AGENDA

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

Thursday, September 26, 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. Member of the Board of Directors and members of the public may attend in person. Under certain circumstances, Directors may also attend and participate in the meeting virtually pursuant to the Brown Act (Gov. Code § 54953). As a convenience to the public, Community Power provides a call-in option and internet-based option for members of the public to virtually observe and provide public comments at its meetings. Additional details on in-person and virtual public participation are below. Please note that, in the event of a technical issue causing a disruption in the call-in option or internet-based option, the meeting will continue unless otherwise required by law, such as when a Board Member is attending the meeting virtually pursuant to certain provisions of the Brown Act.

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

1. Providing oral comments during a meeting. Anyone attending in person desiring to address the Board of Directors is asked to fill out a speaker's slip and present it to the Clerk of the Board. To provide remote comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. On Zoom video conference by computer or mobile phone, use the "Raise Hand" feature. This will notify the moderator that you wish to speak during a specific item on the agenda or during non-agenda Public Comment. Members of the public will not be shown on video but will be able to speak when called upon. If joining the meeting using the Zoom dial-in number, you can raise your hand by pressing *9. Comments will be limited to three (3) minutes.

2. Written Comments. Written public comments must be submitted prior to the start of the meeting to clerkoftheboard@sdcommunitypower.org. Please indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided to Members of the Board. In the discretion of the Chair, the first ten (10) submitted comments shall be stated into the record of the meeting. Comments read at the meeting will be limited to the first 400 words. Comments received after the start of the meeting will be collected, sent to the Members of Board, and be part of the public record.

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

The public may participate using the following remote options:

Teleconference Meeting Webinar https://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

- **Introduction of Luis Montero-Adams, newly appointed CAC member**
- **Introduction of New Employees**

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 August 22, 2024, Meeting Minutes**
2. **Receive and File Treasurer's Report for Period Ending June 30, 2024**
3. **Receive and File Update on Programs**
4. **Receive and File Update on Power Resources**
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 Community Advisory Committee**

9. **Receive and File Update on Community Clean Energy Grant Program**

10. **Receive and File Update on San Diego Regional Climate Collaborative Memorandum of Understanding**

11. **Approve a contract with Virtual Peaker, Inc. with a not-to-exceed amount of $2,400,000 over three years, and options for two one-year extensions, for a Distributed Energy Resources Management System, and authorize execution by the Chief Executive Officer**

12. **Adoption of Resolution No. 2024-07, Approving 2025 Board Meeting Schedule for San Diego Community Power (Community Power)**

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.

13. **Presentation and Update on Clean Energy Prepayment Financing**

Recommendation: Receive and File Presentation and Update on Clean Energy Prepayment Financing.

14. **Adoption of Resolution No. 2024-06, Approving California Community Choice Financing Authority as a Bond Issuer for Energy Prepayment Transaction**

Recommendation: Adopt Resolution No. 2024-06, approving the selection of California Community Choice Financing Authority (CCCFA), a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act, as the Bond Issuer for potential San Diego Community Power's (Community Power) energy prepayment financing transactions and authorizing Community Power to join the CCCFA as an Associate Member.

15. **Approval of Amended and Restated Power Purchase Agreement with JVR Energy Park, LLC**

Recommendation: Approve Amended and Restated Power Purchase Agreement with JVR Energy Park, LLC, and authorize the CEO to execute the agreement.

16. Update on Regulatory and Legislative Affairs

Recommendation: Receive and File Update on Regulatory and Legislative Affairs.

17. Update on Solar Battery Savings Program

Recommendation: Receive and File Solar Battery Savings Update

18. Presentation on Partnership Agreement with the New Children's Museum

Recommendation: Receive and File presentation on a partnership with the New Children's Museum for development of the Creative Youth Development classroom.

19. Presentation on Energy Academy Funding

Recommendation: Receive and File presentation on the development of the Regional Energy Academy and funding of two cohorts (Fall 2024/Spring 2025) by Community Power.

20. Update on San Diego Community Power Network Overview

Recommendation: Receive and File the Update on the San Diego Community Power Network Overview.

CHIEF EXECUTIVE OFFICER REPORT

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

DIRECTOR COMMENTS

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

ADJOURNMENT

The San Diego Community Power Board of Directors will adjourn to a regular meeting scheduled on Thursday, October 24, 2024.

Compliance with the Americans with Disabilities Act

San Diego Community Power Board of Directors meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a

modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may contact (888) 382-0169 or clerkoftheboard@sdcommunitypower.org. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

Availability of Board Documents

Copies of the agenda and agenda packet are available at https://sdcommunitypower.org/resources/meeting-notes/. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Members prior to or during the Board meeting are available for public review as required by law. Public records, including agenda-related documents, can be requested electronically at clerkoftheboard@sdcommunitypower.org or by mail to SDCP, PO BOX 12716, San Diego, CA 92112. The documents may also be posted on the Community Power's website. Such public records are also available for inspection, by appointment, at San Diego Community Power by contacting clerkoftheboard@sdcommunitypower.org to arrange an appointment.

SAN DIEGO COMMUNITY POWER (COMMUNITY POWER)
BOARD OF DIRECTORS

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

REGULAR MEETING MINUTES
August 22, 2024

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

The Agenda Items were considered in the order presented.

WELCOME

CALL TO ORDER

Chair LaCava, City of San Diego called the Community Power Board of Directors regular meeting to order at 5:01 p.m.

ROLL CALL

PRESENT: Chair LaCava, City of San Diego; Director McCann, City of Chula Vista (Via Zoom Teleconference), Alternate Director Kranz, City of Encinitas (Via Zoom Teleconference, AB 2449 Exemption); Director Aguirre, City of Imperial Beach, Director Parent, City of La Mesa; and Director Yamane, City of National City.

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

Staff Present: Chief Executive Officer Burns; Chief Financial Officer Dr. Washington; General Counsel Tyagi; Director of Power Contracts Key; Clerk of the Board Hernandez; and Assistant Clerk of the Board Vences

PLEDGE OF ALLEGIANCE

Chair LaCava led the Pledge of Allegiance.

SPECIAL PRESENTATIONS AND INTRODUCTIONS

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

- **Proclamation for outgoing Community Advisory Committee member Eddie Price**

Chair LaCava presented proclamation to outgoing Community Advisory Committee member Eddie Price. Mr. Price extended appreciation to Board members and staff for the opportunity to serve.

- **Introduction of New Employees**

Chair LaCava welcomed new employees Hanlu Huang, Data Scientist; Aja Holmes, Senior Settlements Analyst; Vincenzo Tarantino, Marketing Manager; Jose Fernando Tapia, Technology System Engineer; and Melissa Elder, Community Engagement Associate to introduce themselves.

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

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

PUBLIC COMMENTS

There were no public comments.

CLOSED SESSION

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

Title: Chief Executive Officer

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

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

There were no public comments on Closed Session Item Nos. 1 and 2.

The Board recessed to Closed Session at 5:12 p.m.

The Board reconvened to Open Session at 5:39 p.m.

ROLL CALL

PRESENT: Chair LaCava, City of San Diego; Director McCann, City of Chula Vista (Via Zoom Teleconference), Alternate Director Kranz, City of Encinitas (Via Zoom Teleconference, AB 2449 Exemption); Director Aguirre, City of Imperial Beach, Director Parent, City of La Mesa; and Director Yamane, City of National City.

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

REPORT FROM CLOSED SESSION

General Counsel Tyagi announced there were no reportable actions from the Closed Session.

Alternate Director Kranz, City of Encinitas reported that he was participating in today's meeting via Zoom Teleconference under one of the exemptions allowed by AB 2449 and there were no individuals over the age of 18 present in the room with him.

CONSENT CALENDAR

1. **Approve June 27, 2024, Meeting Minutes**
2. **Receive and File Treasurer's Report for Period Ending May 31, 2024**
3. **Receive and File Update on Programs**
4. **Receive and File Community Advisory Committee Monthly Report**
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 IT and Data Analytics**
9. **Receive and File Update on Regulatory and Legislative Affairs**
10. **Receive and File Update on Power Services**
11. **Adoption of Resolution No. 2024-05, approving a revision to the San Diego Community Power's Conflict of Interest Code**

There were no public comments on Consent Item Nos. 1-11.

In regard to Consent Item No. 9, Chair LaCava expressed appreciation to staff for their work to ensure the CPUC voted earlier than expected on San Diego Regional Energy Network. In addition, Chair LaCava congratulated recipients of Community Clean Energy Grants and thanked Director Yamane for hosting and joining the press conference.

Motioned by Director Parent and seconded by Director Yamane to approve Consent Calendar Item Nos. 1 through 11. The motion carried 6/0 by Roll Call Vote as follows:

AYES:	Chair LaCava, Director McCann, Alternate Director Kranz, Director Aguirre, Director Parent, and Director Yamane
NOES:	None
ABSTAINED:	None
ABSENT:	Vice Chair Lawson-Remer

REGULAR AGENDA

12. Approve Third Amendment to the Chief Executive Officer Employment Agreement

General Counsel Tyagi provided an overview on the Chief Executive Officer's (CEO) employment agreement and reported that during the Closed Session, the Board approved a third amendment to CEO Burns employment agreement with a five (5) percent merit increase in salary and a three (3) percent market adjustment, bringing Executive's total base salary to Four Hundred and Seventy Thousand Three Hundred and Eleven Dollars and Ninety Cents ($470,311.90), effective as of September 1, 2024,.

There were no public comments on Item No. 12.

The Board expressed appreciation to Ms. Burns for her continued work and dedication to Community Power.

Ms. Burns expressed appreciation for the vote of confidence.

Motioned by Director Aguirre and seconded by Director Parent to approve a third amendment to the Chief Executive Employment Agreement effective September 1, 2024. The motion carried 6/0 by Roll Call Vote as follows:

AYES:	Chair LaCava, Director McCann, Alternate Director Kranz, Director Aguirre, Director Parent, and Director Yamane
NOES:	None
ABSTAINED:	None
ABSENT:	Vice Chair Lawson-Remer

13. Approval of Community Advisory Committee (CAC) Appointment for the City of San Diego

Senior Manager Community Engagement Crespo provided an overview of CAC member selection process and reported that Chair LaCava selected Luis Montero-Adams for the City of San Diego's vacancy.

There were no public comments on Item No. 13.

Motioned by Chair LaCava and seconded by Director Parent to approve the appointment of Luis Montero-Adams to the CAC to fill a City of San Diego vacancy. The motion carried 6/0 by Roll Call Vote as follows:

AYES:	Chair LaCava, Director McCann, Alternate Director Kranz, Director Aguirre, Director Parent, and Director Yamane
NOES:	None
ABSTAINED:	None
ABSENT:	Vice Chair Lawson-Remer

14. Quarterly Report on Community Advisory Committee

Chair Matthew Vasilakis provided the quarterly report on Community Advisory Committee.

There were no public comments on Item No. 14

The Board received and filed Quarterly Report on Community Advisory Committee.

15. Approve Legal Counsel Agreement with Chapman and Cutler LLP

General Counsel Tyagi and CFO/Treasurer Dr. Washington provided an overview of Legal Counsel Agreement with Chapman and Cutler LLP.

There were no public comments on Item No. 15.

Motioned by Director Aguirre and seconded by Director Yamane to approve Legal Counsel Agreement with Chapman and Cutler LLP. The motion carried 6/0 by Roll Call Vote as follows:

AYES:	Chair LaCava, Director McCann, Alternate Director Kranz, Director Aguirre, Director Parent, and Director Yamane
NOES:	None
ABSTAINED:	None
ABSENT:	Vice Chair Lawson-Remer

16. Approve contracts for vendors selected in the 2024 Request for Proposals (RFP) for Professional Services for Energy Trading Risk Management

Director of Power Contracts Key provided an overview of Request for Proposals for Professional Services for Energy Trading and Risk Management.

There were no public comments on Item No. 16.

Motioned by Director Parent and seconded by Director Yamane to:

a. Approve a contract (Attachment A) with PCI Energy Solutions with a not-to-exceed amount of $4,354,549 over the initial term of five years, and a yearly automatic renewal after the initial term, until SDCP provides a notice of termination, for Energy Trading Risk Management Subscription Software, Update and Support Services, and Hosting Services, and authorize execution by the Chief Executive Officer.

b. Approve a contract (Attachment B) with cQuant.IO Inc. with a not-to-exceed amount of $1,467,707 over three years and four months, and options for two one-year extensions, for an Energy Trading Risk Management analytics platform and associated implementation, training, and consulting, and authorize execution by the Chief Executive Officer.

The motion carried 6/0 by Roll Call Vote as follows:

AYES:	Chair LaCava, Director McCann, Alternate Director Kranz, Director Aguirre, Director Parent, and Director Yamane
NOES:	None
ABSTAINED:	None
ABSENT:	Vice Chair Lawson-Remer

17. Board Consideration of Establishing an Ad Hoc Committee to Review Existing San Diego Community Power Board and Committee Compensation and Reimbursement Policy; and, if established, Chair Appointment of Members to the Committee

Chair LaCava provided an overview of existing Community Power Board and Committee Compensation and Reimbursement Policy.

There were no public comments on Item No. 17.

Motioned by Chair LaCava and seconded by Director Aguirre to appoint Directors Aguirre and Yamane and Chair LaCava to the Community Power Board and Committee Compensation and Reimbursement Policy Ad Hoc Committee. The motion carried 6/0 by Roll Call Vote as follows:

AYES:	Chair LaCava, Director McCann, Alternate Director Kranz, Director Aguirre, Director Parent, and Director Yamane
NOES:	None
ABSTAINED:	None
ABSENT:	Vice Chair Lawson-Remer

CHIEF EXECUTIVE OFFICER REPORT

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

DIRECTOR COMMENTS

None.

