the BESS Resource Meters.

**“BESS Resource PNode”** means the BESS Resource PNode identified on the Cover Sheet, as such location may be redesignated from time to time by the CAISO.

**“Business Day”** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 AM and ends at 5:00 PM Pacific Prevailing Time (PPT).

**“Buyer”** has the meaning set forth on the Cover Sheet.

**“Buyer Default”** means an Event of Default of Buyer.

**“CAISO”** means the California Independent System Operator Corporation.

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

**“CAISO Tariff”** means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures (as such term is defined in Appendix A to the CAISO Tariff), 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; provided that if there is a conflict between the BPMs, the CAISO Operating Agreement (as such term is defined in Appendix A to the CAISO Tariff) or the Operating Procedures, on the one hand, and the CAISO Tariff, on the other hand, the CAISO Tariff will control.

**“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 accept at or deliver to the applicable Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

**“Carbon Emission Regulations”** means those regulations that may be adopted from time to time by the State of California pertaining to limiting, taxing, charging for or otherwise regulating carbon dioxide emissions including, but not limited to, the California Cap and Trade Program (Title 17 California Code of Regulations Sections 95801-96022).

**“Change of Control”** means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

- (a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Financing Party (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

**“Charging Energy”** means the Energy delivered to the BESS Resource from the CAISO Grid pursuant to a Charging Notice as measured at the BESS Resource Metering Point by the BESS Resource Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

**“Charging Notice”** means the operating instruction, and any subsequent updates, given by the SC or the CAISO to the Facility, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh, provided that any such operating instruction shall be in accordance with the Operating Procedures. For the avoidance of doubt, any Buyer request to initiate a Storage Capacity Test shall not be considered a Charging Notice.

**“CIRA Tool”** means the CAISO Customer Interface for resource adequacy.

**“CO2e”** has the meaning set forth in Title 17 of the California Code of Regulations § 95802 as the same may be amended or modified from time to time.

**“COD Delay Damages”** means [REDACTED]

**“COD Delay Period”** has the meaning set forth in Exhibit B.

**“Collateral Assignment Agreement”** has the meaning set forth in Section 14.2.

**“Commercial Operation”** means the conditions for commercial operation of the BESS Resource set forth in Exhibit B have been satisfied.

**“Commercial Operation Capacity Test”** has the meaning set forth in Exhibit D.

**“Commercial Operation Date”** means the date on which Commercial Operation is achieved and the conditions set forth in Section 2.2 have been satisfied.

**“Compliance Action”** has the meaning set forth in Section 3.8(a).

**“Compliance Costs”** has the meaning set forth in Section 3.8(a).

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.8(a).

**“Compliance Showings”** means the (a) the compliance or advisory showings (or similar or successor showings) that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO), and (b) if applicable, the Local RAR compliance or advisory showings (or similar or successor showings) that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO), in each case of (a) and (b) pursuant to the Resource Adequacy Rulings, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.



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

“**Contract Price**” has the meaning set forth in Section 8.1.

“**Contract Term**” has the meaning set forth in Section 2.1(a).

“**Contract Year**” means a period of twelve (12) consecutive months beginning on the System RA Start Date or an anniversary thereof and ending at midnight at the end of the day prior to the applicable anniversary of such System RA Start Date.

“**Construction Delay Damages**” means an amount equal to (a) the Development Security required hereunder, divided by (b) one hundred twenty (120).

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

“**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 Capacity**” has the meaning set forth in the CAISO Tariff.

“**CPM Capacity Payment**” has the meaning set forth in the CAISO Tariff.

“**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 Filing Guide**” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“**CPUC System RA Penalty**” means the System RA Penalties assessed against load-serving entities by the CPUC for Resource Adequacy Requirement deficiencies that are not replaced or cured, as established in the Resource Adequacy Rulings and subsequently incorporated into the annual “Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings” that is issued by the CPUC Energy Division, which is expected to be updated annually, or any replacement or successor documentation established by the CPUC Energy Division to reflect Resource Adequacy Requirement penalties that are established by the CPUC and assessed against load-serving entities for Resource Adequacy Requirement deficiencies.

“**Credit Rating**” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements)

or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

**“Cycle”** means each time that the total MWhs discharged from the BESS Resource equals the Maximum Stored Energy Level for the BESS Resource as set forth in Exhibit A.

**“Daily Start Limit”** means the maximum number of times the Thermal Resource can be started each day as set forth on the Cover Sheet.

**“Damage Payment”** means the dollar amount that equals the amount of the Development Security.

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

**“Dealer”** means an entity or person that buys or sells power and takes title to the power at some point.

**“Deemed Delivered RA”** means, for the applicable Showing Month, the amount of Net Qualifying Capacity, expressed in MW, that the Facility would have been able to deliver as Resource Adequacy Benefits, but for (a) a Force Majeure Event as provided in Section 10.1, (b) Thermal Planned Outages permitted by the terms of this Agreement to the extent such Thermal Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Thermal Resource; or (c) the acts or omissions of Buyer.

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

**“Delivered RA”** means an amount, expressed in MW, calculated for the applicable Showing Month as the sum of (a) the amount of the Net Qualifying Capacity of the Facility for such Showing Month able to be shown on Buyer's monthly or annual Resource Adequacy Plan to the CAISO and CPUC and able to be counted as Resource Adequacy Benefits by both the CAISO and CPUC, (b) Deemed Delivered RA and (c) Replacement RA.

**“Delivery Point”** shall mean the Thermal Resource PNode or the BESS Resource PNode, as applicable.

**“Delivery Term”** has the meaning set forth on the Cover Sheet.

**“Development Cure Period”** has the meaning set forth in Exhibit B.

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

**“Discharging Energy”** means all Energy delivered to the Delivery Point from the BESS Resource, net of the Electrical Losses, as measured at the BESS Resource Metering Point by the BESS Resource Meter. All Discharging Energy will have originally been delivered to the BESS Resource from the CAISO Grid as Charging Energy.

“**Discharging Notice**” means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Procedures.

“**Disclosing Party**” has the meaning set forth in Section 18.2.

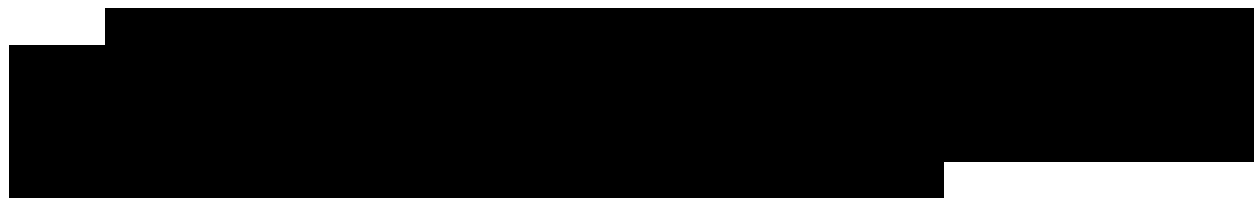
“**Dispatchable Energy**” means all Energy delivered by the Thermal Resource.

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

“**Efficiency Rate**” means the round-trip efficiency of the BESS Resource determined in accordance with Exhibit C.

“**Effective Date**” has the meaning set forth on the Cover Sheet.

“**Electrical Losses**” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, losses of Energy along with all transmission or transformation losses between the Delivery Point and the Facility.



“**Energy**” means alternating current electrical energy measured in MWh.

“**Energy Contract Quantity**” has the meaning set forth on the Cover Sheet.

“**Energy Meter**” means the meters used to measure Charging Energy, Discharging Energy and Dispatchable Energy, as applicable.

“**Energy Rate**” has the meaning set forth on the Cover Sheet.

“**Energy Reservation Payment**” has the meaning set forth on the Cover Sheet.

“**Energy Reservation Price**” has the meaning set forth on the Cover Sheet.

“**Energy Start Date**” has the meaning set forth on the Cover Sheet.

“**Environmental Attributes**” means any and all environmental characteristics, environmental claims, environmental credits, environmental benefits, environmental emissions reductions, environmental offsets, environmental allowances and environmental allocations, existing now or in the future, howsoever characterized, denominated, measured or entitled, attributable to the generation, storage or discharge of Energy from the Facility.

“**Excused Event**” has the meaning set forth in Exhibit E.

**“Expected Commercial Operation Date”** has the meaning set forth on the Cover Sheet.

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

**“Facility”** means the energy generation and storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy generation and storage facility), located at the Site and related generation, storage and mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), and as such generation and storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement. This equipment includes but is not limited to gas turbine engines, transformers, batteries, fire suppression, thermal management, enclosures, and inverters.

**“Facility Energy”** means the Discharging Energy and the Dispatchable Energy.

**“FERC”** means the Federal Energy Regulatory Commission.

**“Financial Security”** means the Development Security or the Performance Security, as applicable.

**“Financing Party”** means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage and/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.

**“Flexible Capacity Category”** shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

**“Flexible Ramping Product”** has the meaning set forth in the CAISO Tariff.

**“Forecasting Agreement”** has the meaning set forth in Section 2.4(a).

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

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

rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes.

**“Gas Distribution Utility”** has the meaning set forth in Exhibit O.

**“Gas Utility Receipt Point”** has the meaning set forth in Exhibit O.

**“Gas Meter”** means the meters used to measure the natural gas supplied to the Thermal Resource.

**“Governmental Approval”** means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include (i) with respect to Seller, those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the use and operation of the Facility and (ii) with respect to Buyer, those federal licenses and state market participation agreements necessary or appropriate to take delivery of and resell electricity.

**“Governmental Authority”** means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, quasi 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.

**“Guaranteed Commercial Operation Date”** has the meaning set forth in Exhibit B.

**“Guaranteed Construction Start Date”** has the meaning set forth on the Cover Sheet.

**“Guaranteed Efficiency Rate”** means the percentage specified on the Cover Sheet.

**“Guaranteed Heat Rate”** has the meaning set forth on the Cover Sheet.

**“Guaranteed RA Availability”** has the meaning set forth on the Cover Sheet.

**“Guaranteed RA Amount”** means the RA Contract Quantity, less any reduction in the Facility’s Net Qualifying Capacity resulting from [REDACTED]

**“Guaranteed Storage Availability”** has the meaning set forth on the Cover Sheet.

**“Heat Rate”** has the meaning set forth in Exhibit C.

**“Heat Rate Liquidated Damages”** has the meaning set forth in Exhibit C.

“**Hold-Back Capacity**” has the meaning set forth in Section 4.5.

“**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).

“**Installed Capacity**” has the meaning set forth in Exhibit M.

“**Interconnection Agreement**” means the interconnection agreements among Seller (or Seller’s Affiliate), the CAISO, and the Participating Transmission Owner, pursuant to which (i) the Thermal Resource will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Thermal Resource that is no less than the RA Contract Quantity, (ii) the BESS Resource will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the BESS Resource that is no less than the Energy Contract Quantity, provided that such interconnection capacity may be maintained through a combination of rights under the Interconnection Agreement dedicated to the BESS Resource and under an Interconnection Agreement shared with the Thermal Resource, and pursuant to which the applicable Interconnection Facilities and any other Interconnection Facilities have or will be constructed, operated and maintained during the Delivery Term.

“**Interconnection Delays**” means any delay in achieving Commercial Operation due to any delay in obtaining the Interconnection Agreement or completing the Interconnection Facilities under the Interconnection Agreement provided that in either case Seller has taken commercially reasonable actions to obtain the Interconnection Agreement and cause the applicable Interconnection Facilities to be completed.

“**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.

“**Interest Rate**” has the meaning set forth in Section 8.3.

“**Investment Grade Credit Rating**” means a Credit Rating of (i) BBB- or higher by S&P and Baa3 or higher by Moody’s if the Person is rated by both agencies, or (ii) a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody’s if the Person is rated by only one of the agencies.

“**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, 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.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank, or U.S. branch of a foreign bank, with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit I.

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

“**Limited Assignee**” has the meaning set forth in Section 14.4.

“**Local RA Start Date**” has the meaning set forth on the Cover Sheet.

“**Local RAR**” means the local Resource Adequacy Requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

“**Local RAR Attributes**” means, with respect to the Facility, any and all Resource Adequacy Benefits of the Facility, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction over Local RAR that can be counted toward Buyer’s Local RAR.

“**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, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. 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., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes.

“**Major Subcontractor**” means [REDACTED]

“**Minimum Efficiency Rate**” means the percentage specified on the Cover Sheet.

“**Monthly RA Availability**” has the meaning set forth in Exhibit F.

**“Monthly Storage Availability”** has the meaning set forth in Exhibit E.

**“Moody’s”** means Moody’s Investors Service, Inc.

**“Must Offer Obligations”** means the obligation to bid or cause the SC to bid the applicable resource into the CAISO Markets in order for the applicable resource to qualify to deliver Resource Adequacy Benefits.

**“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.

**“Net Qualifying Capacity”** has the meaning set forth in the CAISO Tariff.

**“Non-Availability Charges”** 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 email in accordance with Article 9.

**“Notification Deadline”** means thirty (30) days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month, provided that for the Showing Months of August and September, the Notification Deadline means sixty (60) days before the relevant deadline for the corresponding Compliance Showing.

**“Operating Procedures”** means those rules, requirements, and procedures developed pursuant to Section 2.2 consistent with Exhibit H, as the same may be modified from time to time in accordance with this Agreement.

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

**“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 for the Facility is set forth in Exhibit A.

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

**“Performance Security”** means (i) cash or (ii) a Letter of Credit, in either case in the amount set forth on the Cover Sheet for “Performance Security.”



**“Permitted Transferee”** means (i) any Affiliate of Seller, (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s; and

(b) At least three (3) years of experience in the ownership and operations of facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility; or

(iii) or any other entity approved in writing by Buyer acting reasonably and in good faith.

**“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.

**“Prevailing Wage Requirement”** has the meaning set forth in Section 13.4.

**“Price Lock Transaction”** has the meaning set forth in Exhibit O.

**“Product”** has the meaning set forth on the Cover Sheet.

**“Prudent Industry 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 or standalone storage facilities 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 Industry 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 or stand-alone storage in the Western United States. Prudent Industry 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.

**“Qualifying Capacity”** has the meaning set forth in the CAISO Tariff.

**“RA Availability Cure Plan”** has the meaning set forth in Section 11.1(b).

**“RA Contract Quantity”** has the meaning set forth on the Cover Sheet.

**“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 4.18(b).

**“RA Product”** has the meaning set forth in Section 4.2(a).

**“RA Reservation Payment”** has the meaning set forth on the Cover Sheet.

**“RA Shortfall”** means, for a given Showing Month, the difference, expressed in kW, of (a) the Guaranteed RA Amount minus (b) Delivered RA. If the result of the calculation is a negative number, the RA Shortfall shall be deemed to be zero kW for such Showing Month.

**“RA Shortfall Month”** means, for purposes of calculating an RA Deficiency Amount under Section 4.18(b), any month during the Delivery Term during which there is a RA Shortfall.

**“Receiving Party”** has the meaning set forth in Section 18.2.

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

**“Replacement RA”** means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month, including, as applicable, Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, and any Local RAR; provided that any Replacement RA capacity must be communicated by Seller to Buyer with Replacement RA product information in a Notice to Buyer no later than the Notification Deadline.

**“Replacement Unit”** has the meaning set forth in Section 4.3.

**“Requested Confidential Information”** has the meaning set forth in Section 18.2.

**“Resource Adequacy Benefits”** means the rights and privileges attached to the Facility associated with the RA Contract Quantity that satisfy any entity’s Resource Adequacy Requirements, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

**“Resource Adequacy Plan”** has the meaning set forth in the CAISO Tariff.

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

**“Resource Adequacy Resource”** has the meaning set forth in the CAISO Tariff.

**“Resource Adequacy Rulings”** means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 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 decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC, and any other existing or subsequent ruling

or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

“**Resource Category**” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“**Resource Start**” has the meaning set forth in Exhibit O.

“**ROFO Notice**” has the meaning set forth on the Cover Sheet.

“**ROFO Offer**” has the meaning set forth on the Cover Sheet.

“**ROFO Response Period**” has the meaning set forth on the Cover Sheet.

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

“**SC Agreement**” has the meaning set forth in Section 2.3(a).

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

“**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.

“**Seller**” has the meaning set forth on the Cover Sheet.

“**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).

“**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 point of interconnection, 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.

“**Shared Facilities Agreement**” has the meaning set forth in Section 6.3.

“**Showing Month**” means the calendar month of the Delivery Term that is the subject of the 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 Compliance Showing made in June is for the Showing Month of August.

“**Shown Unit**” means the Thermal Resource, the BESS Resource, or any Replacement Unit, as applicable.

“**Site**” means the applicable real property on which the Facility is or will be located, as further described in Exhibit A.

“**Standalone Energy Storage Incentives**” means: (a) all federal, state, or local Tax Credits or other Tax benefits associated with the construction or ownership of the BESS Resource (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 BESS Resources; and (c) any other form of incentive relating in any way to the BESS Resources that is not an Environmental Attribute associated with Charging Energy.

“**Start Fee**” has the meaning set forth in Exhibit O.

“**Station Power**” means:

(a) The Energy produced or discharged by the Facility that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) the Energy produced or discharged by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

“**Storage Availability Cure Plan**” has the meaning set forth in Section 11.1(b)(iii).

“**Storage Capacity**” means the maximum dependable capability of the BESS Resource to discharge Energy at a particular moment.

“**Storage Capacity Test**” means any test or retest of the capacity of the BESS Resource conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.11 and Exhibit D.

“**Storage Contract Capacity**” has the meaning set forth on the Cover Sheet.

“**Storage Energy**” means the total quantity of electric energy measured in MWh that can be stored by the BESS Resource as set forth on the Cover Sheet.

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

“**Subsequent Buyer**” means the purchaser of RA Product from Buyer in a re-sale of RA Product by Buyer.

“**Substitute Capacity**” means “RA Substitute Capacity” as defined in the CAISO Tariff.

**“Substitute Capacity Request”** has the meaning set forth in Section 4.5(b).

**“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.

**“System RA Start Date”** has the meaning set forth in the Cover Sheet.

**“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.

**“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”** has the meaning set forth in Section 3.6.

**“Thermal Planned Outage”** means a period during which the Thermal Resource is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Exhibit G-2.

**“Thermal Resource”** means the natural gas-fired turbine electricity generating power plant at the Facility as described in Exhibit A.

**“Thermal Resource PNode”** means the Thermal Resource PNode identified on the Cover Sheet, as such location may be redesignated from time to time by the CAISO.

**“Transmission Provider”** means any entity or entities transmitting or transporting Facility Energy on behalf of Seller or Buyer from the applicable 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 Points.

**“Ultimate Parent”** means MRP Golden Finance, LLC, a Delaware limited liability company.

**“Unavailable”** means that the BESS Resource is not available to be charged nor to be discharged.

**“Unplanned Outage”** means a period during which Seller is prevented from making Facility Energy available at the applicable Delivery Point due to (i) the need to maintain or repair a component of the BESS Resource and/or Thermal Resource, or (ii) any outage of the Transmission System, in each of case (i) and (ii) which period is not a BESS Planned Outage or Thermal Planned Outage.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that 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 work 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 Industry Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Industry 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.

(m) Buyer acknowledges that, as of the Effect Date, the Facility is (or will be) owned by two of Seller's Affiliates (each, an "**Owner**"), one of which owns the Thermal Resource and one of which will own the BESS Resource. Throughout the Contract Term Seller will maintain such agreements with the Owners and other instruments as are necessary for Seller to perform its obligations under this Agreement. References to Seller in this Agreement will include, as the context requires, Seller and/or the Owners.

(n) Notwithstanding anything to the contrary contained in this Agreement, for U.S. federal income tax purposes, the Parties intend that this Agreement will be treated as a service contract within the meaning of, and for the purposes of, Section 7701(e) of the Internal Revenue Code of 1986, as amended.

## ARTICLE 2

### TERM; COMMERCIAL OPERATION; OPTIMIZATION SERVICES

#### 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**").

(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 and obligations shall remain in full force and effect for five (5) years following the termination of this Agreement.

2.2 **Conditions Precedent.** The Commercial Operation Date shall not occur until the following conditions have been satisfied:

(a) Seller has delivered to Buyer (i) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit L and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit M setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and/or a Participating Load Agreement and a Meter Service Agreement for the BESS Resource 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 (or its Affiliate or a third party transmission entity, if a sharing arrangement permitted by this Agreement is in effect) 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 required for operation of the BESS Resource have been obtained (or if not obtained, applied for and reasonably expected to be received within 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 obtained all real property rights, including Site Control, required for the operation of the BESS Resource during the Delivery Term, and Seller has provided evidence of such rights to Buyer;

(f) Insurance requirements for the Facility pursuant to Article 17 have been met, with evidence provided in writing to Buyer; and

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

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

At least ninety (90) days prior to the Commercial Operation Date, Seller shall deliver Notice to Buyer of the anticipated Commercial Operation Date and the proposed Operating Procedures, which Operating Procedures shall be consistent with, and no less restrictive than, the technical, operational and decision-making parameters or procedures described in Exhibit H. The Parties shall meet periodically upon the written request of either Party, but in any event no less than once per Contract Year, to evaluate potential changes to the Operating Procedures.

### 2.3 **Scheduling Services.**





(b) During the Delivery Period, Seller's designee under the SC Agreement shall be responsible for performing all obligations under this Agreement that are appropriate or required to be performed by a Scheduling Coordinator. Buyer shall provide guidance and direction directly to the Scheduling Coordinator to optimize the dispatch of the Facility and schedule natural gas, and Buyer's instructions shall be controlling. During the Delivery Period, Seller shall take, or cause the Facility's SC to take, all necessary steps to qualify itself and the Facility in such other manner identified and approved by the CAISO and CPUC that permits Seller to sell and deliver any and all Resource Adequacy Benefits and other Capacity Attributes to Buyer. In addition to the requirements of Exhibit N, Seller shall cause the Facility's SC to comply, with all applicable CAISO Tariff provisions, CPUC Decisions and all other applicable rules, requirements or Laws, including any bidding of the Facility to meet any Must Offer Obligations, in order to deliver or maintain the right to deliver Resource Adequacy Benefits and other Capacity Attributes to Buyer.

(c) Seller and Buyer shall conduct meetings on a quarterly basis or as otherwise reasonably requested by Buyer to discuss the overall performance of the provider under the SC Agreement. Based on the information exchanged during such discussions, Seller shall use commercially reasonable efforts to implement any changes to the overall strategy or performance objectives identified in this meeting.

(d) If Buyer determines that the Scheduling Coordinator is not performing its obligations under the SC Agreement to Buyer's reasonable satisfaction, Buyer shall have the right to request that Seller replace the Scheduling Coordinator. Following receipt of such Notice, Seller shall use reasonable commercial efforts to identify an alternate service provider and negotiate a new SC Agreement but shall not enter into the new SC Agreement until and unless Buyer has approved such agreement in writing, such approval not to be unreasonably withheld conditioned or delayed. Following such approval, Seller shall use reasonable commercial efforts to promptly terminate the existing SC Agreement such that the new SC Agreement starts on termination of the existing SC Agreement. Buyer shall be liable for the termination penalties under the SC Agreement, except to the extent arising due to the negligence or willful misconduct of Seller, provided, however that (i) Seller shall use reasonable commercial efforts to minimize any penalties and enforce any rights to terminate for cause and without liability to Buyer and (ii) if the existing SC Agreement is terminated at Buyer's direction without cause, notwithstanding any provision to the contrary herein, Buyer's maximum liability for any associated termination penalty shall not exceed [REDACTED]

## 2.4 Forecasting Services.

(a) [REDACTED]

(b) In connection with any bidding, dispatch or other decisions based on forecast market conditions, Seller shall be permitted to rely on any advice, recommendations and guidance received from the provider under the Forecasting Agreement. Buyer may provide guidance and direction directly to Seller concerning actions the Scheduling Coordinator should take to optimize the dispatch of the Facility, in which case Buyer's instructions shall be controlling. Seller shall have no liability to Buyer as a result of following instructions received from Buyer or following any advice, recommendations or guidance from the provider under the Forecasting Agreement except to the extent resulting from Seller's gross negligence or intentional misconduct.

(c) Seller and Buyer shall conduct meetings on a quarterly basis or as otherwise reasonably requested by Buyer to discuss the overall performance of the provider under the Forecasting Agreement. Based on the information exchanged during such discussions, Seller shall use commercially reasonable efforts to implement any changes to the overall strategy or performance objectives identified in this meeting.

2.5 **Financial Responsibility for Scheduling and Forecasting Services.**



(b) The Parties acknowledge and agree that Seller will not be directly performing SC services. Seller shall not be responsible for the financial results of Buyer's dispatch instructions to the SC but shall be responsible for the SC's failure to implement such instructions in accordance with the requirements of this Agreement, including Prudent Industry Practice and the requirements of the CAISO Tariff. Seller will use reasonable efforts to ensure that the SC Agreement has a provision identifying Buyer as a third-party beneficiary of the SC Agreement and entitling Buyer to have direct recourse against the SC for remedies, including breach of contract and indemnification.

**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 all the Product associated with the Facility at the Contract Price, and Seller shall supply and deliver to Buyer all the Product associated with the Facility. During the Delivery Term, Buyer will have exclusive rights, subject to compliance with the Operating Procedures, to offer, bid, or otherwise submit the Product from the Facility for sale in the available markets, and retain and receive any and all related revenues.

(a) Facility Energy. Buyer's right to schedule Facility Energy shall not

commence until the Energy Start Date and is limited to the maximum quantity of Energy that can be produced by the Energy Contract Quantity. Buyer may elect to schedule any combination of Dispatchable Energy and Discharging Energy, but the total quantity may not exceed the Energy Contract Quantity in any hour.

(b) Ancillary Services. Buyer's right to schedule Ancillary Services and Flexible Ramping Product from the Thermal Resource shall not commence until the Energy Start Date and Buyer's right to schedule Ancillary Services and Flexible Ramping Product from the BESS Resource shall not commence until the Commercial Operation Date. Further, Buyer's right to schedule Ancillary Services and Flexible Ramping Product is limited to the Ancillary Services and Flexible Ramping Product that can be provided from Energy from the applicable resource under the CAISO Tariff without modifying the Facility and in no event greater than the Energy Contract Quantity. Such right specifically excludes any Ancillary Services and Flexible Ramping Product that interfere or conflict with the ability to supply the Resources Adequacy Benefits. Buyer may elect to schedule Ancillary Services and Flexible Ramping Product from any combination of Dispatchable Energy and Discharging Energy, but the total quantity may not exceed the quantity of Ancillary Services and Flexible Ramping Product that can be provided from the Energy Contract Quantity in any hour.