ADJOURNMENT

Community Power Board meeting adjourned at 6:34 p.m. to the next regular Board meeting scheduled on Thursday, September 26, 2024, at 5:00 p.m.

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Maricela Hernandez, MMC, CPMC
Clerk of the Board

SAN DIEGO COMMUNITY POWER

SAN DIEGO COMMUNITY POWER
Staff Report – Item 2

To: San Diego Community Power Board of Directors

From: Eric W. Washington, Chief Financial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Treasurer's Report for Fiscal Year Ending June 30, 2024

Date: September 26, 2024

RECOMMENDATION

Receive and File Treasurer's Report for Fiscal Year Ending June 30, 2024.

BACKGROUND

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

Community Power has prepared its year-to-date financial statements for the twelve-month period ended June 30, 2024, along with budgetary comparisons.

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

On February 22, 2024, the Community Power 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 April 30, 2024, and reports for the remaining fiscal year will include a comparison against the mid-year budget amendment adopted by the Board.

ANALYSIS AND DISCUSSION

Actual financial results for the Fiscal Year End 6/30/24: $1.244 billion in net operating revenues were reported compared to $1.304 billion budgeted for the period. $1.066 billion in total expenses were reported (including $1.033 billion in energy costs) compared to

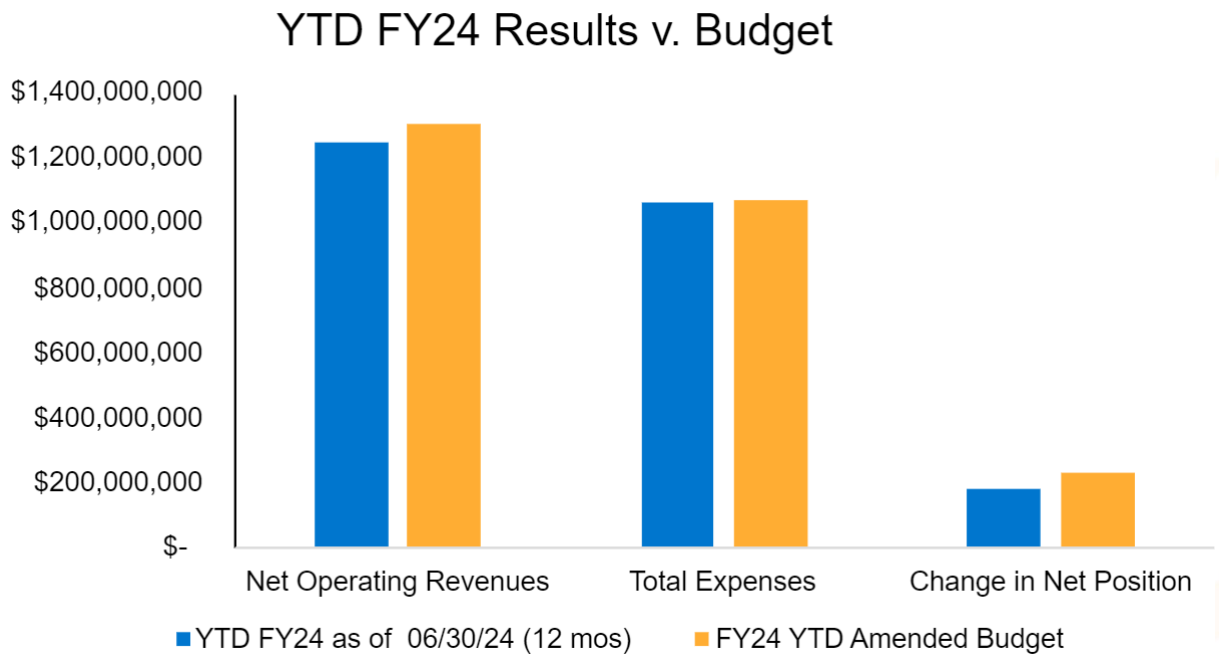
$1.071 billion budgeted for the period (including $1.020 billion budgeted for energy costs). After expenses, Community Power's change in net position of $178.7 million was reported Fiscal Year End 2023-24. The following is a summary of the actual results compared to the Fiscal Year 2023-24 Amended Budget.

Table 1: Budget Comparison Versus Actual Result

Budget Comparison				
	YTD FY24 as of 06/30/24 (12 mos)	FY24 YTD Amended Budget	Budget Variance ($)	Budget (%)
Net Operating Revenues	$ 1,244,325,827	$ 1,304,274,067	$ (59,948,240)	95%
Total Expenses	$ 1,065,625,201	$ 1,071,601,284	$ (5,976,083)	99%
Change in Net Position	**$ 178,700,626**	**$ 232,672,783**	**$ (53,972,157)**	**-23%**

- Net operating revenues finished $59.95 million (or 5.0 percentage points) under the budget primarily due to lower-than-expected customer load correlated with cooler weather in the summer months of calendar year 2024.
- Total expenses finished $5.98 million (or 1.0 percentage points) under the budget similarly due to lower-than-expected customer load corelated with the cooler weather in the summer months of calendar year 2024 and to investment income earned on Community Power's cash reserves. These savings were partially offset by higher-than expected energy costs.

Figure 1: Proforma versus Actual Results

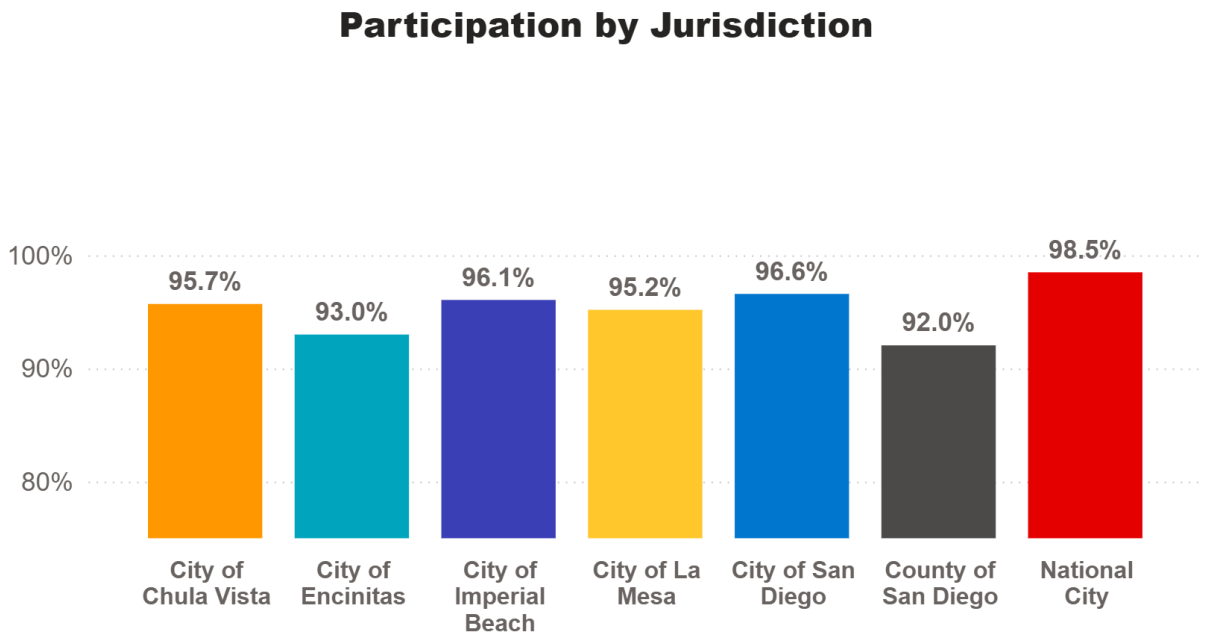


For the twelve-month Fiscal Year Ending 6/30/24, Community Power contributed $178,700,626 to its net position compared to the expected contribution of $232,672,783 per the Fiscal Year 2023-24 amended budget. Total Community Power reserves at the

Fiscal Year End were $369,226,921 in unrestricted cash. Total access to liquidity was $412,294,943, including availability under the line of credit. Community Power had a total Fiscal Year 2023-24 reserve target of $524,984,866, which is equivalent to 180-days of total operating expenses as set in Community Power's Reserve Policy and Strategic Goals.

As a reminder, the financial statements in Community Power's Treasurer's Reports are issued as a compilation. Certified public accountants generally issue three levels of financial statements: audit, review and compilation. Community Power expects to review preliminary audited financials for the same period Fiscal Year Ending 6/30/24 with the FRMC in October 2024.

Figure 2: Participation Rates as of 9/11/2024



Jurisdiction	Service Option Default	Eligible Accounts	Enrolled Accounts	Participation Rate
City of Chula Vista	PowerOn	98,859	94,606	95.7%
City of Encinitas	Power100	28,603	26,600	93.0%
City of Imperial Beach	PowerOn	10,974	10,541	96.1%
City of La Mesa	PowerOn	29,526	28,103	95.2%
City of San Diego	PowerOn	624,749	603,423	96.6%
County of San Diego	PowerOn	190,553	175,391	92.0%
National City	PowerOn	19,599	19,304	98.5%
Total		**1,002,863**	**957,968**	**95.5%**

The participation rate for Community Power reflects full enrollment of current member agencies. We are reporting on the number of enrolled accounts and eligible accounts associated with all member agencies on a rolling basis as of the reporting month.

Staff are also presenting the state of Community Power Arrearages related to financial risk for FRMC consideration and for regular review. Additional metrics can be added by request. The below arrearage data includes Community Power's Receivables aged 120+ Days as of 9/11/2024.

Figure 3: State of Community Power Arrearages as of 9/11/2024

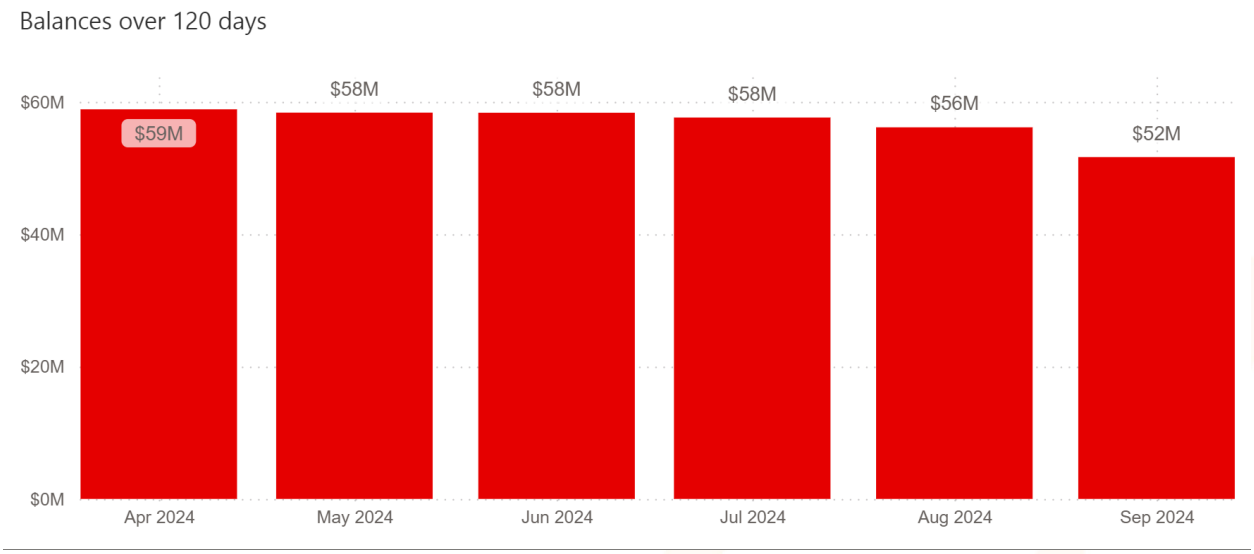


Figure 4: State of Community Power Arrearages Residential vs Commercial as of 9/11/2024

COMMITTEE REVIEW

The report was reviewed by the Finance and Risk Management Committee (FRMC) on September 19, 2024.

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: 2024 Year-to-Date Period Ended June 30, 2024, Financial Statements

MAHER
ACCOUNTANCY

ACCOUNTANTS' COMPILATION REPORT

Management
San Diego Community Power

Management is responsible for the accompanying financial statements of San Diego Community Power (a California Joint Powers Authority) which comprise the statement of net position as of June 30, 2024, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

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

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

Maher Accountancy
San Rafael, CA
August 8, 2024

SAN DIEGO COMMUNITY POWER
STATEMENT OF NET POSITION
As of June 30, 2024

ASSETS	
Current assets	
Cash and cash equivalents - unrestricted	$ 299,794,943
Cash and cash equivalents - restricted	500,000
Accounts receivable, net of allowance	103,512,165
Accrued revenue	67,144,547
Prepaid expenses	35,018,400
Other receivables	5,888,858
Deposits	12,162,199
Total current assets	524,021,112
Noncurrent assets	
Cash and cash equivalents - restricted	1,147,000
Lease asset, net of amortization	1,135,059
Capital assets, net of depreciation	123,784
Total noncurrent assets	2,405,843
Total assets	526,426,955
LIABILITIES	
Current liabilities	
Accrued cost of electricity	144,552,901
Accounts payable	4,726,427
Other accrued liabilities	1,422,404
State surcharges payable	528,942
Deposits - energy suppliers	4,055,000
Lease liability	964,404
Total current liabilities	156,250,078
Noncurrent liabilities	
Supplier security deposits	624,000
Lease liability	325,956
Total noncurrent liabilities	949,956
Total liabilities	157,200,034
NET POSITION	
Restricted for security collateral	1,647,000
Unrestricted	367,579,921
Total net position	$ 369,226,921

See accountants' compilation report.