(c) Environmental Attributes. Seller shall own all Environmental Attributes associated with (i) the generation of electricity by the Thermal Resource and (ii) the Charging Energy.

3.2 **Ownership of Standalone Energy Storage Incentives**. Seller shall own and may assign or sell, in its sole discretion, all right, title and interest to any Standalone Energy Storage Incentives associated with or resulting from the development, installation, ownership or operation of the Facility or the production, sale, purchase or use of the Charging Energy or Discharging Energy, in each case that currently exist or as may become available due to any change in Law.

3.3 **Capacity Attributes**. Throughout the Delivery Term, Seller shall transfer to Buyer, and Buyer may in its sole discretion assign or sell all right, title and interest to any Capacity Attributes associated with or resulting from the development, installation, ownership or operation of the Facility or the production, sale, purchase or use of the Facility Energy, in each case that currently exist or as may become available due to any change in Law.

3.4 **Energy Rate and Start Fee**. During the Delivery Term, Buyer shall pay the Energy Rate to Seller for all Dispatchable Energy and the Start Fee for each Resource Start pursuant to the invoicing and payment provisions set forth in Article 8.

3.5 **Reservation Payment**. During each month of the Delivery Term, Buyer shall pay the monthly RA Reservation Payment and, following the Energy Start Date, the Energy Reservation Payment, to Seller pursuant to the invoicing and payment provisions set forth in Article 8.

3.6 **Test Energy**. To the extent any electricity is dispatched from the Facility prior to the Commercial Operation Date ("**Test Energy**"), dispatch of such Test Energy shall not be

evidence that Commercial Operation has been achieved or that the BESS Resource has been placed in service.

3.7 **Emissions.**

[REDACTED]

[REDACTED]

3.8 **Change in Law.**

[REDACTED] (the

“Compliance Expenditure Cap”);

(b) If the Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated Compliance Costs.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

(e) If Buyer does not pay the Compliance Costs in excess of the Compliance Expenditure Cap, or if it is not possible for Seller to achieve compliance with a change in Law through the payment or incurrence of costs, then Seller shall be excused from the corresponding Compliance Actions under this Agreement and may, without liability to Buyer or any reduction in Buyer’s payment obligations, suspend performance under this Agreement, including obligations to offer, schedule or dispatch the Facility and any Products, to the extent performance is restricted by the change in Law.

#### **ARTICLE 4 OBLIGATIONS AND DELIVERIES**

4.1 **Product Delivery**. Subject to the provisions of this Agreement, during the Delivery Term:

(a) Seller shall supply and deliver the Product to Buyer, and Buyer shall accept and pay for the Product, in accordance with the terms of this Agreement; provided, however, that with respect to Facility Energy and any Ancillary Services, such Products shall be delivered into the CAISO markets directly in accordance with this Agreement. Notwithstanding anything herein to the contrary, Seller shall have no obligation to deliver any Resource Adequacy Benefits prior to the System RA Start Date, to deliver any Local RAR Attributes prior to the Local RA Start Date, or to make the BESS Resource available prior to the Commercial Operation Date.

(b) Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with Station Power.

(c) Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with: (i) the delivery of Charging Energy to the Delivery Point for the BESS Resource (including the cost of the Charging Energy itself and associated Electrical Losses), and (ii) the acceptance and transmission of Discharging Energy and Dispatchable Energy at and from the applicable Delivery Point, including without limitation, transmission costs and transmission line losses with regard to (i) and (ii). Charging Energy, Discharging Energy, Dispatchable Energy, Resource Adequacy Benefits and other Products will be Scheduled and, as applicable, delivered to the CAISO by the Scheduling Coordinator.

4.2 **Transfer of Resource Adequacy Benefits**.

(a) Seller shall transfer the Resource Adequacy Benefits and, if applicable, Replacement RA from Replacement Units (the “**RA Product**”) to Buyer by submitting Supply Plans to CAISO for the Shown Unit(s).

(b) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the CAISO Tariff. Seller shall submit, or cause the Shown Unit’s SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the CAISO Tariff and CPUC requirements to identify and confirm the RA Product delivered in accordance with Buyer’s instructions for each Showing Month of the Delivery Term.

(c) If CAISO rejects the Supply Plan or the Resource Adequacy Plan with respect to any part of the RA Product for the Facility in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan for validation before the applicable deadline for the Showing Month.

(d) The RA Product is received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer’s instructions, including Buyer’s instructions to withhold all or part of the RA Product for such Showing Month, has been accepted for the RA Product from the Shown Unit(s) by CAISO. Seller has failed to transfer the RA Product under this Section 4.2 if (i) Buyer has elected to submit the RA Product from the Shown Unit(s) in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO due to the acts or omissions of Seller notwithstanding performance of the Parties’ obligations in Section 4.2(c) or (ii) Seller fails to submit the volume of RA Product for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month. Seller will not have failed to properly transfer the RA Product if Buyer fails or chooses not to submit the Shown Unit(s) and the RA Product in its Resource Adequacy Plan with the CPUC or CAISO.

(e) Hold-Back Capacity, if any, is deemed RA Product received by Buyer, unless utilized under Section 4.5 as Substitute Capacity, then RA Product is considered received according to the requirements therein.

(f) To the extent Seller reduces deliveries of Product pursuant to Section 4.8 prior to the Facility being included in the applicable Supply Plan and does not elect to provide Replacement RA, Buyer shall be responsible for the costs associated with procuring Substitute Capacity to the extent Buyer directs Seller to include the Facility in the applicable Supply Plan. To the extent Seller reduces deliveries of Product either pursuant to Section 4.8 or otherwise after the Facility is included in the applicable Supply Plan Seller shall be responsible for the costs associated with procuring Substitute Capacity.

4.3 **Seller’s Option To Provide Alternate Capacity.** If Seller is unable to provide the Resource Adequacy Benefits from the Facility for a Showing Month for any reason, including, without limitation, as provided in Section 4.8, then Seller may, at no cost to Buyer, provide Buyer with Replacement RA from one or more replacement units having the same Capacity Attributes as the Facility (each such unit, a “**Replacement Unit**”) in an amount such that the total amount of RA Product provided to Buyer from the Facility and any Replacement Unit(s) for each Showing

Month is not more than the RA Contract Quantity, provided that in each case:

(a) Seller shall notify Buyer in writing of its intent to provide Replacement RA and shall identify the proposed Replacement Units from which such Replacement RA shall be provided no later than the Notification Deadline for Buyer's Compliance Showings related to such Showing Month;

(b) The proposed Replacement Units must (i) be accepted by the CAISO, and (ii) otherwise satisfy the requirements of this Agreement;

(c) Seller shall, or shall cause the SC to submit, a Supply Plan for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Buyer's Compliance Showings;

(d) If Seller does not comply with the requirements of Sections 4.3(a), (b) and (c) for the applicable Showing Month and, if applicable, annual filing, then any such Replacement Units shall not be deemed a Replacement Unit for purposes of this Agreement for that Showing Month; and

(e) The designation of any Replacement Unit(s) by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

(f) In no event shall a Replacement Unit utilize coal or coal materials as a source of fuel. A Replacement Unit must be a specific resource that is connected directly to the CAISO-controlled grid or be under the operational control of CAISO. A Replacement Unit may not be an unspecified import.

(g) Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 4.3 and Buyer has approved such Replacement Units as consistent with this Agreement, then any such Replacement Units shall be deemed a Shown Unit for purposes of this Agreement for that Showing Month. Buyer's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

#### 4.4 **Buyer's Re-Sale of RA Product.**

(a) Buyer may re-sell all or part of the RA Product; provided that any such resale must not increase Seller's obligations hereunder other than as set forth in this Section 4.4. For any such resale, the Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of the Subsequent Buyer. Seller shall, or shall cause the Shown Unit's SC, to follow Buyer's instructions with respect to providing such resold RA Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Agreement. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold RA Product in a manner consistent with Buyer's rights under this Agreement. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Shown Unit's SC to comply with this Agreement, Seller will be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the RA Product.

(b) Buyer shall notify Seller in writing of any resale of RA Product and the Subsequent Buyer no later than two (2) Business Days before the deadline for the Compliance Showing for each Showing Month for which Buyer has resold the RA Product. Buyer shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the deadline for the Compliance Showing for each Showing Month for which Buyer has resold the RA Product.

(c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to direct the Seller or the Shown Unit's SC to offer, bid, or otherwise submit the RA Product for re-sale into such market, and Seller and the Shown Unit's SC shall comply with the Buyer's direction and Buyer shall retain and receive all revenues from such re-sale.

(d) Buyer shall have the exclusive right to direct the Seller or the Shown Unit's SC to offer, bid, or otherwise submit the RA Product into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller and the Shown Unit's SC shall comply with the Buyer's direction and, to the extent that the CAISO designates the RA Product as CPM Capacity, Buyer shall be entitled to retain and receive the CPM Capacity Payment. Unless otherwise instructed by Buyer, (i) Seller shall not, and shall cause the Shown Unit's SC to not, offer any portion of the RA Product to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the RA Product as CPM Capacity, then Seller shall, and shall cause the Shown Unit's SC to, promptly (and in any event within one (1) Business Day of the time Seller receives notification from CAISO) notify Buyer of such designation, and if CAISO makes such a designation, Seller shall not, and shall cause the Shown Unit's SC to not, accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

#### 4.5 **Hold-Back and Substitute Capacity.**

(a) No later than three (3) Business Days before the relevant deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request in writing that Seller not list, or cause the Shown Unit's SC not to list, in the Shown Unit's Supply Plan a portion or all of the RA Product for such Showing Month ("**Hold-Back Capacity**"). The amount of RA Product that is the subject of Buyer's request for Hold-Back Capacity shall be deemed RA Product received by Buyer consistent with Section 4.2 for purposes of calculating the payments due hereunder, unless utilized under Section 4.5(b) as Substitute Capacity, then RA Product is considered received according to the requirements therein. Seller shall, or shall cause the Shown Unit's SC to, comply with Buyer's request under this Section 4.5.

(b) In any Showing Month in which Buyer has designated Hold-Back Capacity, Buyer may request, in writing, that Seller make the Hold-Back Capacity available for Buyer's use as Substitute Capacity within the respective Showing Month ("**Substitute Capacity Request**") with the following schedule:

(i) For Buyer's Substitute Capacity Requests that are to be scheduled with CAISO prior to the Showing Month (e.g., through the CAISO RA Substitute Capacity Assessment), the Substitute Capacity Request shall be received by Seller at least two (2) Business Days prior to the applicable CAISO scheduling deadline. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Buyer's request under this Section 4.5(b), provided that



to the extent Seller is unable to provide the requested Substitute Capacity from the Facility due to a Thermal Planned Outage or a Forced Outage, Seller shall not have any liability for such failure.

(ii) For Buyer's Substitute Capacity Requests that are to be scheduled with CAISO after the commencement of the Showing Month, the Substitute Capacity Request shall be received by Seller at least five (5) Business Days before Buyer submits its Substitute Capacity in the CIRA Tool. Seller shall, or shall cause the Replacement Unit's Scheduling Coordinator to, comply with Buyer's request under this Section 4.5(b), provided that to the extent Seller is unable to provide the requested Substitute Capacity from the Facility due to a Thermal Planned Outage or a Forced Outage, Seller shall not have any liability for such failure.

4.6 **Gas Supply.** Seller shall be responsible for the supply of natural gas for the Thermal Resource in accordance with Exhibit O.

4.7 **Charging Energy Management.**

(a) **Generally.** Buyer shall be solely responsible, at its sole cost, for procuring Charging Energy. Buyer shall be solely responsible, at its sole cost, for arranging transmission and wheeling required to deliver Charging Energy to the Delivery Point for the BESS Resource and to accept Discharging Energy at the Delivery Point for the BESS Resource. Except as expressly set forth in this Agreement, including Sections 4.7(c) and (e) and Section 4.11(b), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the BESS Resource. 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.** The BESS Resource will have the capability to be charged seven (7) days per week and twenty-four (24) hours per day (including holidays), through Charging Notices sent electronically, provided, that the right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement including the Operating Procedures; provided, however, that the sole and exclusive remedy for any failure of the BESS Resource to be available is the Availability Adjustment Factor. Each Charging Notice issued in accordance with this Agreement will be effective unless and until the Buyer or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice. Seller shall comply with all Charging Notices, subject to the requirements and limitations set forth in this Agreement. 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). Notwithstanding the foregoing, Buyer shall be solely responsible for causing sufficient Charging Notices to be issued to (i) support any Discharging Notices and (ii) ensure the eligibility of the Resource Adequacy Benefits for purchase and sale under the CAISO market rules, and (iii) otherwise participating in any CAISO markets.

(c) **No Unauthorized Charging.** Seller shall not charge the BESS Resource during the Delivery Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO. If, during the Contract Term, Seller (i) charges the BESS Resource to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the BESS Resource in violation of the first

sentence of this Section 4.7(c), then (x) Seller shall be responsible for all Energy costs associated with such charging of the BESS Resource, (y) Buyer shall not be required to pay for such Energy, and (z) Buyer shall be entitled to discharge such Energy and entitled to the Product associated with discharging such Energy.

(d) Discharging Notices. Buyer will have the right to discharge the BESS Resource 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 provided, however, that the sole and exclusive remedy for any failure of the BESS Resource to be available is the Availability Adjustment Factor. 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 or CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) No Unauthorized Discharging. Seller shall not discharge the BESS Resource during the Delivery Term other than pursuant to a valid Discharging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from the CAISO. If, during the Delivery Term, Seller (i) discharges the BESS Resource other than as provided for in the Discharging Notice or (ii) discharges the BESS Resource in violation of the first sentence of this Section 4.7(e), then (x) Seller shall be responsible for all Energy costs associated with such discharging of the BESS Resource, (y) Buyer shall not be required to pay for the Charging Energy that was discharged, and (z) Buyer shall be entitled to the Product associated with such discharge.

(f) Scheduling Charging Energy and Discharging Energy. Seller (or Seller's SC) shall schedule Charging Energy and Discharging Energy in accordance with the Charging Notices and Discharging Notices, subject to the requirements of this Agreement. In the event that Seller (or Seller's SC) fails to schedule the Charging Energy or Discharging Energy in accordance with Buyer's instructions and the requirements of this Agreement, the payment amounts owed to Buyer by Seller shall equal the net revenue Buyer would have received had Seller (or Seller's SC) properly Scheduled the Charging Energy or Discharging Energy, as applicable. Payment of such amount shall be Seller's sole and exclusive liability for any failure to schedule the Charging Energy or Discharging Energy, except as provided in Exhibit N.

(g) Coordination Regarding Commissioning and Storage Capacity Tests. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause the BESS Resources to be charged or discharged. Seller shall have exclusive rights to test, charge and discharge the BESS Resource. 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. Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the BESS Resource testing for periods prior to the Commercial Operation Date. Both prior to and after the Commercial Operation Date, (i) Buyer shall reasonably coordinate and cooperate with Seller with respect to BESS Resource commissioning and Storage Capacity Tests, and (ii) Seller shall reasonably coordinate and cooperate with Buyer with respect to BESS Resource commissioning and Storage Capacity Tests so as to minimize direct and opportunity costs to the Buyer associated with such activities.

#### 4.8 **Reduction in Deliveries.**

(a) **Facility Maintenance.** Seller will deliver to Buyer the expected schedule for performing maintenance on the Facility in accordance with Exhibits G-1 and G-2. Seller shall be permitted to reduce deliveries of Product during a BESS Planned Outage or Thermal Planned Outage.

(b) **Unplanned Outage.** Seller shall be permitted to reduce deliveries of Product during any Unplanned Outage.

(c) **Force Majeure Event.** Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(d) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

#### 4.9 **RA Availability.**

(a) During the Delivery Term, the Facility shall maintain a Monthly RA Availability during each month of no less than the Guaranteed RA Availability, which Monthly RA Availability shall be calculated in accordance with Exhibit F.

(b) If the Monthly RA Availability during any month is less than the Guaranteed RA Availability, then Buyer's payment for the Product shall be calculated by reference to the RA Availability Adjustment Factor as determined in accordance with Exhibit F.

(c) Subject to Section 4.18, the sole and exclusive remedy for any failure of the Facility to provide Resource Adequacy Benefits is the RA Availability Adjustment Factor. Buyer shall be solely responsible for procuring those Resource Adequacy Benefits that the Facility fails to provide under this Agreement.

#### 4.10 **Storage Availability.**

(a) During the Delivery Term, the Facility shall maintain a Monthly Storage Availability during each month of no less than the Guaranteed Storage Availability, which Monthly Storage Availability shall be calculated in accordance with Exhibit E.

(b) If the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Buyer's payment for the Product shall be calculated by reference to the Availability Adjustment Factor (as determined in accordance with Exhibit E).

#### 4.11 **Storage Capacity Tests.**

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit D. Thereafter, Seller and Buyer shall have the right to run retests of the Storage Capacity Test in accordance with Exhibit D.

(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 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 shall (i) not be entitled to the payment 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, Buyer shall (x) procure the associated Charging Energy, (y) be liable for all CAISO costs and charges for the associated Charging Energy, and (z) be entitled to any CAISO revenues associated with the associated Discharging Energy. No Charging Notices or Discharging Notices shall be issued during any Storage Capacity Test except as reasonably requested by Seller or Buyer to implement the applicable test.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit D. If the Effective Discharge Capacity determined pursuant to a Storage Capacity Test varies from the then current Energy Contract Quantity, as applicable, then the Effective Discharge Capacity determined pursuant to a Storage Capacity Test (not to exceed the initial Energy Contract Quantity set forth on the Cover Sheet) shall become the new Energy Contract Quantity at the beginning of the day following the completion of the test for all purposes under this Agreement.

4.12 **Efficiency Guaranty**. On a monthly basis, if the Efficiency Rate of the BESS Resource is less than the Guaranteed Efficiency Rate, Seller shall reimburse Buyer for the incremental cost of purchasing Charging Energy calculated in accordance with Exhibit C.

4.13 **Heat Rate Guaranty**. In the event the Heat Rate is higher than the Guaranteed Heat Rate, Seller will owe Buyer Heat Rate Liquidated Damages in accordance with Exhibit C.

4.14 **Start, Run and Cycle Limits**. Buyer may not exceed the Daily Start Limit or Annual Run Hour Limit of the Thermal Resource or the Annual Cycle Limit of the BESS Resource.

4.15 **Interconnection Capacity**. Throughout the Delivery Term, Seller shall have and maintain interconnection capacity available or dedicated (a) to the Thermal Resource that is no less than the RA Contract Quantity, and (b) to the BESS Resource that is no less than the Storage Contract Capacity, provided that such interconnection capacity may be maintained through a combination of rights under the Interconnection Agreement dedicated to the BESS Resource and under an Interconnection Agreement shared with the Thermal Resource. Seller shall be responsible for all costs of interconnecting the Thermal Resource and the BESS Resource to the Transmission System. Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or the Gas Distribution Utility or under this Agreement resulting from Seller's breach of this Section 4.15. Buyer shall use commercially reasonable efforts to mitigate the damages from such breach.

4.16 **Title and Risk of Loss**. Notwithstanding any provision in this Agreement to the contrary, Buyer shall not have title or risk of loss related to any natural gas or Facility Energy.

4.17 **Notice of Outages.**

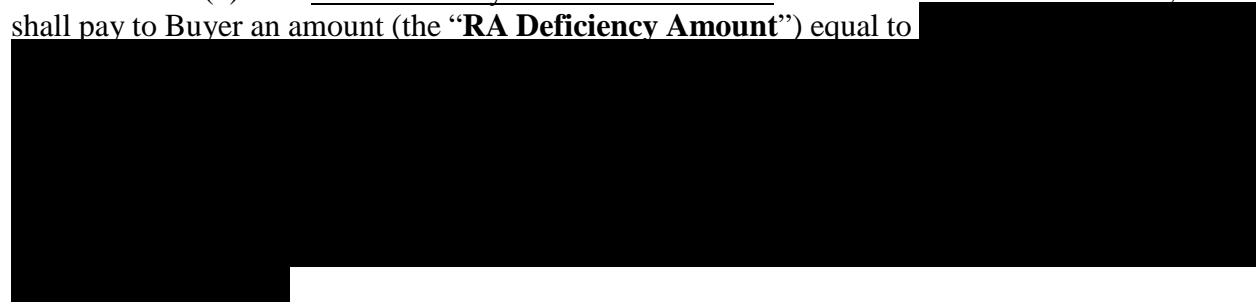
(a) **Notice of Unplanned Outages.** Seller shall notify Buyer promptly following the occurrence of an Unplanned Outage, or following Seller having knowledge that an Unplanned Outage will occur. Seller shall communicate to Buyer the estimated duration of an Unplanned Outage and use reasonable commercial efforts to update Buyer of any changes to the estimated direction thereof.

(b) **Facility Availability.** During the Delivery Term, Seller shall deliver to Buyer a schedule of the expected availability of the Facility on an hourly basis and shall update Buyer of a changes reasonably anticipated promptly following Seller's determination that changes are required.

4.18 **Resource Adequacy Failure**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages, in each case, as the sole remedy for any RA Shortfall.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to



**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 Industry Practice relating to the operation and maintenance of the Facility, 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 action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit J 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, Dispatching Energy or Discharging Energy to Buyer.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements; *provided* that such Shared Facilities Agreements shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Energy Contract Quantity.

## **ARTICLE 7 METERING**

7.1 **Metering.** Seller shall obtain and maintain a CAISO Resource ID for the BESS Resource and the Thermal Resource. At Seller's expense, Seller shall install and maintain all necessary Energy Meters and telemetry required by the CAISO to deliver the Product. At Seller's expense, Seller shall install and maintain the Gas Meter as required for the Thermal Resource to receive natural gas service from the Gas Distribution Utility.

7.2 **Meter Verification.** If Seller has reason to believe there may be an Energy Meter or a Gas Meter malfunction, or upon Buyer's reasonable request, Seller shall test the Energy Meter

or the Gas Meter. 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. Meter accuracy shall be determined based on CAISO or Gas Distribution Utility standards, as applicable. If a meter is inaccurate it shall be promptly repaired or replaced at Seller's expense. If the meter test was performed by Buyer's request and the meter(s) provided to be accurate, Buyer shall reimburse Seller for the costs and expenses associated with the test.

7.3 **Meter Adjustments.** If a meter provided to be inaccurate, the procedures used by the CAISO or the Gas Distribution Utility, as applicable, shall be used to adjust payments due hereunder. If no such procedures are applicable, Seller shall, acting reasonably and in good faith, determine when the inaccuracy first became effective and calculate the resulting adjustments. If Seller cannot reasonably determine when the inaccuracy first occurred, it will be assumed to have occurred halfway between the previous test and the current test (not to exceed 6 months).

## **ARTICLE 8 INVOICING AND PAYMENT; CREDIT**

8.1 **Contract Price.** The contract price (the "**Contract Price**") shall be calculated monthly, in arrears, as follows:

- (a) The RA Reservation Payment, plus
- (b) The Energy Reservation Payment, plus
- (c) The product of (i) the Energy Rate and (ii) the Dispatchable Energy delivered in the applicable month; plus
- (d) The Start Fee for the applicable month; plus
- (e) Any costs incurred by Seller for natural gas arising from any failure of Dispatchable Energy to be generated in the quantities subject to a Price Lock Transaction as set forth in Exhibit O excluding any costs, charges or penalties incurred due to the Seller's failure to perform its actions under this Agreement or Seller's failure to comply with the tariffs, agreements or other requirements of the Gas Distribution Utility.

8.2 **Statements and Invoicing.** Seller shall deliver an invoice to Buyer within twenty (20) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of metered data, including the amount of Charging Energy, Discharging Energy and Dispatchable Energy delivered to Buyer (if any), the RA Reservation Payment, the Energy Reservation Payment and the total Contract Price; (b) reflect any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; (c) reflect any CAISO costs and revenues passed through to Buyer, (d) include any natural gas costs or revenues passed through to Buyer pursuant to Section 4.6 and (e) be in a format and contain detail reasonably acceptable to Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. The invoice shall be delivered by electronic mail in accordance with Exhibit J.

8.3 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit J, which may be updated by Seller by Notice hereunder; provided, however, that changes to invoice, payment, wire transfer and other banking information in the Agreement must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes to the Agreement. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. 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.

8.4 **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 five (5) 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.

8.5 **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 8.6, (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 except 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 8.3, accruing from the date on which the adjusted amount should have been due. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twelve (12) months from the date of the invoice.

8.6 **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 8.5. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.6 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.

8.7 **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, without limitation, liquidated damage payments under Exhibit B, CAISO Costs and Revenues calculated pursuant to Exhibit N, interest, payments, and credits shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.8 **Payment Security.**

(a) **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. 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 (x) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (y) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (z) 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.

(b) **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, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the 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.

(c) **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 in, and lien on (and right to net against), and assignment of the Development Security and Performance Security to the extent provided in the form of cash, and any other cash collateral and cash equivalent collateral posted pursuant to Section 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 granted under this Section 8.8(c) in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

8.9 **Use of Financial Security.** 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 Financial Security provided by Seller, 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 Financial 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 Financial Security; and

(c) Liquidate the applicable Financial Security then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

## **ARTICLE 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 J 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 if sent by electronic mail at the time indicated by the time stamp upon delivery, except that if received after

5 PM Pacific Prevailing Time, it shall be deemed received on the next Business Day. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic mail, or any other mutually acceptable form of electronic communication, and shall be considered delivered upon successful completion of such transmission (or, in the case of electronic mail, if no notice of delivery failure is received). Notices of claimed breach of this Agreement or an Event of Default must concurrently be sent by hand delivery or overnight carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees.

## **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; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; epidemic; pandemic; 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 an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy storage capacity at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (v) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (vi) any action or inaction by Transmission Provider that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Reliability Network Upgrades except to the extent caused by a Force Majeure Event.