SAN DIEGO COMMUNITY POWER
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
Year Ended June 30, 2024

OPERATING REVENUES	
Electricity sales, net	$ 1,243,068,892
Grant revenue	983,500
Other income	10,598,252
Total operating revenues	1,254,650,644
OPERATING EXPENSES	
Cost of electricity	1,043,990,061
Contract services	19,750,534
Staff compensation	11,399,388
Other operating expenses	3,261,424
Depreciation and amortization	727,567
Total operating expenses	1,079,128,974
Operating income	175,521,670
NON-OPERATING REVENUES (EXPENSES)	
Interest income	9,384,873
Interest and financing expense	(1,691,953)
Nonoperating revenues (expenses), net	7,692,920
CHANGE IN NET POSITION	183,214,590
Net position at beginning of year	186,012,331
Net position at end of year	$ 369,226,921

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS
Year Ended June 30, 2024

CASH FLOWS FROM OPERATING ACTIVITIES	
Receipts from customers	$ 1,264,068,317
Receipts of supplier security deposits	37,126,179
Receipts from wholesale sales	14,984,889
Other operating receipts	11,581,752
Payments to suppliers for electricity	(1,013,786,468)
Payments for goods and services	(21,749,019)
Payments of staff compensation and benefits	(11,066,586)
Payments for deposits and collateral	(15,783,943)
Payments of state surcharges	(2,321,269)
Net cash provided by operating activities	263,053,852
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES	
Principal payments - bank note	(35,730,000)
Interest and related expense payments	(2,190,907)
Net cash provided (used) by non-capital financing activities	(37,920,907)
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES	
Payments of lease liability	(604,328)
Payments to acquire capital assets	(71,550)
Net cash (used) by capital and related financing activities	(675,878)
CASH FLOWS FROM INVESTING ACTIVITIES	
Interest income received	9,153,996
Net change in cash and cash equivalents	233,611,063
Cash and cash equivalents at beginning of year	67,830,880
Cash and cash equivalents at end of year	$ 301,441,943
Reconciliation to the Statement of Net Position	
Cash and cash equivalents (unrestricted)	$ 299,794,943
Restricted cash - current	500,000
Restricted cash - noncurrent	1,147,000
Cash and cash equivalents	$ 301,441,943

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS (continued)
Year Ended June 30, 2024

RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES

Operating income	$ 175,521,670
Adjustments to reconcile operating income to net cash provided by operating activities	
Depreciation and amortization expense	727,567
(Increase) decrease in:	
Accounts receivable, net	7,001,566
Accrued revenue	11,648,237
Prepaid expenses	(4,490,902)
Other receivables	(5,424,266)
Deposits	5,494,151
Increase (decrease) in:	
Accrued cost of electricity	67,207,558
Accounts payable	4,287,161
Other accrued liabilities	(2,372,243)
State surcharges payable	28,353
Deposits - energy suppliers	3,425,000
Net cash provided by operating activities	$ 263,053,852

MAHER
ACCOUNTANCY

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 year ended June 30, 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
August 8, 2024

SAN DIEGO COMMUNITY POWER
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
Year Ended June 30, 2024

	2023/24 YTD Amended Budget	2023/24 YTD Actual	2023/24 YTD Amended Budget Variance (Under) Over	2023/24 YTD Actual/ Amended Budget %	2023/24 Annual Amended Budget	2023/24 Amended Budget Remaining
REVENUES AND OTHER SOURCES						
Gross Ratepayer Revenues	1,365,732,007	$ 1,261,779,464	(103,952,543)	92%	$ 1,365,732,007	$ 103,952,543
Less: Uncollectible Customer Accounts	(61,457,940)	(18,710,572)	42,747,368	30%	(61,457,940)	(42,747,368)
Grant Revenue	-	983,500	983,500		-	(983,500)
Other Income		273,435	273,435		-	(273,435)
Total Revenues and Other Sources	1,304,274,067	1,244,325,827	(59,948,240)		1,304,274,067	59,948,240
OPERATING EXPENSES						
Cost of Energy	1,020,844,552	1,033,665,244	12,820,692	101%	1,020,844,552	(12,820,692)
Professional Services and Consultants	22,250,657	18,341,191	(3,909,466)	82%	22,250,657	3,909,466
Personnel Costs	11,603,394	11,399,388	(204,006)	98%	11,603,394	204,006
Marketing and Outreach	2,925,978	1,951,399	(974,579)	67%	2,925,978	974,579
General and Administration	6,812,564	2,478,220	(4,334,344)	36%	6,812,564	4,334,344
Programs	115,500	847,719	732,219	734%	115,500	(732,219)
Total Operating Expenses	1,064,552,645	1,068,683,161	4,130,516		1,064,552,645	(4,130,516)
Operating Income (Loss)	239,721,422	175,642,666	(64,078,756)		239,721,422	64,078,756
NON-OPERATING REVENUES (EXPENSES)						
Investment Income	-	9,384,873	9,384,873		-	(9,384,873)
Interest and Related Expenses	(2,393,639)	(1,671,913)	721,726	70%	(2,393,639)	(721,726)
Transfer to Capital Investment Program	(4,655,000)	(4,655,000)	-	100%	(4,655,000)	-
Total Non-Operating Revenues (Expenses)	(7,048,639)	3,057,960	10,106,599		(7,048,639)	(10,106,599)
NET CHANGE	$ 232,672,783	$ 178,700,626	$ (53,972,157)		$ 232,672,783	$ 53,972,157

See accountants' compilation report.

SAN DIEGO COMMUNITY POWER
Staff Report – Item 3

To: San Diego Community Power Board of Directors

From: Colin Santulli, Director of Programs

Via: Karin Burns, Chief Executive Officer

Subject: Update on Programs

Date: September 26, 2024

RECOMMENDATION

Receive and file update on customer energy programs.

BACKGROUND

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

ANALYSIS AND DISCUSSION

Updates on customer energy programs are detailed below.

Commercial Programs

Commercial Application Assistance Pilot

Status: Please refer to Item 3 of the August 2024 Board staff report for the most recent update on this pilot.

Efficient Refrigeration Pilot Program

Status: In late December 2023, Community Power was awarded a grant from the California Department of Food and Agriculture's Healthy Refrigeration Grant Program. Community Power will use the grant funds to launch a pilot program that will provide energy-efficient refrigeration equipment and additional technical assistance to corner stores and/or small businesses in its service territory. Staff are currently working on procuring the vendors necessary to implement the pilot program. Staff released a Request for Proposals ("RFP") for an equipment vendor on July 23, 2024 and the RFP closed on September 6, 2024.

Next Steps: Staff anticipate bringing the contract for approval to the October 2024 Board meeting. Staff will continue to develop program materials in anticipation of its launch in Q4 CY 2024.

FLEXmarket Pilot
Please refer to Item 3 of the March 2024 Board staff report for the most recent update on this program.

Residential Programs

California Energy Commission ("CEC") Equitable Building Decarbonization Direct Install ("EBD DI") Program
Please refer to Item 3 of the August 2024 Board staff report for the most recent update on this program.

Flexible Load Programs

Distributed Energy Resources Management System ("DERMS") Procurement
Status: Staff conducted product demonstrations with the top two DERMS vendors in late August 2024. Staff are negotiating a Software as a Solution ("SaaS") agreement with the selected vendor.

Next Steps: Staff anticipate bringing the vendor agreement to the Board for approval in September 2024.

Managed Charging Pilot
Status: The Managed Charging (V1G) software RFP closed August 27, 2024. Staff are in the process of reviewing and scoring the eight proposals that were received.

Next Steps: After proposal review is complete, Staff will schedule interviews and product demonstrations before selecting a vendor solution. Staff anticipate bringing the V1G vendor agreement to the Board for approval in Q4 CY 2024.

Solar and Energy Storage

Disadvantaged Communities–Single-Family Affordable Solar Homes ("DAC-SASH") Readiness Pilot
Please refer to Item 3 of the August 2024 Board staff report for the most recent update on this pilot.

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 an item to the Board by Q1 CY 2025 to update the tariff with support for virtual and aggregation versions of NBT.

Solar Battery Savings Program

Status: The Solar Battery Savings Program began enrolling contractors and battery manufacturers in July 2024 and began accepting applications on July 29, 2024. To date, applicants have submitted over 1,300 applications, including 500 within the first 24 hours. Applications have been received from all jurisdictions within Community Power's service territory. The program currently has over 40 approved contractors actively participating and 12 approved battery manufacturers. The Solar Battery Savings webpage provides a directory of approved local contractors and battery manufacturers, the program manual, FAQs, and real-time updates on the budget. A web-based portal for contractors and battery manufacturers allows contractors to submit applications, access an interactive Communities of Concern Geographic Information Systems ("GIS") map for incentive level determination, and view program files in a fillable format. Additionally, contractors can track application status and remaining program budget through the portal. Battery manufacturers can access customer participation through the portal and submit performance data quarterly. Staff has set up weekly office hours and sends updates in a weekly newsletter every Friday to all approved contractors.

Next Steps: Staff are continuing to review applications and improve contractor communications and program processes. Staff anticipate bringing a full program update to the Board in September 2024.

Solar for Our Communities
Please refer to Item 3 of the August 2024 Board staff report for the most recent update on this program.

San Diego Regional Energy Network ("SDREN")
SDREN Formation
Please refer to Item 3 of the August 2024 Board staff report for the most recent update on this pilot.

AD-HOC COMMITTEE AND/OR SUBCOMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A

SAN DIEGO COMMUNITY POWER
Staff Report – Item 4

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Chief Commercial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Update on Power Resources

Date: September 26, 2024

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 twelve people strong with a Senior Quantitative Energy Analyst who joined the team in September. The Power Services team has two open positions currently, and is excited to continue stable, prudent growth through 2024.

Portfolio Updates

On April 25, 2024, SDCP's Board of Directors approved the First Amendment to the EEI Transaction Confirmation for Modified CAM Resource Adequacy between SDCP and SDG&E. The original confirmation was executed on July 8, 2022. In early September, SDCP executed the approved amendment, which is effective as of September 6, 2024, pending approval by the CPUC. The executed version of the amendment includes modifications to the version approved by the Board on April 25, 2024; the only adjustments were adjustments to the performance assurance amounts, and they were

approved by SDCP General Counsel and consistent with authority delegated to SDCP's CEO via the Energy Risk Management Policy.

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 1,600 MW of renewable generation and over 1,000 MW of storage capacity. Staff remain in negotiations with several other developers for additional resources that are expected to be online between 2025 and 2029. In addition, pursuant to CAISO's revisions to their cluster study process for interconnecting future projects, staff have issued an RFP for CAISO Cluster 15 projects, which will serve to select renewable and storage projects that SDCP are most interested in getting studied by the CAISO. SDCP will also be issuing an All-Source RFO with an emphasis on clean, firm resources to meet MTR requirements and enhance SDGP's portfolio. 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) program, SDCP launched the RFP solicitation for respective program resources on August 26th, proposals for which were due February 24, 2024. Staff have notified shortlisted participants and hope to present the resulting PPAs to the Board in the coming months.

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

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

Short-Term RPS Procurement

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

Market Update

Due to limited resource availability in the broader Western Interconnection, lingering supply chain impacts that have delayed development of new-build energy resources, and recent implementation of tariffs and duties on foreign imports, the market for renewable energy and resource adequacy (RA) resources continues to be exceptionally tight and expensive. Staff are working with developers, industry groups, the CPUC, and CA Governor's Office and legislators to i) develop near-term solutions while also actively procuring short-term energy and capacity products and long-term energy resources to meet SDCP's portfolio needs practically and cost-effectively, and ii) to establish a portfolio of resources that will provide value to SDCP and California's clean, reliable energy needs into the future.

Despite a recent warm spell, near-term California power markets continue to soften due to declining power and gas markets throughout the US, and robust 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

To: San Diego Community Power Board of Directors

From: Chandra Pugh, Director of People

Via: Karin Burns, Chief Executive Officer

Subject: Update on Human Resources

Date: September 26, 2024

RECOMMENDATION

Receive and File the Update on Human Resources.

BACKGROUND

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

Hiring:

This month, Community Power welcomed our new Public Outreach Coordinator Catherine Riegel, Senior Quantitative Energy Analyst, Bronte Parker and Rachel Zook, Program Manager - Vehicle Grid Integration.

We look forward to welcoming two new Senior Program Managers next month: Marissa Van Sant and Amy Whitehouse.

Open positions:

Data Engineer
Origination Manager: Virtual Interviews
Director of Portfolio Management
Marketing Manager
Senior Counsel / Assistant General Counsel
Rates Analyst
Finance Manager SD REN
Sr. Cyber Security Analyst

Workplace Safety:

Community Power has contracted with Ed Sherman Consultants to provide comprehensive training, threat assessment and ongoing security consulting services related to crises management and employee safety. We look forward to our 2nd in person training topics, Workplace Violence Threat Assessment and Workplace Violence Prevention Key Principles for Leadership.

Our WPP document and incident log is available to staff and located on our HR website. The plan will be reviewed periodically to ensure relevant revisions and updates are captured accordingly.