10.2 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. In addition, if a Force Majeure Event causes the Facility to be materially damaged such that returning the Facility to the full operational status that existing prior to the Force Majeure Event is reasonably expected to take more than twelve (12) months, Seller may terminate this Agreement upon Notice to Buyer. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Sections 2.1(b) and 10.4. 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, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or 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)(i) or (ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

10.3 **Notice for Force Majeure.** Within two (2) Business Days of the Party becoming aware of that a Force Majeure Event will impact the Party's performance under this Agreement, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks thereafter the claiming Party shall provide the other Party with Notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely Notice shall not constitute a waiver of the Force Majeure Event, but the relief granted shall be based on the date Notice is provided rather than the date of the Force Majeure Event. Upon written request from the other Party, the claiming Party shall provide documentation demonstrating to other Party's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from the claiming Party's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

10.4 **ROFO Following Force Majeure Event Termination.** In the event that this Agreement was terminated by Seller pursuant to Section 10.2 due to material damage to the Facility, and, within two (2) years following such termination Seller proposes to return the Facility to its full operational status, Buyer shall have a right of first offer to contract for any rights to discharging energy, resource adequacy benefits, ancillary services, and any other products from the Facility consistent with the terms and conditions of this Agreement [REDACTED]. Prior to offering to sell such products from the Facility to a third party, Seller shall first provide Buyer with Notice of intent to market such for sale. Buyer shall have [REDACTED] after receipt of the Notice to provide Seller with a written offer to purchase such products. If the Parties cannot reach an agreement and do not execute a contract to purchase the energy products from the Facility within [REDACTED] following Seller's receipt of Buyer's offer, or if Buyer fails provide Seller the offer within the required time period, then Seller will thereafter be free to market the products from the Facility for sale to a third party.

**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;

(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 such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 14.1, 14.2, 14.3 or 14.4, as appropriate; 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) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller’s payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of COD Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(ii) the failure by Seller to maintain an average Efficiency Rate equal to or greater than the Minimum Efficiency Rate over any rolling twelve (12) month period;

(iii) if, in any Contract Year, the simple average of the Monthly Storage Availability for such Contract Year (calculated at the end of such Contract Year) is not equal to 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 such failure to maintain a simple average of Monthly Storage Availability for such Contract Year equal to at least [REDACTED]

(iv) if, in any Contract Year, the simple average of the Monthly RA Availability for such Contract Year (calculated at the end of such Contract Year) is not equal to 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 such failure to maintain a simple average of the Monthly RA Availability for such Contract Year equal at least [REDACTED]

(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) except to the extent excused by an Excused Event, if Seller fails to maintain an average Storage Capacity equal to at least [REDACTED] of the Storage Contract Capacity for more than [REDACTED]; or

(vii) failure by Seller to provide and maintain Financial Security pursuant to Section 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish amounts in accordance with this Agreement.

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)(i))

subject to the limitations in Section 11.7, 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, that 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 termination of this Agreement and the Event of Default related thereto.

**11.3 Termination Payment.** The Termination Payment ("**Termination Payment**") for the Terminated Transaction owed pursuant to Section 11.2 (b)(ii) shall be the aggregate of the Settlement Amount 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. 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 the 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 the 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.** As soon as practicable after termination of this Agreement, 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 is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

**11.5 Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part,

the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **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.

11.7 **Seller Pre-COD Liability Limitations.** Notwithstanding anything in this Agreement to the contrary, Seller's aggregate liability under this Agreement prior to the Commercial Operation Date, including liabilities for payment of Construction Delay Damages, COD Delay Damages and the Damage Payment, shall not exceed [REDACTED]

## **ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM A PARTY'S FRAUD OR INTENTIONAL MISREPRESENTATION, 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, 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) Seller has, or will have prior to the Delivery Term, all necessary Governmental Approvals to perform its obligations hereunder.

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, duly organized, validly existing and in good standing under the laws of California.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer has, or will have prior to the Delivery Term, all necessary Governmental Approvals to perform its obligations hereunder.

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 **Community Benefits.** Seller pledges to deliver one hundred twenty-five thousand dollars (\$125,000) to Buyer so that Buyer may direct such amount to community benefits initiatives that directly benefit stakeholders in Buyer’s service area. Buyer and Seller shall identify initiatives that are of mutual interest such as housing, education, workforce training, environmental stewardship, and habitat improvement. Buyer shall have discretion to determine which initiatives will be funded and will provide Seller Notice describing the initiatives Buyer intends to fund. Seller shall make this payment within sixty (60) days after the Commercial Operation Date, and (b) 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 13.5, 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 13.5 without the prior written consent of Seller.

13.6 **Supplier Diversity.** Seller acknowledges that Buyer will 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 using the form attached hereto as Exhibit Q.

13.7 **Economic Impacts Report.** During the first year following the Commercial Operation Date, Buyer may request that Seller prepare and deliver a single written report describing the Facility’s local economic impact. No later than thirty (30) days after written request from Buyer for such written report, Seller will provide Buyer a written report describing the Facility’s local economic impact through the Commercial Operation Date, including expenditures for construction labor and capital expenditures for procurement of locally-supplied equipment, and number of construction jobs created. Seller may aggregate such information as necessary or appropriate to protect confidential, proprietary or commercially-sensitive information and the written report shall be treated as Confidential Information under this Agreement.

## ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer's consent and will not be subject to Section 14.2 or Section 14.3 if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. The assigning Party shall pay the other Party's reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys' fees.

14.2 **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 or portion thereof. 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 Financing Party to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement 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 Financing Party 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 Financing Party at the time such Notice is provided to Seller and the cure period of Financing Party shall not commence until Financing Party has received Notice of such Event of Default;

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

(i) The status of efforts by Seller or Financing Party 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 Financing Party 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) Financing Party will have the right to cure an Event of Default on behalf of Seller, only if Financing Party sends a Notice to Buyer before the later of (i) the expiration of any cure period, and (ii) fifteen (15) Business Days after Financing Party's receipt of Notice of such Event of Default from Buyer, indicating Financing Party's intention to cure. Financing Party 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 [REDACTED]

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

(e) Financing Party 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 Financing Party, directly or indirectly, takes possession of, or title to the Facility following Seller's bankruptcy or similar insolvency proceedings (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) and the Agreement is in effect at such time, Financing Party or its designee shall not disturb Buyer's rights and privileges arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Financing Party as set forth in the Collateral Assignment Agreement); provided, if Buyer advises Financing Party that Buyer will require that Financing Party cure (or cause to be cured) any Event of Default existing as of the possession date 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 Financing Party at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default (which are capable of being cured) to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings), or

(ii) Not assume this Agreement;

(g) If following Seller's bankruptcy or similar insolvency proceedings Financing Party elects to sell or transfer the Facility (after Financing Party directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Financing Party (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Financing Party shall cause the transferee or buyer to comply with the foregoing clause (f) 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.

(h) If this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith, Financing Party shall have the right to elect within one hundred eight (180) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller (or Financing Party or its designee that has title to the Facility) having the same terms as this Agreement for the remaining term thereof; provided that in the event a designee of Financing Party, 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 shall (i) meet the definition of Permitted Transferee and (ii) be an entity that Buyer is permitted to contract with under applicable Law.

14.3 **Permitted Assignment by Seller.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, or any other conflict of interest Law:

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:

(i) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(ii) Seller has provided Buyer a written agreement signed by the Affiliate to which Seller wishes to assign its interests that provides that such Affiliate will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment.

(b) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to any Person succeeding to all, or substantially all, of the assets of Seller (whether voluntary or by operation of law), if, and only if:

(i) The assignee is a Permitted Transferee;

(ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

(c) Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and confirmed by Buyer.

14.4 **Permitted Assignment by Buyer.** Buyer may make a limited assignment to an entity with an Investment Grade Credit Rating ("**Limited Assignee**") of Buyer's right to receive Product and Buyer's obligation to make payments to Seller, subject to execution of an assignment agreement between and among Seller, Buyer, and Limited Assignee upon terms and conditions mutually agreed, including that the limited assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement. Buyer may make such

assignment by delivering Notice upon not less than thirty (30) days prior to such proposed assignment. Buyer shall pay Seller for any payments 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. Any failure by the Limited Assignee to make payments to Seller when due hereunder shall be a Buyer Event of Default if not cured within the applicable cure period specified herein. 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.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of San Diego, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, 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 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

## ARTICLE 16 INDEMNIFICATION

### 16.1 Indemnification.

(a) Each Party (the “**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 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its own sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

### 16.2 Claims.

(a) Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which an indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; *provided*, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

16.3 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are



cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

## **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 bodily injury insurance, in a minimum amount of [REDACTED] per occurrence, and general aggregate of not less than [REDACTED], including contractual liability in said amount, including Buyer having additional insured status; and (ii) an umbrella/excess liability insurance liability policy in a minimum limit of liability of [REDACTED] each occurrence and in the 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/separation of insureds provisions.

(b) Employer's Liability Insurance. Seller shall maintain Employer's Liability insurance in a minimum amount not to 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 accident. 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.

(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.

(f) Operational 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 replacement value of the Facility; provided, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits that are usual and customary to similar risks. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.

(g) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date naming Seller (and Financing Party if any) as additional insured if coverage provided by Subcontractor,

Pollution Legal Liability Insurance in the amount of [REDACTED] per event and in the aggregate with Seller as a named insured and Financing Party, if any, as an additional insured.

(h) **Subcontractor Insurance.** Seller shall require all of its Major Subcontractors to carry: (i) commercial general liability insurance with a combined single limit of coverage not less than [REDACTED] per occurrence/general aggregate; (ii) workers' compensation insurance and employer's liability coverage in accordance with applicable requirements of California Law; and (iii) business auto insurance for bodily injury and property damage with limits of [REDACTED] per accident. All Major Subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (h)(i) and (h)(iii). All Major Subcontractors shall provide a primary/non-contributory endorsement on commercial general liability and auto liability insurance, and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(h).

(i) **Evidence of Insurance.** Within sixty (60) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage except for ten (10) days for non-payment of premium. General Liability and Business Auto insurance shall be primary coverage without right of contribution from any insurance of Buyer. Umbrella/Excess Liability insurance shall be 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.

## **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; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's members, employees, lenders or investors, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange,

control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify written material with the word “Confidential” and must clearly advise the Disclosing Party if any oral communication contains Confidential Information and should be treated as confidential.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing Notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer and Buyer’s Indemnified Parties from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer or Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information. The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of five (5) years following the date of termination of this Agreement.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations under this Article 18 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 in this Article 18. 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 Article 18 or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of

Seller, its Financing Party(ies)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release.

## **ARTICLE 19 MISCELLANEOUS**

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly.

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 Financing Party 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 execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

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 advisors, contractors, consultants or employees of Buyer or Buyer’s 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.** 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 to maximize benefits to Buyer, including: (i) modification of the description of Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; or (ii) submission of any reports, data, or other information required by Governmental

Authorities; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement. 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 either Party may request that the other Party 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, provided, however that Seller shall have no obligation to agree to any amendment that results in an unreimbursed reduction of forecast revenue Seller expects to generate under this Agreement. 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 Section 15.2. 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.

*[Signatures on following page]*

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

**MRP PACIFICA MARKETING II LLC,**  
**a Delaware limited liability company**

**SAN DIEGO COMMUNITY POWER, a**  
**California joint powers authority**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**FACILITY DESCRIPTION**

<b>Site Name</b>	
County	San Diego, CA
Site APNs	APN 232-410-45-00
Facility Type	Natural gas-fired plant and battery energy storage system (BESS)
Participating Transmission Owner	SDG&E
<b>Thermal Resource</b>	
Description	48.04 MW Simple Cycle Gas Turbine
Generating Capacity (MW)	48.04 MW
Conversion Rate	
Resource ID	ESCONDO_6_UNITB1
<b>BESS Resource</b>	
Type	Lithium Ion Battery Energy Storage System
Operating Characteristics	
Operating Procedures	See <u>Exhibit H</u>
Maximum Charging Capacity (MWh)	52
Maximum Discharging Capacity (MWh)	52
Maximum Stored Energy Level (MWh)	52
Resource ID	To be determined by CAISO



## EXHIBIT B

### FACILITY COMMERCIAL OPERATION

1. **Thermal Resource.** The Thermal Resource is operational.
2. **Construction of the BESS Resource.**
  - a. **“Construction Start”** will occur following Seller’s execution of one or more engineering, procurement, and construction (EPC) contracts related to the BESS Resource and issuance of a full notice to proceed with the construction of the BESS Resource under such EPC contracts that includes authorization of mobilization to the Site by Seller and/or its designees and authorization of the physical movement of soil at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit K 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 2(b) of this Exhibit B and/or a Development Cure Period pursuant to Section 4 of this Exhibit B.
  - b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer on account of such delay. 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 one hundred twenty (120) days of extensions by such payment of Construction Delay Damages. Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the BESS Resource. Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month, and within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 3(a) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2 (subject to the limitations in Section 11.7).
3. **Commercial Operation of the BESS Resource.** **“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 L (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 Commercial Operation has been achieved. Subject to Buyer's confirmation in Section 3(iii) of this Exhibit B, the "**Commercial Operation Date**" shall be the later of (x) the Expected Commercial Operation Date or (y) the date in the COD Certificate on which Seller confirmed to Buyer that Commercial Operation was achieved.