DISCUSSION AND ANALYSIS

N/A

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS:

N/A

SAN DIEGO COMMUNITY POWER
Staff Report – Item 6

To: San Diego Community Power Board of Directors

From: Lucas Utouh, Senior Director of Data Analytics and Customer Operations

Via: Karin Burns, Chief Executive Officer

Subject: Update on Customer Operations

Date: September 26, 2024

RECOMMENDATION

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

BACKGROUND

Staff will provide regular updates to the Board of Directors centered around tracking 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

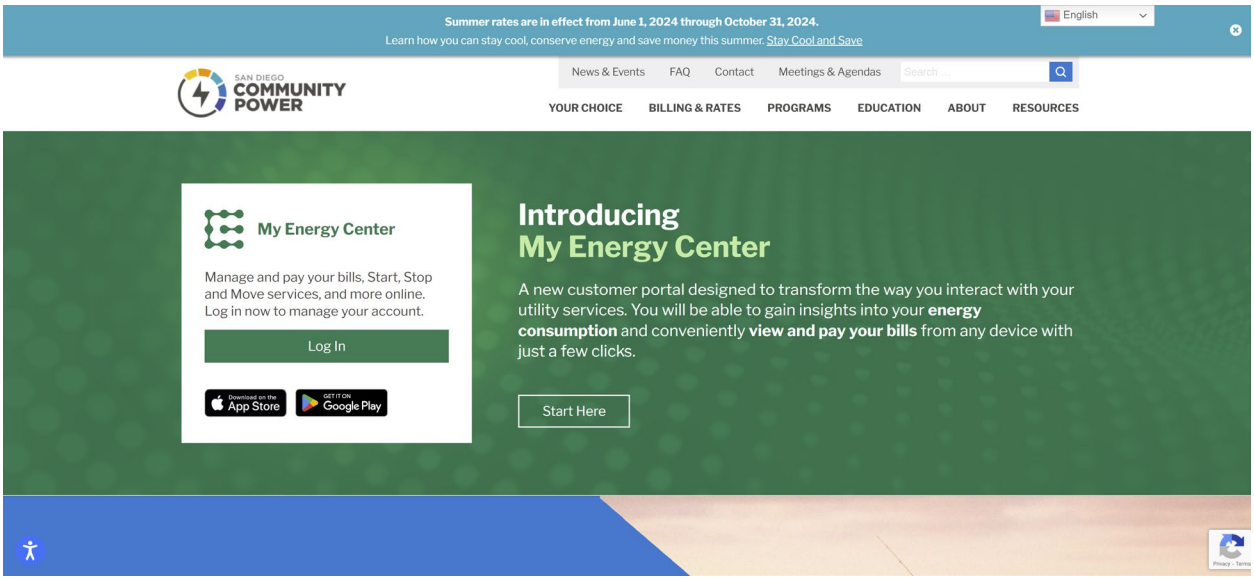
A) Enrollment Update

As of September 09, 2024, SDCP is serving a cumulative total count of **957,968** active accounts.

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

B) My Energy Center Update

Please note that as of August 4, 2024, SDG&E's My Account portal became My Energy Center. The link to this new portal is available on both SDG&E and Community Power's websites. Please note that customers will still be able to use their SDG&E My Account login credentials to view their SDG&E and Community Power account information and make payments through My Energy Center. On SD Community Power's homepage, there currently is a banner with My Energy Center to allow our customers to easily access the new portal. See the snippet below for reference:



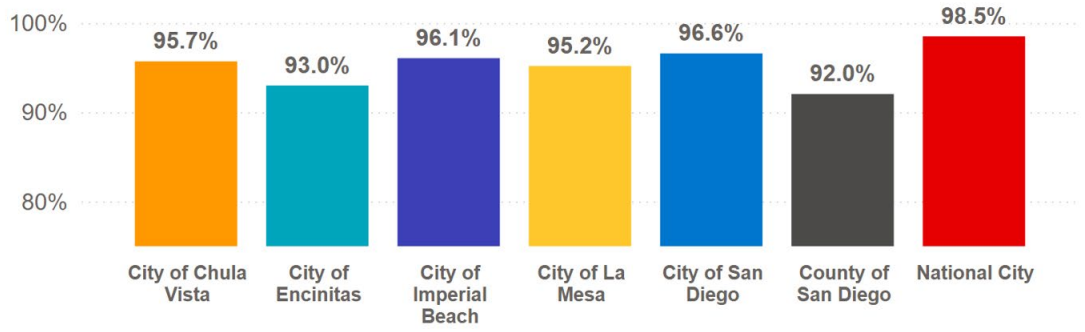
C) Customer Participation Tracking

With the roll out of PowerBase and Power100 Green+ as of 7/1/2024, staff and Calpine have worked together to completely recalibrate and revamp our customer participation statistics as we no longer have just two service options but four and customers are able to elect their participation in any of the 4 options, provided they meet the requisite eligibility criteria. The below charts summarize these actions accordingly as of September 09, 2024:

Enrolled Accounts	Participation Rate
957,968	95.5%

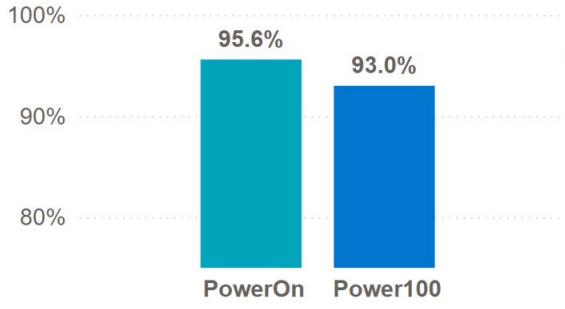
Participation

Participation by Jurisdiction

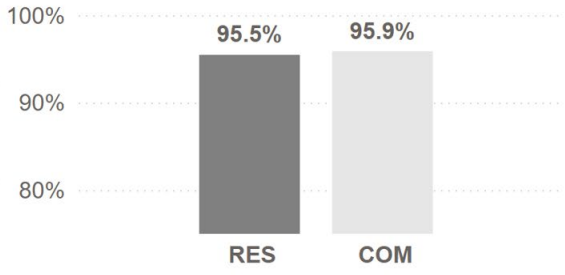


Jurisdiction	Service Option Default	Eligible Accounts	Enrolled Accounts	Participation Rate
City of Chula Vista	PowerOn	98,859	94,606	95.7%
City of Encinitas	Power100	28,603	26,600	93.0%
City of Imperial Beach	PowerOn	10,974	10,541	96.1%
City of La Mesa	PowerOn	29,526	28,103	95.2%
City of San Diego	PowerOn	624,749	603,423	96.6%
County of San Diego	PowerOn	190,553	175,391	92.0%
National City	PowerOn	19,599	19,304	98.5%
Total		**1,002,863**	**957,968**	**95.5%**

Participation by Default Service Option



Residential vs Commercial Participation

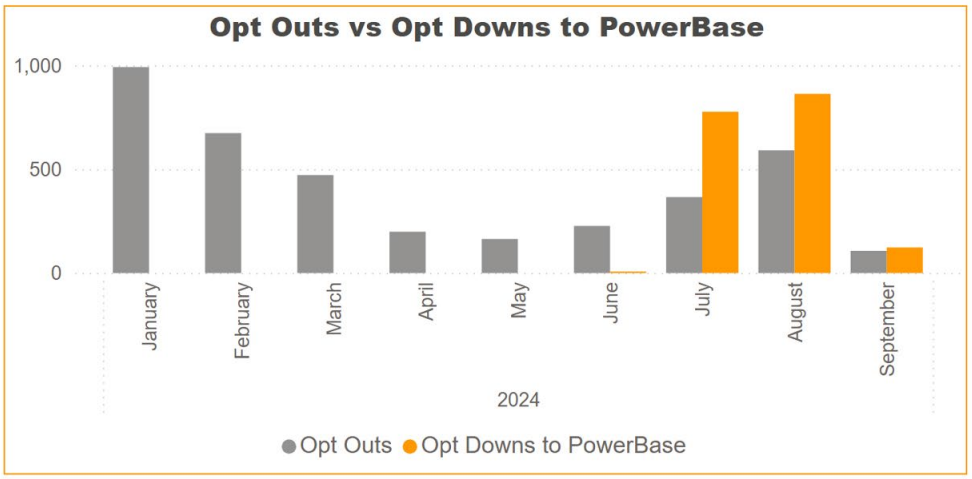


Service Option

PowerBase		PowerOn		Power100		Power100 Green+	
Enrolled	1,688	Enrolled	922,118	Enrolled	34,161	Enrolled	1
Participation	0.2%	Participation	96.3%	Participation	3.6%	Participation	0.0%

Service Option Enrollment Summary

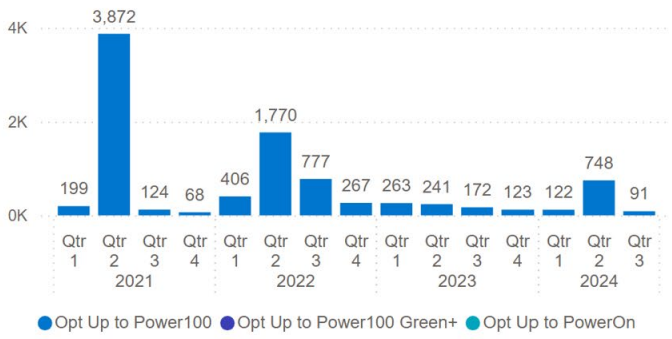
Jurisdiction	Service Option Default	Enrolled Accounts	Power Base Enrolled	Power Base %	PowerOn Enrolled	PowerOn %	Power 100 Enrolled	Power 100 %	Power100 Green+ Enrolled	Power100 Green+ %
City of Chula Vista	PowerOn	94,606	144	0.2%	93,557	98.9%	905	1.0%		
City of Encinitas	Power100	26,600	54	0.2%	442	1.7%	26,104	98.1%		
City of Imperial Beach	PowerOn	10,541	19	0.2%	10,443	99.1%	79	0.7%		
City of La Mesa	PowerOn	28,103	47	0.2%	27,796	98.9%	260	0.9%		
City of San Diego	PowerOn	603,423	887	0.1%	596,531	98.9%	6,004	1.0%	1	0.0%
County of San Diego	PowerOn	175,391	517	0.3%	174,097	99.3%	777	0.4%		
National City	PowerOn	19,304	20	0.1%	19,252	99.7%	32	0.2%		
Total		**957,968**	**1,688**	**0.2%**	**922,118**	**96.3%**	**34,161**	**3.6%**	**1**	**0.0%**



Opt Up History

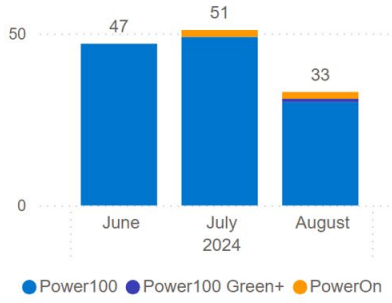
Total Opt Ups	Opt Ups Current*
9,243	8,120

Opt Ups Quarterly



Opt Ups Monthly

Last 3 Calendar Months



Opt Ups by Jurisdiction

Jurisdiction	2021	2022	2023	2024 Q1	2024 Q2	2024-7	2024-8	2024-9	Total
City of Chula Vista	710	175	61	5	30	3	4		**988**
City of Encinitas	18	1	1		1				**21**
City of Imperial Beach	60	29	11	2	3				**105**
City of La Mesa	155	120	19	3	1	1	1		**300**
City of National City			12	17	7				**36**
City of San Diego	3,316	2,895	488	75	130	41	21	4	**6,970**
County of San Diego	4		207	20	576	6	7	3	**823**
Total	**4,263**	**3,220**	**799**	**122**	**748**	**51**	**33**	**7**	**9,243**

Opt Ups by Customer Class

Customer Class	2021	2022	2023	2024 Q1	2024 Q2	2024-7	2024-8	2024-9	Total
Commercial	4,256	296	232	47	609	10	4	2	**5,456**
Residential	7	2,924	567	75	139	41	29	5	**3,787**
Total	**4,263**	**3,220**	**799**	**122**	**748**	**51**	**33**	**7**	**9,243**

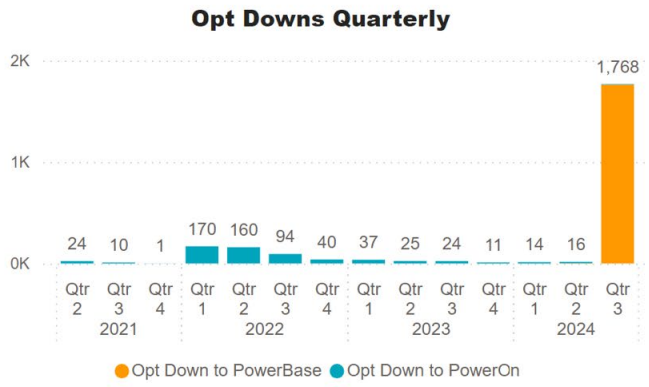
Opt Ups by Method

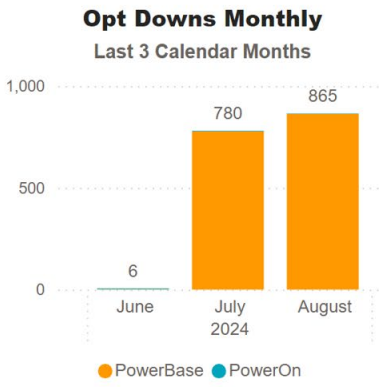
Opt Method	2021	2022	2023	2024 Q1	2024 Q2	2024-7	2024-8	2024-9	Total
CSR	4,232	1,372	301	52	679	27	9	4	**6,676**
IVR	4	85	84	23	9		5		**210**
Web	27	1,763	414	47	60	24	19	3	**2,357**
Total	**4,263**	**3,220**	**799**	**122**	**748**	**51**	**33**	**7**	**9,243**

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

Opt Down History

Total Opt Downs	Opt Downs Current*
2,394	2,182





Opt Downs by Jurisdiction

Jurisdiction	2021	2022	2023	2024 Q1	2024 Q2	2024-7	2024-8	2024-9	Total
City of Chula Vista		2	4			78	62	12	**158**
City of Encinitas	35	429	74	12	10	22	23	13	**618**
City of Imperial Beach		1				9	11	1	**22**
City of La Mesa		4				22	24	2	**52**
City of National City					1	8	9	3	**21**
City of San Diego		28	13	2	3	390	466	65	**967**
County of San Diego			6		2	251	270	27	**556**
Total	**35**	**464**	**97**	**14**	**16**	**780**	**865**	**123**	**2,394**