- a. Seller shall cause Commercial Operation for the BESS Resource to occur by December 1, 2026 (as such date may be extended by the Development Cure Period (defined below), the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date. If Seller achieves Commercial Operation for the BESS Resource within thirty (30) days after the Guaranteed Commercial Operation Date, then Buyer shall refund to Seller all Construction Delay Damages paid by Seller. Seller shall include the amount of the refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation, and Buyer shall include payment of such refund in its payment of such invoice.
  - b. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended pursuant to the Development Cure Period, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date, not to exceed [REDACTED] (the "**COD Delay Period**").
  - c. If Commercial Operation is achieved during a month for which Seller has paid COD Delay Damages, Buyer shall repay to Seller the amount of COD Delay Damages paid to Buyer that are not owed by Seller for such month. Seller may include such amounts owed by Buyer in its invoices to Buyer hereunder.
  - d. The Parties agree that Buyer's receipt of COD Delay Damages shall be Buyer's sole and exclusive remedy for Seller's failure to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2 (subject to the limitations in Section 11.7).
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 automatically 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:
- a. Force Majeure Event;
  - b. Interconnection Delays; and

c. Event of Default of Buyer.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period, other than any delays due to Section 4(c) above, shall not exceed [REDACTED], for any reason, including a Force Majeure Event, and the cumulative extensions granted to (i) the Guaranteed Construction Date by Seller's payment of Construction Delay Damages pursuant to Section 2(c) of this Exhibit B, (ii) the Guaranteed Commercial Operation Date by Seller's payment of COD Delay Damages pursuant to Section 3(c) of this Exhibit B, and (iii) any Development Cure Period(s), other than any delays due to clause 4(c) above, shall not exceed [REDACTED]

[REDACTED] For clarity, the permitted extensions under the Development Cure Period extend each of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date simultaneously. Seller shall provide prompt Notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide Notice within five (5) Business Days of Seller becoming aware of such delay.

5. **Failure to Reach Storage Contract Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have sixty (60) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit M hereto specifying the new Installed Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay Capacity Damages to Buyer, in an amount equal to [REDACTED]

[REDACTED] and the Storage Contract Capacity and other applicable portions of the Agreement, including the Storage Contract Capacity table in the Cover Sheet, shall be adjusted accordingly.

6. **Commercial Operation Conditions:** Commercial Operation of the BESS Resource shall occur once the following conditions are satisfied:

- a. The BESS Resource is fully operational and interconnected, fully integrated and synchronized with the Transmission System.
- b. Seller has installed equipment for the BESS Resource.
- c. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.
- d. Seller has demonstrated functionality of the BESS Resource's communication systems and automatic generation control (AGC) interface to operate the BESS Resource 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.

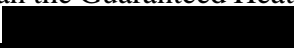
- e. The BESS Resource is fully capable of charging, storing and discharging energy and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable Operating Protocols.
- f. Authorization was received from the CAISO and the Participating Transmission Owner to operate the BESS Resource is parallel with the Transmission System.
- g. The PTO has provided documentation supporting Commercial Operation.
- h. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.

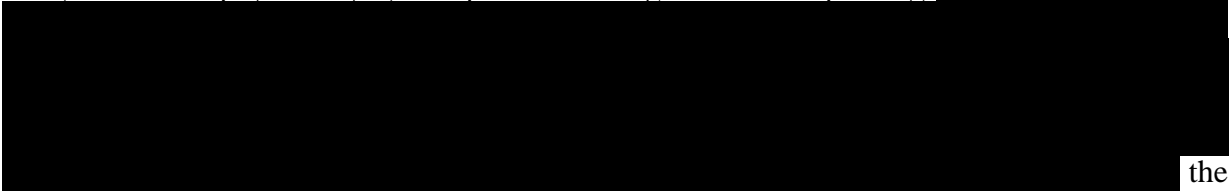
## EXHIBIT C

### EFFICIENCY GUARANTY

#### Thermal Resource Heat Rate Guaranty

**Heat Rate Testing:** The heat rate (“**Heat Rate**”) of the Thermal Resource shall be determined by performing thermal performance testing generally in accordance with the American Society of Mechanical Engineers’ Standard PTC 22 and Prudent Industry Practice. The Heat Rate will be first tested no later than thirty (30) days prior to the Energy Start Date and thereafter, the Heat Rate will be tested annually upon Buyer’s request. In addition, Buyer shall have the right to require a test or retest of the Heat Rate at any time upon no less than ten (10) Business Days prior written Notice to Seller if Buyer reasonably believes that the current Heat Rate has varied materially from the results of the most recent Heat Rate test. All costs or revenues associated with any Heat Rate test shall be borne by, or accrue to, Buyer, as applicable.

**Heat Rate Liquidated Damages:** In the event the Heat Rate is higher than the Guaranteed Heat Rate, Seller will pay to Buyer, as liquidated damages and not a penalty, 

 the “**Heat Rate Liquidated Damages**”). Following any Heat Rate test demonstrating a Heat Rate higher than the Guaranteed Heat Rate, Heat Rate Liquidated Damages shall be calculated and reflected as a credit on the next monthly invoice in accordance with Section 8.2.

#### BESS Resource Efficiency Guaranty

##### **Efficiency Guaranty Testing:**

The “**Efficiency**” of the BESS Resource shall be calculated as follows:

$$Efficiency = \frac{MWh_{delivered} + \text{Stored Energy}_{end}}{MWh_{received} + \text{Stored Energy}_{start}}$$

Where:

- (i)  $MWh_{delivered}$  = all measured and recorded Discharging Energy delivered from the BESS Resource at the Metering Point for the Facility during the Measurement Period.
- (ii)  $MWh_{received}$  = all measured and recorded Charging Energy received during charging of the BESS Resource at the Metering Point for the Facility during the Measurement Period.

- (iii) Stored Energy<sub>end</sub> = available electric energy in the BESS Resource at the end of the Measurement Period.
- (iv) Stored Energy<sub>start</sub> = available electric energy in the BESS Resource at the start of the Measurement Period.
- (v) “Measurement Period” means a calendar month.

**Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate**

If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total Charging Energy for such month by (ii) the percentage amount by which the Efficiency Rate is less than the Guaranteed Efficiency Rate, by (iii) the simple average of the Day-Ahead Market locational marginal price for all the hours in which Charging Energy was provided in the applicable month, as published by the CAISO, for the Delivery Point for the BESS Resource, provided, that if the foregoing calculation results in a negative value, then no liquidated damages amount shall be owed by either Party.

## EXHIBIT D

### STORAGE CAPACITY TESTS

The “**Storage Capacity Test**,” or “CT,” shall be performed by Seller by maintaining Discharging Energy from the BESS Resource for one (1) hour and the “**Effective Discharge Capacity**” in megawatts (MW) shall be determined as the quotient of the aggregate quantity of Discharging Energy (MWh) at the end of the one (1) hour test period, as measured at the Delivery Point for the BESS Resource, divided by one (1); provided, however, that the Effective Discharge Capacity cannot exceed the Energy Contract Quantity set forth in the Cover Sheet.

#### **Capacity Test Notice and Frequency**

- A. **Commercial Operation Capacity Test(s)**. Upon no less than ten (10) Business Days’ prior Notice to Buyer, Seller shall schedule and complete a “**Commercial Operation Capacity Test**” prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test shall be performed in accordance with this Exhibit D and shall establish the Installed Capacity hereunder based on the actual capacity and capabilities of the BESS Resource determined by such Commercial Operation Capacity Test(s).
- B. **Subsequent Capacity Tests**. Following the Commercial Operation Date, at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days’ prior Notice to Buyer, Seller shall schedule and complete an Annual Storage Capacity Test (“**Annual Storage Capacity Test**”). In addition to the Annual Storage Capacity Test, if Buyer has a commercially-reasonable basis to believe that the Effective Discharge Capacity is materially less than shown by the most recent test results, Buyer shall have the right to require a Storage Capacity Test at any time upon no less than ten (10) Business Days prior Notice to Seller. Seller shall have the right to run up to three (3) retests 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 Industry Practice).
- C. **Test Results and Re-Setting of Effective Discharge Capacity**. 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 Energy Meter readings from the BESS Resource and plant log sheets verifying the operating conditions and output of the BESS Resource.

#### **Capacity Test Procedures**

##### PART I. GENERAL.

- A. Each Storage Capacity Test shall be conducted in accordance with Prudent Industry Practices, the Operating Procedures detailed at Exhibit H, and the provisions of this Exhibit D. Buyer or its representative may be present for the CT.
- B. Conditions Prior to Testing.

1. EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
2. Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data.
3. Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed BESS Resource equipment, including verification that all controls, set points, and instruments of the EMS are configured.

## PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

- A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit D, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Discharge Capacity resulting from such Storage Capacity Test, if applicable, will be made in accordance with this Exhibit D.
  1. Electrical output at maximum discharging level (MW) for one (1) hour; and
  2. Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the BESS Resource Meter (MW), as sustained until the SOC reaches 100%.
- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:
  1. Time;
  2. The amount of Discharging Energy to the BESS Resource Meters (kWh) (i.e., to each measurement device making up the BESS Resource Meter);
  3. Net electrical energy input from the BESS Resource Meters (kWh) (i.e., from each measurement device making up the BESS Resource Meter); and
  4. Stored Energy Level (MWh).
- C. Site Conditions. During each CT, the following conditions at the Site shall be measured



and recorded simultaneously at thirty (30) minute intervals:

1. Relative humidity (%);
2. Barometric pressure (inches Hg) near the horizontal centerline of the BESS Resource; and
3. Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

1. That the CT successfully started;
2. The maximum sustained discharging level for one (1) consecutive hour pursuant to A(1) above;
3. The maximum sustained charging level for two (2) consecutive hours (or such lesser time as is required to reach 100% SOC) pursuant to A(2) above;
4. Amount of time between the BESS Resources' electrical output going from 0 to the maximum sustained discharging level registered during the CT for purposes of calculating the ramp rate (with the parties acknowledging this value may be effectively instantaneous and unmeasurable with precision);
5. Amount of time between the BESS Resource's electrical input going from 0 to the maximum sustained charging level registered during the CT (for purposes of calculating the ramp rate);
6. Amount of Charging Energy, registered at the BESS Resource Meters, to go from 0% SOC to 100% SOC;
7. Amount of Discharging Energy, registered at the BESS Resource Meters, to go from 100% SOC to 0% SOC.

E. Test Conditions.

8. General. At all times during a CT, the BESS Resource shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the BESS Resource.
9. Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
10. Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The

instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Industry Practice and, as applicable, the CAISO Tariff.

- F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Discharge Capacity pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT subject to providing Buyer with five (5) Business Days' prior Notice, or such shorter period of time as the Parties may agree.
- G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
1. A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
  2. The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
  3. Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor. If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing BESS Resource construction, Seller shall, if applicable, deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit D with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then current design of the BESS Resource ("**Supplementary 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 Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit D.
- I. Adjustment to Effective Discharge Capacity. Based on each Storage Capacity Test, the Effective Discharge Capacity, which shall be expressed in MW AC, shall be updated to equal the total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first one (1) hour of discharge (up to, but not in excess of, the (a) the Storage Contract Capacity (in the case of a Commercial Operation Capacity Test) or

(b) the Installed Capacity (in the case of any other Capacity Test)).

### PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

#### A. Effective Discharge Capacity Test

Procedure:

1. System Starting State: The BESS Resource will be in the on-line state at 0% SOC.
2. Record the initial value of the SOC.
3. Command a real power charge that results in an AC power of BESS Resource's maximum charging level and continue charging until the earlier of (a) the BESS Resource has reached 100% SOC or (b) two (2) hours have elapsed since the Facility commenced charging.
4. Record and store the SOC after the BESS Resource earlier of (a) the Facility has reached 100% SOC or (b) two (2) hours of continuous charging.
5. Record and store the amount of Charging Energy, registered at the BESS Resource Meters, to go from 0% SOC to 100% SOC.
6. Following one (1) hour rest period, command a real power discharge that results in an AC power output of the BESS Resource's maximum discharging level and maintain the discharging state until the earlier of (a) the BESS Resource has discharged at the maximum discharging level for one (1) consecutive hour, or (b) the BESS Resource has reached 0% SOC.
7. Record and store the SOC after one (1) hour of continuous discharging.
8. Record and store the Discharging Energy as measured at the BESS Resource Meters. Such data point shall be used for purposes of calculation of the Effective Discharge Capacity.
9. If the BESS Resource has not reached 0% SOC pursuant to Section III.A.6, continue discharging the BESS Resource until it reaches a 0% SOC.
10. Record and store the Discharging Energy as measured at the BESS Resource Meters from the commencement of discharging pursuant to Part III.A.6 until the BESS Resource has reached a 0% SOC pursuant to either Part III.A.7 or Part III.A.9, as applicable.

Test Results:

The resulting Effective Discharge Capacity measurement is the sum of the total Discharging Energy at the BESS Resource Meters.

#### B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the BESS Resource's maximum discharging level within 1 second.
- System starting date: The BESS Resource will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  1. Record the BESS Resource active power level at the BESS Resource Meters.
  2. Command the BESS Resource to follow a simulated CAISO RIG signal of PMAX at .95 power factor for ten (10) minutes.
  3. Record and store the BESS Resource active power response (in seconds).
- System end state: The BESS Resource will be in the on-line state and at a commanded active power level of 0 MW.

### **C. AGC Charge Test**

- Purpose: This test will demonstrate the AGC charge capability to achieve the BESS Resource's full charging level within 1 second.
- System starting state: The BESS Resource will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The BESS Resource control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  1. Record the BESS Resource active power level at the BESS Resource Meters.
  2. Command the BESS Resource to follow a simulated CAISO RIG signal of PMAX at .95 power factor for ten (10) minutes.
  3. Record and store the BESS Resource active power response (in seconds).
- System end state: The BESS Resource will be in the on-line state and at a commanded active power level of 0 MW.

### **D. Reactive Power Production Test**

- Purpose: This test will demonstrate the reactive power production capability of the BESS Resource.
- System starting state: The BESS Resource will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.

#### Procedure:

1. Record the BESS Resource reactive power level at the BESS Resource Meters.

2. Command the BESS Resource to follow 15 MW for ten (10) minutes.
  3. Record and store the BESS Resource reactive power response.
- System end state: The BESS Resource will be in the on-line state and at a commanded reactive power level of 0 MVAR.