Opt Downs by Customer Class

Customer Class	2021	2022	2023	2024 Q1	2024 Q2	2024-7	2024-8	2024-9	Total
Commercial	34	23	9	2		202	127	13	**410**
Residential	1	441	88	12	16	578	738	110	**1,984**
Total	**35**	**464**	**97**	**14**	**16**	**780**	**865**	**123**	**2,394**

Opt Downs by Method

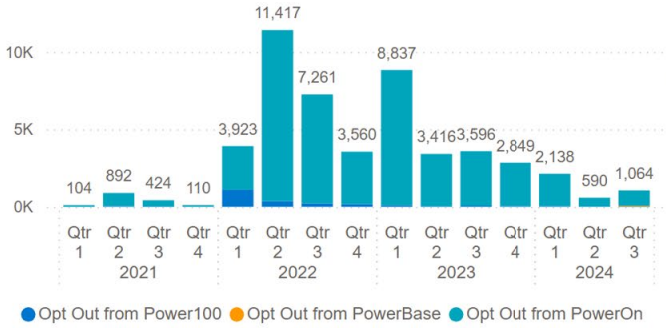
Opt Method	2021	2022	2023	2024 Q1	2024 Q2	2024-7	2024-8	2024-9	Total
CSR	31	311	65	10	10	572	692	92	**1,783**
IVR	4	26	3	1		75	60	14	**183**
Web		127	29	3	6	133	113	17	**428**
Total	**35**	**464**	**97**	**14**	**16**	**780**	**865**	**123**	**2,394**

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

Opt Out History

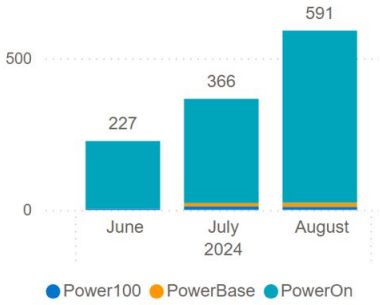
Total Opt Outs	Opt Outs Current*
50,181	44,709

Opt Outs Quarterly



Opt Outs Monthly

Last 3 Calendar Months



Opt Outs by Jurisdiction

Jurisdiction	2021	2022	2023	2024 Q1	2024 Q2	2024-7	2024-8	2024-9	Total
City of Chula Vista	267	3,467	747	120	55	34	55	9	**4,754**
City of Encinitas	66	1,874	230	39	10	14	12	1	**2,246**
City of Imperial Beach	32	343	99	25	8	3	8	1	**519**
City of La Mesa	84	1,269	235	39	21	8	17	1	**1,674**
City of National City			284	22	11	5	8	1	**331**
City of San Diego	1,079	19,207	3,185	529	226	157	224	42	**24,649**
County of San Diego	2	1	13,918	1,364	259	145	267	52	**16,008**
Total	**1,530**	**26,161**	**18,698**	**2,138**	**590**	**366**	**591**	**107**	**50,181**

Opt Outs by Customer Class

Customer Class	2021	2022	2023	2024 Q1	2024 Q2	2024-7	2024-8	2024-9	Total
Commercial	1,492	535	1,690	120	33	30	33	7	**3,940**
Residential	38	25,626	17,008	2,018	557	336	558	100	**46,241**
Total	**1,530**	**26,161**	**18,698**	**2,138**	**590**	**366**	**591**	**107**	**50,181**

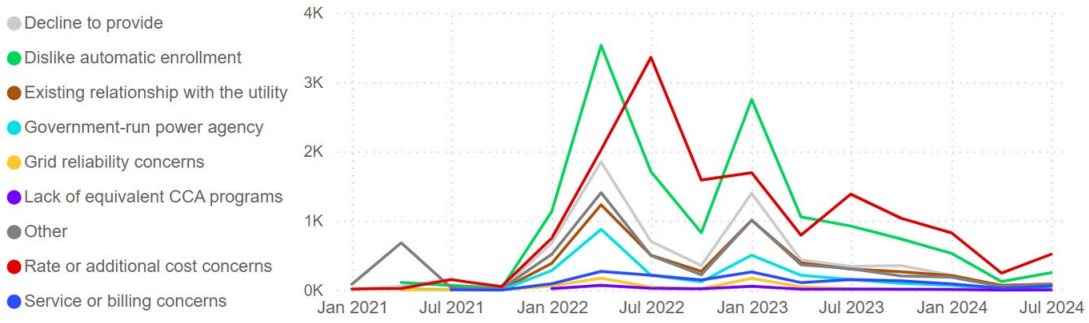
Opt Outs by Method

Opt Method	2021	2022	2023	2024 Q1	2024 Q2	2024-7	2024-8	2024-9	Total
CSR	1,104	6,967	4,706	591	188	106	182	28	**13,872**
IVR	102	4,890	3,794	508	150	89	167	28	**9,728**
Web	324	14,304	10,198	1,039	252	171	242	51	**26,581**
Total	**1,530**	**26,161**	**18,698**	**2,138**	**590**	**366**	**591**	**107**	**50,181**

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

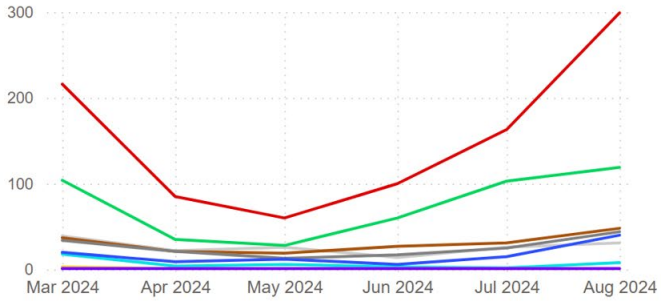
Opt Out Reason Summary

Opt Outs by Reason Quarterly



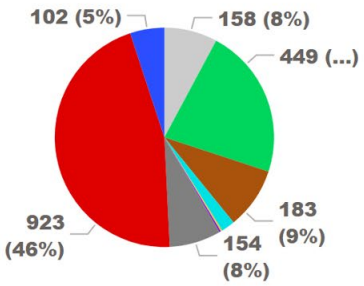
Opt Outs by Reason Monthly

Last 6 Calendar Months



Opt Out Reason Distribution

Last 6 Calendar Months

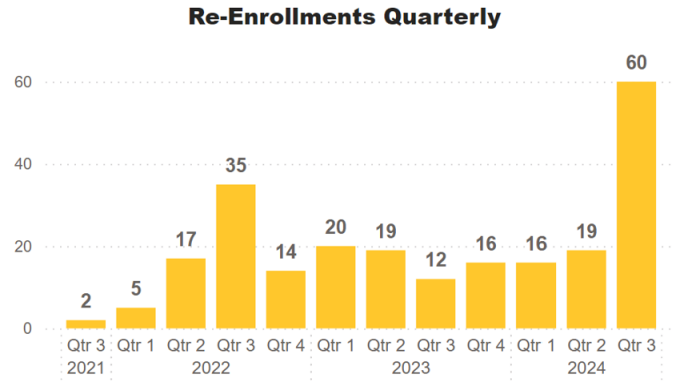


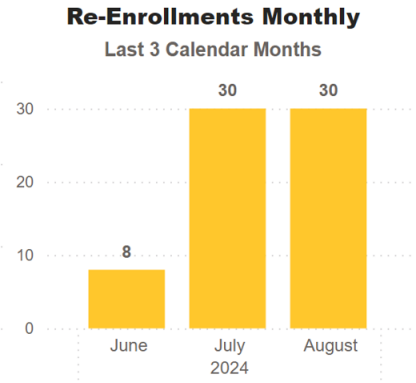
Opt Outs by Reason Table

Opt Out Reason	2021	2022	2023	2024 Q1	2024 Q2	2024-7	2024-8	2024-9	Total
Decline to provide	228	3,584	2,524	214	62	26	31	6	**6,675**
Dislike automatic enrollment	204	7,196	5,461	529	123	103	119	28	**13,763**
Existing relationship with the utility	2	2,390	1,968	209	67	31	48	6	**4,721**
Government-run power agency	24	1,492	963	67	13	2	8	4	**2,573**
Grid reliability concerns	7	293	252	14	1		1		**568**
Lack of equivalent CCA programs		131	90	7	1	1	1		**231**
Other	819	2,639	1,885	185	51	25	44	6	**5,654**
Rate or additional cost concerns	240	7,716	4,901	825	245	163	299	55	**14,444**
Service or billing concerns	6	720	654	88	27	15	40	2	**1,552**
Total	**1,530**	**26,161**	**18,698**	**2,138**	**590**	**366**	**591**	**107**	**50,181**

Re-Enrollment Requests

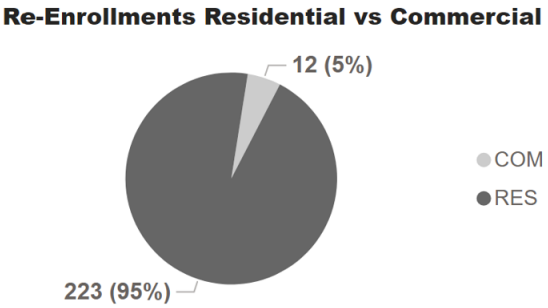
Excludes closed accounts





Re-Enrollments by Jurisdiction

Jurisdiction	Accounts
City of Chula Vista	19
City of Encinitas	20
City of Imperial Beach	3
City of La Mesa	6
City of National City	1
City of San Diego	150
County of San Diego	36
Total	**235**



Mass enrollment for all customer accounts within National City and the Unincorporated County of San Diego concluded on April 1, 2024.

D) Contact Center Metrics

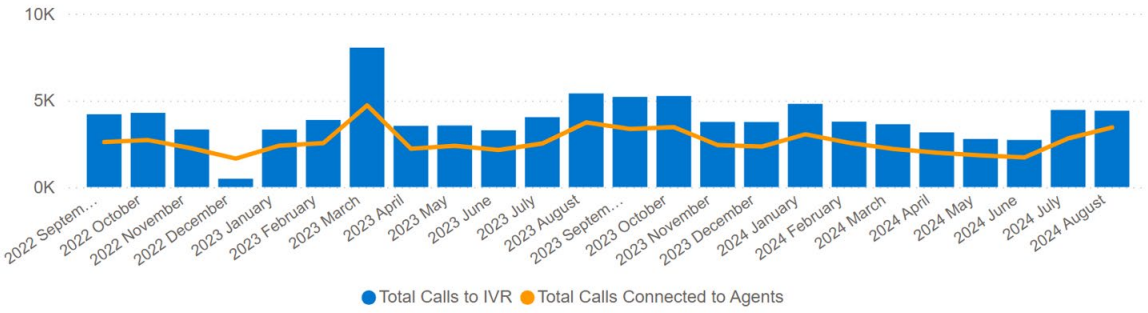
As expected, call volumes rose in July as summer rates came into effect as of June 1, 2024 and customers started seeing increased bills as a function of the Winter to Summer price differential. Our Public Affairs Team has put out Summer season and bill saving tips' communication and is running social media campaign around Summer energy conservation that should help provide our customers with resources and tips to reduce higher bills.

The chart below summarizes contact made by customers into the Contact Center broken down by month through September 9th, 2024:

Contact Center Metrics

Contact Center Call Volume Trends

Last 24 Calendar Months

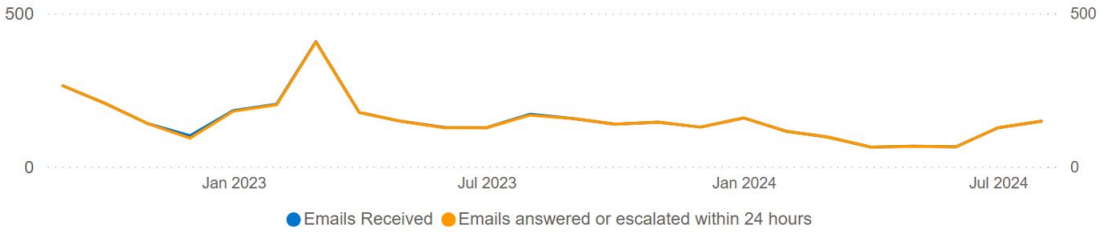


Interactive Voice Response (IVR) and Service Level Agreement (SLA) Metrics

	2021	2022	2023	2024 Q1	2024 Q2	2024-7	2024-8	Total
Total Calls to IVR	2,289	47,118	52,977	12,198	8,646	4,445	4,401	**132,074**
Total Calls Connected to Agents	1,401	30,174	34,173	7,792	5,519	2,807	3,438	**85,304**
Avg Seconds to Answer	20.00	11.50	6.75	15.67	9.00	38.00	1.00	**12.49**
Avg Call Duration (Minutes)	8.5	9.8	9.6	9.4	8.7	10.9	10.4	**9.4**
Calls Answered within 60 Seconds (75% SLA)	96.23%	95.50%	97.57%	92.85%	96.92%	83.27%	72.56%	**95.32%**
Abandon Rate	0.57%	0.36%	0.19%	0.57%	0.30%	1.54%	2.71%	**0.45%**

Customer Service Email Volume Trends

Last 24 Calendar Months



Customer Service Emails

	2021	2022	2023	2024 Q1	2024 Q2	2024-7	2024-8	Total
Emails Received	272	2,894	2,116	371	196	127	148	**6,124**
Emails answered or escalated within 24 hours	257	2,821	2,107	371	196	127	148	**6,027**
Completion %	94%	96%	100%	100%	100%	100%	100%	**98%**

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.

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

E) Joint Rate Comparison Update

As a result of rolling out Board approved two new service options i.e. PowerBase and Power100 Green+ as of 7/1/2024, staff is pleased to let the Community Advisory Committee know that our latest joint rate comparison (JRC) depicting SDG&E rates effective as of March 1, 2024 in comparison to SD Community Power's rates including PowerBase has been published and can be accessed via SDCP_SDGE_JRC 07.01.2024_Final1.pdf.

F) Key Accounts Forum

San Diego Community Power hosted its first ever Key Accounts Forum on August 16, 2024 at the San Diego Library, Shiley Suite. The purpose of this forum was for SD Community Power staff to actively engage with its key account stakeholders, specifically around strategic partnership opportunities in 100% renewable and carbon free service options, local development opportunities and customer application assistance. There were 30 key account participants from various segments including schools, biotech, property management, airport, water agencies and hospitals etc.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A

SAN DIEGO COMMUNITY POWER
Staff Report – Item 7

To: San Diego Community Power Board of Directors

From: Jen Lebron, Director of Public Affairs

Via: Karin Burns, Chief Executive Officer

Subject: Update on Marketing, Public Relations, and Local Government Affairs

Date: September 26, 2024

RECOMMENDATION

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

BACKGROUND

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

ANALYSIS AND DISCUSSION

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

Recent and Upcoming Public Engagement Events

Montgomery-Waller Community Park Movie in the Park
La Mesa Chamber of Commerce Summer Bash Business Expo
Central Labor Council Laborpalooza Dinner
San Ysidro Health Service Emerald Ball
North San Diego Business Chamber Regional Connect
Fallbrook Community Center Movie in the Park
Collier Park Movie in the Park
San Diego Wave FC Fan Fest
Bike the Bay
Ramona Library Food Pantry
San Diego County Regional Airport Authority Sustainability Fair
National City Chamber of Commerce Nonprofit Summit
Lincoln Acres County Park Movie in the Park

Skyline Hills Library
San Diego Housing Federation Affordable Housing & Community Development Conference
“Understanding Your Bill” Workshop – Skyline Hills Library
Clairemont Family Day
North San Diego Business Chamber’s 36th Annual Rancho Bernardo Alive
Green Corridor Project - Community Connectors Conference
Mission Valley Library
SBE Small Business Expo
Imperial Beach Concerts in the Park
Adams Avenue Street Fair
San Diego 350 Brighter Future Gala
Connect Innovation Day 2024
(Doing) Business for Good Summit
CLEAResult Energy Forum

Marketing, Communications and Outreach

Community Power has been working with local media to provide the public with information about the services it offers. 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 several “Understanding Your Bill” workshops in San Diego and Imperial Beach. These events are part of 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 Community Power service for large commercial and industrial customers.

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

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

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

Local Government Affairs

Community Power played a key role in advocating for the establishment of safety and siting guidelines for Battery Energy Storage Systems (BESS) in County of San Diego unincorporated areas. By engaging with County officials, labor, business, and environmental stakeholders, Community Power's efforts helped prevent the passage of a proposed moratorium on BESS projects, which could have had a chilling effect on projects necessary for Community Power to achieve its renewable energy and local development goals.

The County Board of Supervisors voted on Sept. 11 to have staff return with BESS guidelines by December. Community Power will continue to work with its coalition of stakeholders and County staff to provide input and expertise to ensure that the forthcoming guidelines prioritize safety, sustainability, and community benefits that include local workforce development. These guidelines will help facilitate the responsible development of energy storage projects that are essential to meeting Community Power and its member agencies' renewable energy goals.

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A

SAN DIEGO COMMUNITY POWER
Staff Report – Item 8

To: San Diego Community Power Board of Directors

From: Xiomalys Crespo, Senior Community Engagement Manager

Via: Karin Burns, Chief Executive Officer

Subject: Community Advisory Committee Monthly Report

Date: September 26, 2024

RECOMMENDATION

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

BACKGROUND

Per Section 5.10.3 of the San Diego Community Power (Community Power) Joint Powers Authority (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 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 update will take place during its October 24, 2024 regular meeting.

ANALYSIS AND DISCUSSION

During the September 12, 2024, regular CAC meeting:

- Members welcomed new CAC member representing the City of San Diego Luis Montero-Adams and unanimously approved the consent agenda, which included updates on Marketing, Public Relations and Local Government Affairs, Customer Operations, and Programs.
- The Regulatory and Legislative Affairs team reported on end-of-session policy items, with CAC members inquiring about Resource Adequacy impacts and

advocacy around rooftop solar. Members also congratulated staff for successes around locally driven bills and the San Diego Regional Energy Network.

- The CAC received a presentation on the Community Clean Energy Grant Program, in which members learned about progress achieved through the 2023 grant cycle projects and heard project overviews of the recently announced grantees for the 2024 grant cycle.
- The CAC also received an overview of the San Diego Community Power Network, which will launch a solicitation process to formalize Community Power's partnerships with community-based organizations. Members suggested that this may be an opportunity for grant awardees to enable cross-organizational coordination of projects in the future.
- Committee members shared updates on the County of San Diego's Climate Action Plan and actions around battery storage guidelines, as well as shared anecdotes about their participation in Community Power-sponsored events. Member Harris acknowledged that Community Power is nearing its fifth anniversary and recommended that the Board receive a report on accomplishments to date.

As of September 18, 2024, the CAC has two vacancies representing the County of San Diego (unincorporated) and the City of Chula Vista. Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically. The vacancies continue to be advertised at meetings, community events, and through Community Power'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 9

To: San Diego Community Power Board of Directors

From: Alyson Scurlock, Senior Program Associate
Xiomalys Crespo, Senior Community Engagement Manager

Via: Karin Burns, Chief Executive Officer

Subject: Community Clean Energy Grant Program Update

Date: September 26, 2024

RECOMMENDATION

Receive and file the update on the Community Clean Energy Grant Program.

BACKGROUND

In May 2023, San Diego Community Power's (Community Power) Board of Directors approved the Community Power Plan, which identifies grant programs as a short-term initiative to implement innovative program ideas from community-based organizations or specific clean energy projects that help its members agencies achieve their climate action goals.

The Community Clean Energy Grant Program aims to support local clean energy projects and programs that provide economic, environmental, and health benefits to Community Power's communities, and it is guided by the Community Clean Energy Grant Program Policy, which was first approved in December 2022 and last amended in February 2024.

This presentation provides an update on the program's 2023 and 2024 grant cycles.

ANALYSIS AND DISCUSSION

2023 Grant Cycle Summary

In March 2023, Community Power, in partnership with San Diego Foundation, launched its Community Clean Energy Grant Program. The following ten organizations received 1 year grant awards of up to $45,000 each, totaling $390,000 during the 2023 grant cycle:

- **Casa Familiar** - $44,998.35 to support Casa Verde, a workforce development program that provides extensive training on environmental justice principles, community organizing, and climate change impacts in the South County border region.
- **Climate Action Campaign** - $30,500 to organize workshops for San Diego residents and contractors on how to access available incentives from state and federal programs.

- **Community Housing Works** - $34,500 to promote energy awareness and reduce costs by installing smart light switches in affordable housing properties through a partnership with Flick.
- **Environmental Health Coalition** - $40,500 to support its Holistic Healthy & Climate Resilient Homes program that promotes home energy improvements and indoor air quality.
- **GRID Alternatives** - $45,000 to support the installation of solar panels and storage in Communities of Concern. Each installation site serves as an opportunity for hands-on learning for San Diego's next generation of clean energy workforce.
- **Hammond Climate Solutions Foundation** - $25,000 to increase community energy resilience in Barrio Logan through solar and storage installation.
- **La Mesa Park & Recreation Foundation** - $34,500 to support an electric tool lending library and green community events in the City of La Mesa.
- **MAAC Project** - $45,000 to support MAAC's Electric Vehicle Access Program to reduce carbon emissions and increase electric vehicle adoption in Communities of Concern.
- **San Diego Green Building Council** - $45,000 to expand its Electric Home Cooktop Program that allows San Diego residents to -borrow energy-efficient induction cooktop kits at no charge.
- **United Women of East Africa** - $45,000 to promote sustainable energy behaviors and reduce energy consumption and costs in San Diego's East African communities.

2023 Reporting Highlights

Key joint outcomes from the 2023 grant cycle as reported by the grantees in July 2024 are as follows:

- Increased overall energy literacy and education by engaging 5,384 community members through workshops and community events covering topics such as electric vehicles, energy efficient appliances, environmental justice, and solar installation;
- Improved awareness about energy savings for 1,732 households in affordable housing communities;
- Supported green job/internship opportunities for 15 workforce development trainees; and
- Leveraged an additional $175,355 from other funding sources.

2024 Grant Cycle Overview

Program Overview and Eligibility

Community Power, San Diego Foundation, and Calpine Energy Solutions (Community Power's back-office provider) awarded over $1.2 million during the 2024 grant cycle. Organizations could apply for grants between $25,000 and $100,000, with the option to expend the grants within 12 or 24 months.

Applications must have been led by a nonprofit with 501(c)(3) public charity status and have proven experience serving community members through projects or programs.



Proposed projects or programs must have served Community Power customers, directly related to clean energy, and advanced one or more of the following focus areas:

- Increasing overall energy literacy of Community Power customers;
- Energy focused educational programming that encourages clean energy use, particularly for youth;
- Improvements in indoor and/or outdoor air quality related to electrification;
- Workforce development opportunities that support careers in the clean energy industry; and
- Improved energy resilience to ensure communities can avoid, prepare for, minimize, adapt to, and recover from energy disruptions.

Evaluation

The 2024 grant cycle received 43 applications totaling over $3.6 million in grant funding requests. A collaborative evaluation committee consisting of Community Power, San Diego Foundation, and Calpine Energy Solutions staff reviewed, scored, and selected applications based on the below evaluation criteria (out of 50 points).

Criteria	Description	Scoring
Funding Priority Alignment & Program Design	Project/program is designed to meet community needs while advancing one or more of the program's focus areas.	20 Points
Feasibility	Application demonstrates having the staffing capability, timing, partnerships, and applicable skills to successfully implement the project/program. Budget is within the allowable grant range and is reasonable for the project/program's scope.	13 Points
Communities Served	Project/program demonstrates a comprehensive understanding of the population to be served and focuses on Communities of Concern in Community Power's service territory.	12 Points
Impact & Growth	Project/program is impactful with the potential to be replicated and/or expanded to other communities in Community Power's service territory.	5 Points

The application for the 2024 grant cycle was open from February 26, 2024, to April 5, 2024. The grant cycle was promoted via webpage updates, a pre-recorded webinar, press releases, newsletter updates, targeted emails, and social media posts. Applicants were notified of decisions in June 2024, with grant agreements executed in July 2024, and a press event held on August 19, 2024, to announce the 2024 awardees.

The following 16 organizations received awards during the 2024 grant cycle:

- **Chula Vista Elementary School District** - $75,000 for its "STEAMing into Clean Energy with the Energy Station," which will provide out-of-classroom experiences in science, technology, engineering, art and mathematics (STEAM), often located in the world of work, where students take on different career roles aligned with priority job sectors identified by San Diego Workforce Partnership.

- **GRID Alternatives San Diego** - $100,000 to complete 20 single-family clean energy projects in communities of concern within the next year.
- **Groundwork San Diego, Chollas Creek** - $94,450 for an energy education project that will enhance energy efficiency and air quality in homes and expand community literacy around the economic, environmental and health benefits of improvements for households and communities.
- **SBCS (formerly South Bay Community Services)** - $100,000 to provide low-income, minority and system-involved youth in San Diego with pathways to employment within the solar industry.
- **GoGreenish** - $25,000 to continue a student-led research initiative in partnership with the University of California San Diego School of Global Policy and Strategy measuring outdoor air pollutants in underrepresented K-12 high schools in San Diego.
- **Suncoast Market Cooperative** - $84,108 to assist with opening South County's first consumer-owned food cooperative featuring fresh, healthy and locally-sourced food while supporting the local economy, providing education and advocating for environmentally sustainable practices.
- **La Mesa Park & Recreation Foundation** - $100,000 to host free community electric vehicle and solar power education and install electric vehicle charging stations at a city park.
- **Ocean Discovery Institute** - $50,000 to support over 450 seventh graders from City Heights to engage in hands-on learning experiences centered around climate change and solutions to climate change.
- **South Sudanese Community Center** - $84,590 to expand a sustainable energy education and outreach program focused on City Heights.
- **La Maestra Foundation, Inc.** - $50,000 to support an after-school and summer enrichment program that provides at-risk, low-income youth ages six to 18 with youth leadership and life skills development activities.
- **Climate Action Campaign** - $100,000 toward development of the Refugee and Immigration Cultural Hub (RICH) in City Heights. The project will be built on a 2.2-acre site owned by the Partnership for the Advancement of New Americans (PANA), which aims to establish a healthy, resilient and inclusive development for immigrant and refugee communities and friends.
- **Hammond Climate Solutions Foundation** - $100,000 to build a 16.4kW solar with 35kWh storage project for the National City-based nonprofit Olivewood Gardens and Learning Center and a series of clean energy workshops.
- **MAAC Project** - $45,000 to support its Electric Vehicle Access program, which reduces carbon emissions and increases renewable energy usage in low-income and pollution-burdened communities through an increase in the adoption of electric vehicles.
- **San Diego 350** - $100,000 to create and pilot a high school program that engages teachers and students in communities of concern in San Diego County's South Bay on clean energy and its importance to environmental health.
- **I Am Green Inc.** - $100,000 for its Weatherization & Energy Equity (W.E.E.) program that provides education and training tailored to address the unique

challenges faced by individuals in communities heavily affected by poverty, unemployment, incarceration and environmental injustice.