#### **E. Reactive Power Consumption Test**

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.
- System starting state: The BESS Resource will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The BESS Resource control system will be configured to follow an agreed-upon predefined reactive power profile.

#### Procedure:

1. Record the BESS Resource reactive power level at the BESS Resource Meters.
  2. Command the BESS Resource to follow 15 MW for ten (10) minutes.
  3. Record and store the BESS Resource reactive power response.
- System end state: The BESS Resource will be in the on-line state and at a commanded reactive power level of 0 MVAR.

**EXHIBIT E**

**STORAGE AVAILABILITY**

**1. Monthly Storage Availability**

(a) Calculation of Monthly Storage Availability. Seller shall calculate the “**Monthly Storage Availability**” in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{\text{Average Storage Capacity}}{\text{Storage Contract Capacity}}$$

where:

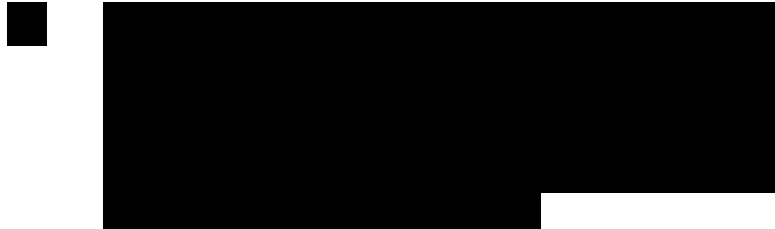
$$\text{Average Storage Capacity} = \frac{\sum \text{Hours Available Capacity}}{\text{Hours}}$$

Where:

Hours = All hours in the month

Available Capacity = for each hour of the month:

- (i) the capacity Seller reports to Buyer as being Available to be scheduled; and



If the BESS Resource is Unavailable for less than a full hour, the Available Capacity shall be the average capacity that was Available during that hour.

If the BESS Resource or any component thereof was previously deemed Unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the BESS Resource is Available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Product in the Day-Ahead Market (as defined in the CAISO Tariff), the BESS Resource will be deemed to be Available to the extent set forth in the revised Notice.

**2. Availability Adjustment Factor**

The applicable “**Availability Adjustment Factor**” or “**AAF**” is calculated as follows:

- (i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

$$AAF = 100\%$$

- (ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability, but [REDACTED] then:

$$AAF = [REDACTED]$$

- (iii) If the Monthly Storage Availability is [REDACTED], then:

$$AAF = 0$$

**EXHIBIT F**

**RA AVAILABILITY**

**1. Monthly RA Availability**

(a) Calculation of Monthly RA Availability. Seller shall calculate the “Monthly RA Availability” in a given Showing Month using the formula set forth below:

$$\text{Monthly RA Availability (\%)} = \frac{\text{Average RA Capacity}}{\text{Guaranteed RA Amount}}$$

where:

$$\text{Average RA Capacity} = \frac{\sum \text{Hours Available RA Capacity}}{\text{Hours}}$$

Where:

Hours = All Availability Assessment Hours for the Showing Month

Available RA Capacity = for each Availability Assessment Hour of the Showing Month, the lesser of the RA Contract Quantity and:

- (i) the total capacity Seller reports to Buyer as being available to be included in the Supply Plan from the Thermal Resource, plus any Replacement RA for such Availability Assessment Hour; plus



- (iii) any capacity for which Seller paid damages pursuant to Section 4.18.

If the Thermal Resource is unavailable for less than a full hour, the Available RA Capacity shall be the average capacity that was available during that hour.

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






**2. RA Availability Adjustment Factor**

The applicable “RA Availability Adjustment Factor” or “RAAAF” is calculated as follows:

- (i) If the Monthly RA Availability is greater than or equal to the Guaranteed RA Availability, then:

$$RAAAF = 100\%$$

- (ii) If the Monthly RA Availability is less than the Guaranteed RA Availability, but , then:

$$RAAAF = \frac{\text{Monthly RA Availability}}{\text{Guaranteed RA Availability}}$$

- (iii) If the Monthly RA Availability is , then:

$$RAAAF = 0$$


## EXHIBIT G-1

### BESS RESOURCE MAINTENANCE INTERVALS

#### 1.1. BESS Maintenance Plans

- (a) Not later than January 15, April 15, July 15 and October 15 of each Contract Year the Seller shall prepare and submit to the Buyer its proposed maintenance plan for the BESS Resource for the following twelve (12)-month period in a form reasonably agreed to by Buyer (a "**BESS Maintenance Plan**") identifying any BESS Planned Outage(s) for that Contract Year; provided that the BESS Maintenance Plan for the first Contract Year shall be prepared and submitted by the Seller to the Buyer not later than sixty (60) days after the Commercial Operation Date.
- (b) If reasonably required in accordance with Prudent Industry Practices, Seller shall have the right, on no less than thirty (30) days advance Notice to Buyer, to change the BESS Maintenance Plan. Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the BESS Maintenance Plan, and Seller shall use reasonable commercial efforts to accommodate such comments.

#### 1.2. BESS Planned Outages

- (a) 
- (b) The Parties shall coordinate, acting reasonably and in good faith, to establish reasonable maintenance schedules for the various components of the BESS Resource.
- (c) Seller and Buyer shall use reasonable commercial efforts to coordinate all forecasted maintenance to coincide with Buyer's forecasted dispatch schedules to minimize any loss of revenue.

#### 1.3. Limited Generation Due to Maintenance

- (a) Maintenance may be performed while the BESS Resource is operating at reduced (limited) generation.
- (b) Maintenance may be performed on the BESS Resource, or a unit thereof, while the Thermal Resource, or unit(s) thereof, respectively, is operating.

1.4. Allowance for BESS Planned Outages

- (a) Outage periods for BESS Planned Outages shall not exceed [REDACTED] [REDACTED] This allowance may be used in increments of an hour or longer on a consecutive or non-consecutive basis. [REDACTED]

- (b) Any hours during which there is a BESS Planned Outage and Seller provides Replacement RA shall not be deducted from the hours allowed for BESS Planned Outages.


## EXHIBIT G-2

### THERMAL RESOURCE MAINTENANCE INTERVALS

#### 1.1. Thermal Maintenance Plans

- (a) Not later than January 15, April 15, July 15 and October 15 of each Contract Year the Seller shall prepare and submit to the Buyer its proposed maintenance plan for the Thermal Resource for the following twelve (12)-month period in a form reasonably agreed to by Buyer (a “**Thermal Maintenance Plan**”) identifying any Thermal Planned Outage(s) for that Contract Year; provided that the Thermal Maintenance Plan for the first Contract Year shall be prepared and submitted by the Seller to the Buyer not later than sixty (60) days after the System RA Start Date.
- (b) If reasonably required in accordance with Prudent Industry Practices, Seller shall have the right, on no less than thirty (30) days advance Notice to Buyer, change the Thermal Maintenance Plan. Buyer may provide comments no later than ten (10) days after receiving Seller’s Notice of proposed changes to the Thermal Maintenance Plan, and Seller shall use reasonable commercial efforts to accommodate such comments. Seller shall schedule all Thermal Planned Outages within the time period determined by the CAISO for the Thermal Resource, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an “Approved Maintenance Outage” under the CAISO Tariff.

#### 1.2. Scheduled Outages

- (a) 
- (b) The Parties shall coordinate, acting reasonably and in good faith, to establish reasonable maintenance schedules for the various components of the Thermal Resource.
- (c) Seller and Buyer shall use reasonable commercial efforts to coordinate all forecasted maintenance to coincide with Buyer’s forecasted dispatch schedules to minimize any loss of revenue.
- (d) To the extent commercially reasonable, Seller shall schedule maintenance outages (i) during periods in which CAISO does not require resource substitution or replacement, and (ii) otherwise in a manner to avoid reductions in Resource Adequacy Benefits available from the Thermal Resource to Buyer.

#### 1.3. Major Overhauls During Peak Summer Months

- (a) Major Overhauls may not be scheduled during [REDACTED] [REDACTED] As used herein “Major Overhaul” means a major overhaul or its equivalent as defined in the applicable original equipment manufacturer’s manual.

1.4. Limited Generation Due to Maintenance

- (a) Maintenance may be performed while the Thermal Resource is operating at reduced (limited) generation.
- (b) Maintenance may be performed on the Thermal Resource, or a unit thereof, while the BESS Resource, or unit(s) thereof, respectively, is operating.

1.5. Allowance for Thermal Planned Outages


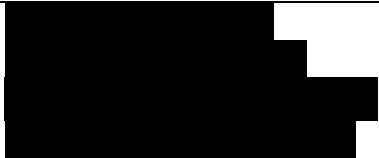
- (a) [REDACTED]
- (b) Any hours during which there is a Thermal Planned Outage and Seller provided Replacement RA shall not be deducted from the hours allowed for Thermal Planned Outages.

**EXHIBIT H**  
**OPERATING PROCEDURES**

The Thermal Resource shall be subject to the following technical operating restrictions:

	<b>Description</b>	<b>Value</b>	<b>Notes</b>
1.	Generating Capacity	48.04 MW	
2.	Daily Dispatch Limits	2 cycles per day	
3.	Start-up Ramp rate	20 MW/min	
4.	Interconnection Capacity Limit	52 MW	

The BESS Resource shall be subject to the following technical operating restrictions:

	<b>Description</b>	<b>Value</b>	<b>Notes</b>
1.	Storage Capacity	52 MW	
2.	Maximum Stored Energy Level	52 MWh	
4.	Maximum Charging Capacity	52 MW	
5.	Minimum Charging Capacity	0 MW	
6.	Maximum Discharging Capacity	52 MW	
7.	Minimum Discharging Capacity	0.1 MW	
8.	Maximum State of Charge (SOC) during Charging	100%	
9.	Minimum State of Charge (SOC) during Discharging	0%	
10.	Minimum Discharge Duration	1 hour	
11.	Minimum Charging Duration	1 hour	
12.	Daily Dispatch Limits		
13.	Start-up Ramp rate	60 MW/min	
14.	Charging energy source	CAISO Grid	
15.	Interconnection Capacity Limit	52 MW	

**EXHIBIT I**

**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:  
Bank Ref.:  
Amount: US\$[XXXXXXXXXX]  
Expiration Date:

Beneficiary:

[\_\_\_\_\_]
[\_\_\_\_\_]
Attn: [\_\_\_\_\_]

Ladies and Gentlemen:

By the order of [\_\_\_\_\_] (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of [\_\_\_\_\_] a [\_\_\_\_\_] (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Financially Settled Toll and Energy Storage Agreement dated as of \_\_\_\_\_ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by 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. [XXXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number] 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 the Beneficiary that all documents presented under and in compliance with

the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date on the then current Expiration Date, or such later date as may be specified in such notice. No presentation made under this Letter of Credit after such Expiration Date (as may be extended in such notice) will be honored.

This Letter of Credit is issued subject to the rules of the 'International Standby Practices 1998', International Chamber of Commerce Publication No. 590 ("ISP98") and, as to matters not addressed by ISP98, shall be governed and construed in accordance with the laws of state of California.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements (other than as set forth in the immediately prior paragraph), this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-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: [\_\_\_\_\_], Attn: [\_\_\_\_\_], [Insert Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

---

[Insert officer name]

[Insert officer title]



Exhibit A

Drawing Certificate

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [\_\_\_\_], a [\_\_\_\_], [Insert Address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of [\_\_\_\_], a [\_\_\_\_] (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Financially Settled Toll and Energy Storage 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 Buyer 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 [\_\_\_\_] 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 [\_\_\_\_] by wire transfer in immediately available funds to the following account:

[Specify account information]

[\_\_\_\_\_]

\_\_\_\_\_  
Name and Title of Authorized Representative

Date \_\_\_\_\_

**EXHIBIT J**

**NOTICES**

<b>MRP Pacifica Marketing II LLC</b>	<b>San Diego Community Power</b>
<b>All Notices:</b> <a href="#">mailto:</a> Street: 200 W. Madison St., Suite 3810 City: Chicago, IL 60606 Attn: Kathleen Pokryfke Phone: 312-766-4551 Email: <a href="mailto:mrpgoldennotices@mrpgenco.com">mrpgoldennotices@mrpgenco.com</a>	<b>All Notices:</b> PO Box 12716  San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: <a href="mailto:bvosburg@sdcommunitypower.org">bvosburg@sdcommunitypower.org</a>
<b>Reference Numbers:</b> [REDACTED]	<b>Reference Numbers:</b> [REDACTED]
<b>Invoices:</b> Attn: Accounts Payable Phone: (312) 766-8510 Email: <a href="mailto:mrpgoldennotices@mrpgenco.com">mrpgoldennotices@mrpgenco.com</a>	<b>Invoices:</b> Attn: SDCP Settlements Phone: (619) 880-6545 Email: <a href="mailto:settlements@sdcommunitypower.org">settlements@sdcommunitypower.org</a>
<b>Scheduling:</b> Attn: CalPeak Power LLC Phone: (760)-530-2323 Email: <a href="mailto:calpeak_dist@tnsk.com">calpeak_dist@tnsk.com</a>	<b>Scheduling:</b> Tenaska Power Services Co. Attn: Kara Whillock Phone: (972) 333-6122 Email: <a href="mailto:kwhillock@tnsk.com">kwhillock@tnsk.com</a> Day Ahead: (817) 303-1115 Real Time: (817) 303-1852 Facsimile: (817) 303-1104
<b>Confirmations:</b> Attn: Phone: Email: <a href="mailto:mrpgoldennotices@mrpgenco.com">mrpgoldennotices@mrpgenco.com</a>	<b>Confirmations:</b> Attn: SDCP Settlements Phone: (619) 880-6545 Email: <a href="mailto:settlements@sdcommunitypower.org">settlements@sdcommunitypower.org</a>
<b>Payments:</b> Attn: Accounts Payable Phone: (312) 766-8510 Email: <a href="mailto:mrpgoldennotices@mrpgenco.com">mrpgoldennotices@mrpgenco.com</a>	<b>Payments:</b> Attn: Michael Maher Phone: (415) 526-3020 Email: <a href="mailto:mmaher@maher CPA.com">mmaher@maher CPA.com</a>
<b>Wire Transfer:</b> BNK: ABA: ACCT:	<b>Wire Transfer:</b> [REDACTED]
<b>Credit and Collections:</b> Attn: Kathleen Pokryfke Email: <a href="mailto:kpokryfke@mrpgenco.com">kpokryfke@mrpgenco.com</a> Phone: (312) 766-4551	<b>Credit and Collections:</b> Attn: SDCP Finance Phone: (619) 880-6545 Email: <a href="mailto:finance@sdcommunitypower.org">finance@sdcommunitypower.org</a>