- **In Good Company** - $50,000 to launch a program that will increase the impact of two existing complementary climate justice educational programs, increase energy literacy in San Diego through an energy-specific learning module and inspire program participants to implement and advocate for clean energy in their communities.

Next Steps

Reporting for the 2024 grant cycle will conclude in June 2025 (1-year grants) and June 2026 (2-year grants).

In 2024, Community Power and San Diego Foundation entered into a contractual agreement over the next 3 years that will leverage the learnings from the inaugural 2023 and this year's grant cycles.

COMMITTEE AND/OR SUBCOMMITTEE REVIEW

This item was presented to the Community Advisory Committee on September 12, 2024.

FISCAL IMPACT

There is no fiscal impact associated with this item.

The Board-approved Fiscal Year (FY) 2023-24 budget included $500,000 to be allocated to the 2024 Community Clean Energy Grant Program and funding to support San Diego Foundation's administration of the program is included in the FY 2023-24 & FY 2024-25 Programs Department budget. Calpine Energy Solutions contributed additional funding to the 2024 grant cycle per their Data Services Agreement with SDCP. All program-related expenditures will comply with the SDCP Board-approved Procurement Policy.

ATTACHMENTS

N/A

SAN DIEGO COMMUNITY POWER
Staff Report – Item 10

To: San Diego Community Power Board of Directors

From: Lee Friedman, Senior Manager – Strategic Partnerships
Ashley Rodriguez, Local Government Affairs Manager

Via: Karin Burns, Chief Executive Officer

Subject: Update on San Diego Regional Climate Collaborative Memorandum of Understanding

Date: September 26, 2024

RECOMMENDATION

Receive and file the Memorandum of Understanding (MOU) with San Diego Regional Climate Collaborative (SDRCC).

BACKGROUND

The SDRCC was established in 2011 as a network for public agencies to advance climate change solutions that mitigate greenhouse gas emissions and adapt to the effects of climate change. As of 2024, 52 organizations across the San Diego region participate in SDRCC.

Since 2022, Community Power has been a Strategic Partner of SDRCC with the strategic goals of building a more sustainable and resilient region by educating local governmental organizations, advancing a regional Energy Decarbonization working group, provide opportunities for Community Power to share critical information to the broader SDRCC network, and administer our Public Agency Grants.

ANALYSIS AND DISCUSSION

As Community Power's team and scope of work grows – especially with the formation of the San Diego Regional Energy Network, we see additional opportunities to further our partnership with SDRCC. Community Power is requesting to enter into a two (2) year MOU with SDRCC at $25,000 a year for a total commitment of $50,000. SDRCC will provide Community Power with the following partnership benefits:

- Access to Leading Membership Benefits through SDRCC that includes cities, special jurisdictions, nonprofits, philanthropic, academic entities, businesses and for-profit organizations.
- Attendance at quarterly SDRCC Network meetings and member events.
- Opportunities for Community Power to have expanded presence at SDRCC hosted events including: tabling, presentations, program advisory capacity, panel participants, etc.
- Recognize Community Power as a strategic partner on the SDRCC website.
- Share Community Power content in SDRCC newsletter and LinkedIn posts and reposts (6/year).
- Provide members with technical assistance (i.e., research, program design and implementation, pilot and certification programs, grants).
- Share announcements and information such as Community Power programs announcement, opportunities for public participation (i.e., advisory committees or educational workshops, policy platform, marketplace, job opportunities, etc.).
- Facilitate/host/collaborate on an energy resilience-themed event(s) for, but not limited to, other SDRCC members.
- Support/facilitate multi-jurisdictional energy-related funding opportunities and/or initiatives.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

$25,000 in FY 2024-2025 and $25,000 in FY 2025-2026 for a total commitment of $50,000

ATTACHMENTS

Attachment A: Memorandum of Understanding Between the San Diego Regional Climate Collaborative and San Diego Community Power

ITEM 10
ATTACHMENT A

Memorandum of Understanding

The San Diego Regional Climate Collaborative, University of San Diego and San Diego Community Power

This Memorandum of Understanding (MOU) outlines the partnership agreement between the San Diego Regional Climate Collaborative, University of San Diego (SDRCC) and San Diego Community Power (SDCP) for their SDRCC Membership.

SDCP will provide SDRCC with a sponsorship of $25,000 annually in 2024 and 2025 for their Strategic Partnership Membership with SDRCC. This partnership will build upon the collaboration established in 2023 between SDRCC and SDCP. The outlined fiscal sponsorship will offer support for SDRCC's core operations and programming, while also serving as the strategic partner membership payment for SDCP.

SDRCC will provide SDCP with the following partnership for their member sponsorship:

- Access to Leading Membership Benefits through SDRCC that includes cities, special jurisdictions, nonprofits, philanthropic, academic entities, businesses and for-profit organizations.
- Attendance at quarterly SDRCC Network meetings and Member events.
- Opportunities for SDCP to have expanded presence at SDRCC hosted events including: tabling, presentations, program advisory capacity, panel participants, etc.
- Recognize SDCP as a strategic partner on the SDRCC website.
- Share SDCP content in SDRCC newsletter and LinkedIn posts and reposts (6/year).
- Provide members with technical assistance (i.e., research, program design and implementation, pilot and certification programs, grants).
- Share announcements and information such as SDCP programs announcement, opportunities for public participation (i.e., advisory committees or educational workshops, policy platform, marketplace, job opportunities, etc.).
- Facilitate/host/collaborate on an energy resilience-themed event(s) for, but not limited to, other SDRCC members.
- Support/facilitate multi-jurisdictional energy-related funding opportunities and/or initiatives.

To deliver on these goals, San Diego Community Power will:

- Provide fiscal sponsorship at a value of $25,000 per year for two fiscal years (FY 25 and FY26) in annual member sponsorship to SDRCC to support core operations and programming.
- SDCP staff will actively participate in SDRCC’s core programming to provide members and SDRCC staff with industry knowledge, support and guidance.
- Recognize SDRCC on SDCP website as a strategic partner, including logo and link to webpage.
- Recognize SDRCC’s applicable programs and events via promotions on SDCP social media channels, throughout the year.

The primary contacts for this MOU are the following:

San Diego Regional Climate Collaborative / University of San Diego
Darbi Berry, Director

San Diego Community Power
Name, Title

The following are signatories recognizing this MOU:

Name: Karin Burns	**Name:** Kristin Scialabba
Organization: San Diego Community Power	**Organization:** Vice Provost of Strategic Communication and Innovation, University of San Diego
Date:	**Date:**
Signature:	**Signature:**

SAN DIEGO COMMUNITY POWER
Staff Report – Item 11

To: San Diego Community Power Board of Directors

From: Tim Treadwell, Senior Program Manager
Colin Santulli, Director of Programs

Subject: Approve a contract with Virtual Peaker, Inc. with a not-to-exceed amount of $2,400,000 over three years, and options for two one-year extensions, for a Distributed Energy Resources Management System (DERMS), and authorize execution by the Chief Executive Officer

Date: September 26, 2024

RECOMMENDATION

Receive and approve the Distributed Energy Resources Management System (DERMS) agreement with Virtual Peaker.

BACKGROUND

Load flexibility is a critical element of California's clean energy goals, as it supports decarbonization and grid reliability, while lowering costs and allowing for increased integration and use of renewable energy. Specifically, load flexibility can:

- Help align customer demand with the supply of clean energy, helping integrate new renewables onto the grid.
- Allow for the integration of new loads, while minimizing the requirement for additional generation and grid infrastructure.
- Support electric reliability during extreme climate-induced events, such as extreme heat events and wildfire-induced transmission outages.

At the January 2024 Board of Directors meeting, staff presented the Flex Load Strategy to be implemented across SDCP's programs. The strategy outlined target end use technologies, key points of integration with existing/planned programs, provided a proposed software architecture to drive device dispatch and control, as well as a framework to guide dispatch and device operations. A central element of the strategy is the procurement of a DERMS.

ANALYSIS AND DISCUSSION

Distributed Energy Resource Management Systems (DERMS)

To support the integration and dispatch of customer DERs, SDCP must procure a Distributed Energy Resource Management Systems (DERMS) software solution. A DERMS is a software platform that incorporates various data points, such as weather, market/price data, and customer preferences, to optimize the operation of DERs in support of various grid services (Figure 1).

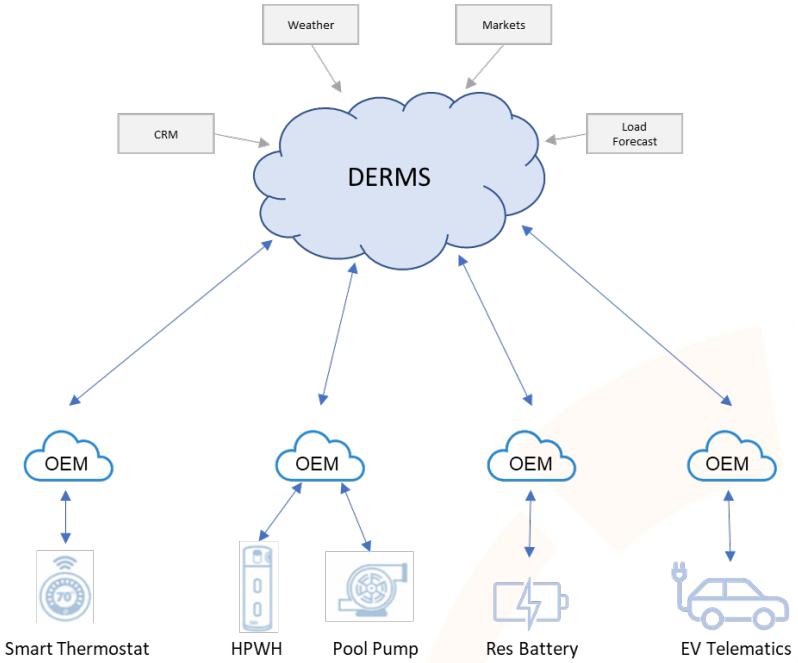


Figure 1 – Illustrative example of simplified DERMS architecture.

The selection and implementation of a DERMS is central to implementing the Flexible Load Strategy. Once operational, this system will allow SDCP to help customers reduce usage during high-cost on-peak periods, while managing portfolio-wide power procurement and resource adequacy costs and risk. The strategy calls for a three-phase rollout of DERMS capabilities, focused on minimizing costs and contracting risks, while at the same time building out infrastructure and operational expertise at a rate that will enable integration of the large-scale resource influx anticipated in 2025 and beyond, with the launch of Community Power building electrification and energy efficiency initiatives.

Procurement Process

In February 2024, staff initiated a process to procure a DERMS platform. The effort began with a market assessment of DERMS solutions and a socialization of the agency's flexible load goals, conducting meetings with several leading vendors. Next, staff contracted with TRC Solution's VPP/DERMS Practice group to support the procurement process. TRC

helped conduct requirements gathering with Community Power's Programs and IT/Customer Data teams and formalize the procurement documents and timelines. Staff released the DERMS RFP on June 10, 2024, posting the solicitation on Community Power's procurement page, conducting directly outreach to solution providers, and promoting the procurement through professional networks. A full procurement timeline is found in Figure 2.

Description	Date
Release of RFP	6/10/2024
Deadline for Written Questions	6/17/2024 at 9:00 a.m. PT
Responses to Questions Provided	6/21/2024
Deadline for Proposal Submission	7/19/2024 at 5:00 p.m. PT
Interviews (if necessary)	Week of 7/29/2024
Demonstrations	8/12/2024 – 8/28/2024
Execution of Contract	No later than 10/11/2024
Commencement of Work	No later than 10/14/2024

Figure 2 - DERMS Procurement Timeline

Six proposals were received in response to the solicitation. Bids were scored based on the proposer's qualifications and experience, demonstration of past success, the approach to the services, commercial terms and pricing, and alignment with SDCP's functional and non-functional requirements. The top two scoring bidders were then invited for interviews and product demonstrations with staff from the Programs and IT/Customer Data teams.

Based on the results of the procurement process, staff recommends selecting Virtual Peaker (VP) as SDCP's DERMS provider and executing a three-year SaaS contract with two optional one-year extensions. VP was selected due to:

- Platform Features - large and growing portfolio of integrations, advanced event scheduling features and program management tools
- Relevant Program Experience - numerous utility DR/Flexible Load programs, including multiple in the western US/California focused on resources in our near-term program plan (i.e., residential storage, thermostats, heat pump water heaters).
- Product Demo - live demonstration of proposed DERMS solution exceeded expectations of all participating SDCP staff and demonstrated VP's existing system capabilities, willingness to adapt functionality for client needs and professional delivery and communication.
- Pricing - higher platform fees with lower cost per-device fees leading to lower organizational costs to maintain the DERMS as the program portfolio grows as expected.

NEXT STEPS

Board approval Virtual Peaker SaaS agreement, followed by contract execution and platform implementation beginning in Q4 2024.

FISCAL IMPACT

The DERMS agreement with Virtual Peaker has a not to exceed value of $2,400,000 over three years, including an anticipated 2024-25 fiscal year cost of $500,000.

ATTACHMENTS

Attachment A: Software as a Service Agreement for Distributed Energy Management System (DERMS) Service with Virtual Peaker, Inc.

ITEM 11
ATTACHMENT A

SAAS SERVICES ORDER FORM

Customer: San Diego Community Power	**Contact: Timothy Treadwell**
Address: 815 E St, Ste 12716, San Diego, CA 92101	**Phone: (619) 732-4655**
	E-Mail: ttreadwell@sdcommunitypower.org
Services: *Virtual Peaker provides scheduling and control of residential energy loads for electric utility service providers.* (the "Service(s)").	
Services Fees: Variable, based on the Price List shown in Exhibit A, payable in advance, subject to the terms of Exhibit A and Section 4 herein.	**Initial Service Term**: Three (3) Years September 26, 2024 - September 26, 2027
Implementation Services: Company will use commercially reasonable efforts to provide Customer the services described in the Statement of Work ("SOW") attached as Exhibit A hereto ("Implementation Services"), and Customer shall pay Company the Implementation Fee in accordance with Exhibit D and the terms herein.	