<b>MRP Pacifica Marketing II LLC</b>	<b>San Diego Community Power</b>
<p><b>With additional Notices of an Event of Default to:</b>  Attn: General Counsel  Phone: (312) 381-8559  Email: <a href="mailto:jdubinski@mrpgenco.com">jdubinski@mrpgenco.com</a></p> <p>Additional notices of an Event of Default to:  Climate Edge Law Group  Attn: Paul Lacourciere  Email: <a href="mailto:paul@celawgroup.com">paul@celawgroup.com</a></p>	<p><b>With additional Notices of an Event of Default or Force Majeure Event to:</b></p> <p>Attn: Veera Tyagi General Counsel  PO Box 12716  San Diego, CA 92112  Phone:  Email: <a href="mailto:vtyagi@sdcommunitypower.org">vtyagi@sdcommunitypower.org</a></p>
<p><b>Emergency Contact:</b>  Attn: CalPeak Power LLC  Phone: (760)530-2323  Email: <a href="mailto:calpeak_dist@tnsk.com">calpeak_dist@tnsk.com</a></p>	<p><b>Emergency Contact:</b>  Attn: Byron Vosburg, Director of Power Services  Phone: (619) 880-6545  Email: <a href="mailto:bvosburg@sdcommunitypower.org">bvosburg@sdcommunitypower.org</a></p>

**EXHIBIT K**

**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification of Construction Start Date (“**Certification**”) is delivered by MRP Pacifica Marketing II LLC (“**Seller**”) to San Diego Community Power Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Financially Settled Toll and Energy Storage 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\_\_.

MRP Pacifica Marketing II LLC

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT L

### 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 Financially Settled Toll and Energy Storage Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between MRP Pacifica Marketing II LLC (“**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 BESS Resource is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the BESS Resource with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
4. Seller has demonstrated functionality of the BESS Resource’s communication systems and automatic generation control (AGC) interface to operate the BESS Resource as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.
5. The BESS Resource 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.
6. Authorization to parallel the BESS Resource was obtained from the Participating Transmission Owner.
7. The Transmission Provider has granted any necessary approvals for Commercial Operation.
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT M**

**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 Financially Settled Toll and Energy Storage Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between MRP Pacifica Marketing II LLC (“**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:

The Commercial Operation Capacity Test demonstrated a maximum dependable operating capability that can be sustained for one hour to discharge electric energy of \_\_ MW AC to the Delivery Point for the BESS Resource, in accordance with the testing procedures, requirements and protocols set forth in Section 4.11 and Exhibit D (the “**Installed Capacity**”).

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[*LICENSED PROFESSIONAL ENGINEER*]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT N

### SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Notices. Seller (as the Facility's SC) shall use a web-based system through which Seller shall submit to 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 Buyer access to 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.

(b) Seller as Scheduling Coordinator for the Facility. During the Delivery Term, Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of the Product at the Delivery Point and for the purposes of conducting Storage Capacity Tests. As directed by Buyer, Seller (as the Facility's SC) shall submit Schedules and Supply Plans to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product, including on a day-ahead, hour-ahead, fifteen-minute market or real time basis.

(c) CAISO Costs and Revenues. Except during a Storage Capacity Test or as otherwise set forth below, Buyer shall be responsible for CAISO costs (including 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, or other credits in respect of the Product Scheduled or delivered from the Facility, provided, that Seller shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) to the extent such CAISO costs are due to Seller's failure to schedule the Charging Energy, Discharging Energy or Dispatchable Energy or submit Supply Plans in accordance with Buyer's instructions and the requirements of this Agreement. 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 resulting from compliance with Buyer's instructions. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account. Buyer shall use reasonable efforts to avoid submitting bids that cause Seller to incur Non-Availability Charges. 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 Seller 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 the Seller's responsibility. Subject to the foregoing, Seller shall pass through to Buyer all CAISO costs and revenues associated with the Facility, which shall be reflected as a credit on the monthly invoices provided to Buyer in accordance with the invoicing and payment provisions of Article 8, including the netting provisions of Section 8.7.



(d) CAISO Settlements. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility.

(e) Dispute Costs. Seller (as the Facility's SC) may be required to dispute CAISO settlements in respect of the Facility. If Buyer has directed Seller to dispute a CAISO settlement, Buyer agrees to pay Seller'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 Buyer with respect to the Facility.

(f) 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.

(g) NERC Reliability Standards. Seller (as Scheduling Coordinator) shall comply with NERC reliability standards.

(h) Audit Right. Buyer has the right, at its sole expense, during normal working hours, and after reasonable Notice, to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statements, charges, revenues, or costs passed through to Buyer in accordance with Seller or the SC providing Scheduling Coordinator services under this Agreement including the costs to procure any natural gas or Substitute Capacity on behalf of Buyer. If such examination reveals any material inaccuracy in any statement, the necessary adjustments shall be made promptly.

## EXHIBIT O

### ENERGY RATE CALCULATION

#### 1. Definitions.

As used in this Exhibit O, the following terms, when used herein when initial capitalization, shall have the meanings set forth below:

**“Conversion Rate”** means [REDACTED]

**“Gas Distribution Utility”** means San Diego Gas & Electric Company.

**“Gas Distribution Utility Receipt Point”** means SoCal City Gate.

**“Gas Price”** means the Price per MMBtu agreed upon pursuant to a Price Lock Transaction or, if either no Price Lock Transaction has been executed for the Delivery Period or the natural gas usage exceeds the quantity of natural gas subject to Price Lock Transaction, the Spot Price.

**“Price Lock Period”** means the period of time commencing on 00:00 on the Start Date and ending at 23:59 on the End Date, each as defined below.

**“Run Hours”** means the hours during which the Thermal Resource is, or is planned to be, operated.

**“Resource Start”** means a start of the Thermal Resource.

**“Spot Price”** means the price listed in Gas Daily Midpoint for the Gas Distribution Utility Receipt Point for the relevant day; provided, if there is no single price published for such location for such day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first day for which a price or range of prices is published that next precedes the relevant day; and (ii) the price (determined as stated above) for the first day for which a price or range of prices is published that next follows the relevant day.

**“Start Fee”** means [REDACTED]

**“Start-up Fuel”** means [REDACTED]

**“Trading Day”** means Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S. starting at 8:00 a.m. Pacific Prevailing Time and ending at 5:00 p.m. Pacific Prevailing Time.

#### 2. Natural Gas Supply.

a. Gas Utility Connection. Seller will, at its sole cost and expense, maintain the

interconnection of the Thermal Resource and gas meter to the Gas Distribution Utility.

b. Supply of Gas.

- i. Seller will cause the Scheduling Coordinator to procure a sufficient quantity of natural gas for the continuous operation of the Thermal Resource consistent with the dispatch schedule for the Thermal Resource and to deliver such natural gas to the Gas Utility Receipt Point; and
- ii. Seller will pay all costs associated with the procurement and delivery of natural gas to the Facility subject to Section 4 of this Exhibit O.

3. Price Lock Process.

- a. No later than ten (10) Business Days prior to the Energy Start Date, and thereafter no later than ten (10) Business Days prior to expiration of the applicable Price Lock Period, Buyer shall request that Seller provide a fixed energy price for a specified period of time (a "**Price Lock Transaction**"). The request shall include the following information:
  - i. The "**Start Date**", which in the case of the first Price Lock Transaction shall be the Energy Start Date and with respect to each subsequent Price Lock Transaction shall be the day after the End Date;
  - ii. The "**End Date**", which shall be no later than 36 months after the Start Date;
  - iii. The number of Resource Starts per day during the Price Lock Period;
  - iv. The number of Run Hours per day during the Price Lock Period.

Buyer may include in a single request up to three variations in the above information and may request that Seller use reasonable commercial efforts to secure quotes from a particular supplier.

- b. Following receipt of such request, Seller shall promptly, but in any event within one (1) Trading Day (as defined below), deliver to Buyer a quote for the Energy Rate to be used during the requested Price Lock Period along with an "Acceptance Deadline" by which the quote must be accepted; provided, Seller shall use commercially reasonable efforts to provide Buyer at least ninety (90) minutes to accept a quote. The quote will represent Seller's commercially reasonable efforts to secure the fixed price fuel for Dispatchable Energy and will include any natural gas transportation and distribution charges, credit charges, scheduling costs, or other adjustments to the market price based on verifiable costs to the Seller. Seller will deliver the quote via email in the following form:

Acceptance Deadline:

Start Date:

End Date:

Number of Resource Starts per Day:

Number of Run Hours Per Day:

Energy Rate: (\$/MWh)

Where the “**Energy Rate**” is calculated as follows:

$$\text{Price per MMBtu} \times \text{Conversion Rate}$$

*The foregoing represents an offer to fix the Energy Rate under that certain Financially Settled Toll and Energy Storage Agreement by and between San Diego Community Power and MRP Pacifica Marketing II LLC dated as of \_\_\_\_\_. Neither Party has any obligation with respect to this offer until and unless Buyer accepts such offer in writing prior to the Acceptance Deadline in the form set forth in Exhibit P (a “**Price Lock Transaction Order**”). This offer expires without further action if it is not accepted in writing prior to the Acceptance Deadline.*

- c. Where Buyer has included in its request variations in the required information, the quote will indicate which variation it is applicable to. Seller will use commercially reasonable efforts to obtain and deliver to Buyer quotes from multiple suppliers and, if applicable, any supplier that Buyer has specifically requested quotes from. Notwithstanding the foregoing, Seller shall have no obligation to disclose to Buyer which supplier provided each quote.
  - d. If Buyer accepts the offer by delivering a Price Lock Transaction Order to Seller prior to the offer’s expiration, then the Price Lock Transaction Order will be used to calculate the Energy Rate under this Agreement for the Price Lock Period, subject to the usage limits set forth below. If the offer expires, Buyer may request that Seller provide a new quote during the same Trading Day and Seller will use reasonable commercial efforts to provide a new quote within that Trading Day.
4. **Usage Limits.** To the extent that the number of Resource Starts per Day or the Run Hours per Day exceeds the amount subject to a Price Lock Transaction, the Energy Rate and the Start Fee for such excess usage shall be calculated using the Spot Price. To the extent that the Resource Starts per Day or the Run Hours per Day is less than the MMBtu per Day amount subject to a Price Lock Transaction, Seller shall use commercially reasonable efforts to liquidate the associated natural gas consistent with Prudent Industry Practices and shall pass through to Buyer any resulting costs or revenues.
5. **Low Carbon Fuel.** Buyer and Seller agree to utilize low carbon fuels to the extent commercially reasonable at the Facility. Buyer has the option, but not the obligation, to request Seller to utilize low carbon fuels. Low carbon fuels include pipeline quality renewable natural gas and/or up to 30 percent (30%) hydrogen blended natural gas. Buyer shall give Seller sufficient time to procure low carbon fuels and comply with Local and State regulatory requirements in

accordance with Prudent Industry Practices. The costs and expenses associated with procuring, purchasing and delivering to the Facility low carbon fuels shall be passed through to Buyer. Seller may present to Buyer an Energy Rate based on the cost of such Low Carbon Fuel for consideration of the Price Lock.

**EXHIBIT P**

**FORM OF “PRICE LOCK TRANSACTION ORDER”**

This **PRICE LOCK TRANSACTION ORDER** (“**Order**”), is delivered by San Diego Community Power to MRP Pacifica Marketing II LLC in accordance with the terms of that certain Financially Settled Toll and Energy Storage Agreement by and between San Diego Community Power, as Buyer, and MRP Pacifica Marketing II LLC, as Seller, dated as of \_\_\_\_\_ (the “**Agreement**”). All capitalized terms used in this Order but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Exhibit O of the Agreement, Buyer accepts Seller’s offer to fix the Energy Rate as follows:

Seller’s Acceptance Deadline:

Date/Time of Buyer’s Acceptance:

Start Date:

End Date:

Number of Resource Starts per Day:

Number of Run Hours Per Day:

Energy Rate: (\$/MWh)

Buyer has caused this Order to be duly executed and delivered by a duly authorized representative on the date written below.

**SAN DIEGO COMMUNITY POWER**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT Q

### 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 (WMDVLGBTs) 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](http://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