SAAS SERVICES AGREEMENT

This SaaS Services Agreement ("Agreement") is entered into on this 26th day of September, 2024 (the "Effective Date") between Virtual Peaker, Inc with a place of business at 825 E. Market Street Suite 203, Louisville, KY 40206 ("Company"), and the Customer listed above ("Customer"), individually referred to as "a Party" and collectively referred to as "the Parties." This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form, unless otherwise expressly agreed in writing by the Parties.

Virtual Peaker, Inc:

By:_____

Name:_____

Title:_____

[San Diego Community Power]:

By: _____

Name:_____

Title: _____

TERMS AND CONDITIONS

1.1 **SAAS SERVICES AND SUPPORT**

1.2 Subject to the terms of this Agreement, Company will provide Customer the services in accordance with the Service Level Terms attached hereto as Exhibit B (hereinafter "the Services"). As part of the registration process, Customer will identify an administrative user name and password for Customer's Company account. Company reserves the right to refuse registration of or cancel passwords it deems inappropriate and require Customer to select a new password.

1.3 Subject to the terms hereof, Company will provide Customer with technical support services in accordance with the terms set forth in Exhibit C.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels. With respect to any Software that is distributed or provided to Customer for use on Customer premises or devices, Company hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Software as described herein during the Term only in connection with the Services.

2.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

2.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company's standard published policies then in effect (the "Policy") and all applicable laws and regulations.

2.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

3. CONFIDENTIALITY

3.1 The Parties acknowledge that certain information and materials exchanged during the Term of this Agreement, including this Agreement, may contain proprietary and Confidential Information of the disclosing Party. "**Confidential Information**" means and includes any and all non-public information of the disclosing Party including, without limitation, trade secrets, analyses, compilations, forecasts, studies, techniques, plans, designs, cost data, pricing data, financial data, customer information, Customer data, total load data, non-public information regarding features, functionality and performance of the Services, Company proprietary information, and employee information, disclosed by the disclosing Party to the receiving Party which relates in any manner, directly or indirectly, to the disclosing Party and/or its business, whether such information is disclosed in writing, verbally, electronically, or otherwise. For the purposes of this Agreement, Confidential Information shall include Customer data, which refers to all data and information provided, collected, or produced on Customer's behalf in connection with the Services provided under this Agreement; including, but not limited to, confidential personally identifiable information or utility customer data protected under California privacy laws, billing data, usage data, enrollment information, contact history, and any other confidential or proprietary information that relates to current, prospective, or former Customer utility customers. For avoidance of doubt, Confidential Information includes (i) any information disclosed in written form and clearly marked "Confidential" and (ii) information which would reasonably be considered proprietary, trade secret, and confidential.

3.2 Notwithstanding the foregoing, Confidential Information does not include information that (i) is known to the receiving Party at the time of disclosure to the receiving Party as demonstrated by dated electronic or written records of the receiving Party; (ii) is or becomes generally known through no wrongful act of the receiving Party; (iii) has been rightfully received by a Party from a third party authorized to make such disclosure without restriction; (iv) has been approved for release by written authorization of the disclosing Party; or (v) produced or disclosed pursuant to applicable laws, regulations, subpoena, or court order, provided the receiving Party has given the disclosing Party prompt notice of such request so that the disclosing Party has an opportunity to defend, limit or protect such

production or disclosure.

3.3 During the Term, each Party may be given access to the other Party's Confidential Information. The receiving Party of the Confidential Information agrees to: (i) protect the disclosing Party's Confidential Information in a reasonable and appropriate manner to the same extent it protects the confidentiality of its own Confidential Information of like kind, but in no event less than a reasonable manner; and (ii) use and reproduce disclosing Party's Confidential Information only as necessary to perform its obligations and exercise its rights pursuant to this Agreement. The receiving Party may share the disclosing Party's Confidential Information with its employees and third parties that assist the receiving Party in its performance of its obligations and the exercise of its rights pursuant to the Agreement and who are subject to non-disclosure obligations no less restrictive than those set forth herein. The receiving Party shall maintain the secrecy of Confidential Information that is not deemed a trade secret, customer information, or customer data for the Term, plus five (5) years. The receiving Party shall maintain confidential customer information, Customer Data, and any Trade Secrets in perpetuity or as long as the trade secret is protected under the applicable trade secret laws.

3.4 As required by subpoena, the California Public Records Act, or other legal or regulatory law/process, the Parties may be required to disclose Confidential Information. Compliance with a subpoena, request under the California Public Records Act, or other legal or regulatory process shall not constitute a breach of this Agreement. If either Party is required to disclose any Confidential Information, the disclosing Party shall notify the other Party in writing as promptly as feasible so that the other Party may, if it so chooses and at its own expense, challenge the disclosure or seek a protective order. The Party challenging the disclosure or seeking a protective order shall be responsible for any costs or attorneys' fees awarded to a prevailing litigant seeking the records in the event that a court awards such costs or fees against the Party maintaining the records. However, disclosure pursuant to a legal requirement shall not constitute a breach of this section.

3.5 NOTWITHSTANDING ANY OF THE FOREGOING, COMPANY AGREES THAT IT WILL NOT ACCESS AND/OR USE CUSTOMER'S UTILITY CUSTOMER CONFIDENTIAL INFORMATION FROM CUSTOMER, OR FROM CUSTOMER'S UTILITY CUSTOMERS, FOR ANY PURPOSE OTHER THAN PROVIDING SERVICES UNDER THIS AGREEMENT.

4. PROPRIETARY RIGHTS

4.1 Neither Party shall use the other Party's name or insignia, photographs, or any publicity pertaining to the Services in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the other Party.

4.2 Except for Reports described below, Customer shall own all right, title and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data and provided to Customer as part of the Services.

4.3 Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with implementation Services or support provided therein, (c) Company's internal systems, know-how, programs and work product, including any reports specifically created for Customer ("Reports") and any other intellectual property of Company, and (d) all intellectual property rights related to any of the foregoing. Nothing in this Agreement shall be construed to transfer any right, title, or interest to Customer. Notwithstanding anything to the contrary, Company shall have the right collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies.

4.4 Company hereby grants to Customer a perpetual, non-exclusive, non-sublicensable, non-transferrable, royalty free (exclusive of payments made under this Agreement) license to use any Reports that Company provides to Customer on an "as is" basis.

4.5 Each Party acknowledges that money damages would not be a sufficient remedy for any breach of this Section or Section 3. Accordingly, in the event of any such breach of this Section or Section 3, in addition to any other remedies at law or in equity that a Party may have, it shall be entitled to equitable relief, including injunctive relief or specific performance, or both.

5. PAYMENT OF FEES

5.1 Customer will pay Company the applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 90 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

5.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be

responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

6. TERM AND TERMINATION

6.1 Subject to earlier termination as provided below, this Agreement shall have a term the consists of an Initial Service Term as specified in the Order Form, and may be renewed annually, for up to two (2) additional years, if requested by the Customer at least thirty (30) days prior to the end of the then-current term (collectively "the Term").

6.2 In addition to any other remedies it may have, either Party may also terminate this Agreement upon thirty (30) days' notice without cure, if the other Party materially breaches any of the terms or conditions of this Agreement, including non-payment. Customer will pay in full for the Services up to and including the last day of the month on which the Services are provided. Upon any termination, Company will make all Customer Data available to Customer for electronic retrieval for a period of sixty (60) days, but thereafter Company may, but is not obligated to, delete stored Customer Data. All sections of this Agreement, which by their nature should survive termination, will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

7. WARRANTY AND DISCLAIMER

7.1 Each Party represents and warrants to the other Party that (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and (d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such party in accordance with its terms.

7.2 Company warrants that the Services will perform substantially in accordance with and in the manner described in Exhibit B-Service Level Agreement. This warranty shall be in effect during Initial Service Term, and any extension thereof, provided that: (a) the Services are not modified, changed, or altered by anyone other than Company, unless authorized by Company in writing; (b) the error or defect is not caused by Customer, its agents, servants, employees, or contractors, or any third parties; (c) Customer promptly notifies Company of the error or defect after it is discovered; and (d) all Fees due at the time to Company have been paid.

7.3 Company warrants that the Services are legally owned by, or has been developed by Company or that Company is authorized to distribute the Services.

7.4 Customer represents and warrants that it accepts sole responsibility for: (a) the selection of the Services to achieve Customer's intended results; (b) its use; and (c) the results obtained from the Services.

7.5 THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR A CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION. Customer's SOLE AND EXCLUSIVE REMEDY and Company's only obligation under this warranty is to correct all software errors in the most recent release to operate substantially in accordance with the Company's then-current specification for the Services. Any action by Customer for breach of this Agreement must be commenced within one (1) year after breach has occurred.

8. INDEMNITY

8.1 Company shall hold Customer harmless from liability to third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing, which shall not be unreasonably withheld. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

Customer shall hold Company harmless from liability to third parties to the proportionate extent resulting from Customer's material breach of a provision of this Agreement, provided Customer is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Customer will not be responsible for any settlement it does not approve in writing, which shall not be unreasonably withheld.

9. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON OR DATA BREACH CAUSED IN WHOLE OR IN PART BY NEGLIGENCE OR GROSS NEGLIGENCE OF COMPANY, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (B) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (C) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY DURING THE INITIAL TERM OF THIS AGREEMENT.

10. NO WAIVER; FORCE MAJEURE

10.1 No Waiver. Failure of either Party to exercise in any respect any of the rights provided for herein shall not be deemed a waiver of any right hereunder.

10.2 Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, pandemic, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo ("Force Majeure Event").

11. SEVERABILITY

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality, or enforceability of the remaining provisions shall be in no way affected or impaired thereby and shall remain in full force and effect.

12. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by either Party except upon the written consent of the other Party which consent shall not be unreasonably withheld. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

13. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. Venue shall be in San Diego County, California.

EXHIBIT A

Statement of Work

Introduction

San Diego Community Power (SDCP) is seeking an engagement with Virtual Peaker that will allow SDCP to enroll, dispatch, and analyze data from DERs. This SOW lays out a 3-year engagement with SDCP, with future work detailed in separate documents.

Services

Virtual Peaker will provide SDCP with its Shift (DERMS), Relay (Customer Engagement), and Envision (Load Forecasting) suites.

Virtual Peaker's Shift (DERMS) Suite manages electric demand across a variety of device types. The Shift suite applies patented machine learning and real-time control to internet-enabled devices to reduce demand while minimizing the negative impact on the residential customer. Shift connects smart devices to run demand response programs that leverage distributed energy resources (DERs) to reduce cost and peak load. Virtual Peaker's platform provides SDCP with the Utility Portal, a full web platform that allows for SDCP-side users to access all necessary data and information in real-time, manage customer enrollments, call control events, and download/manage data.

The key features of the Shift Suite include:

- Device Integrations: SDCP can leverage Virtual Peaker's existing OEM integrations to manage customer devices
- Utility Portal: Provides real-time management for SDCP, including data analysis, customer enrollments, and event control
- Behavioral and Device Control: Enables control of energy demand by managing customer devices
- Reporting and Analytics: Offers data insights into energy usage and control event effectiveness
- Wholesale Arbitrage: Allows for optimized financial decisions in energy markets
- Shift API: Can be used to connect the Shift suite features to an external utility system

Virtual Peaker's Relay (Customer Engagement) Suite provides SDCP with customizable, SDCP-branded tools to engage customers and motivate them to participate in demand response and device control programs. This suite also provides SDCP with tools to streamline program management, including enrollment approvals and customer messaging. It also gives customers insights into their device data, local weather, and usage.

The key features of the Relay Suite include:

- Program Landing Page: Communicates program details, displays eligible devices, and helps recruit customers
- Enrollment Portal: A user-friendly interface where customers can enroll in programs, with Virtual Peaker managing all the manufacturer-specific requirements
- Message Center: SDCP can create branded marketing messages, send device tips, and track campaign results. Messages can also be automatically triggered by certain events, like customer enrollments.
- Direct Messaging: Enables direct communication with customers for seamless engagement and support, allowing SDCP to assist with device enrollment, send reminders, or provide updates

- Homeowner App: A web-based platform where customers can view energy savings, usage, and control their devices. SDCP can also send custom messages and tips through the app.
- Incentive Management: Located in the Utility Portal, this feature allows SDCP to track and manage customer incentives, such as rewards for enrollment and performance. Various incentive types (e.g., gift cards, prepaid cards) can be distributed via email, SMS, or mail.
- Quick Actions Modal: Allows SDCP to quickly verify and bulk approve enrollment applications

Virtual Peaker's Envision (Forecasting) Suite provides SDCP with accurate forecasts to ensure your customers have a reliable source of power at the best price. The Envision suite uses machine learning algorithms that constantly improve with real time data to help SDCP make smarter power purchasing and event scheduling decisions. Using the combination of historical load data and real time data, the Envision suite provides SDCP with daily, weekly, and monthly (up to 1 year) forecasts. For customers with battery storage systems connected to the platform, SDCP will be able to forecast battery performance in upcoming events for the selected fleet of batteries.

Integrations

Virtual Peaker will grant SDCP access to device integrations for batteries, thermostats, hot water heaters, EV telematics, and EV chargers. .

Client Success & Training

Virtual Peaker will provide an Account Manager and fully-staffed Client Success team that will support SDCP through the setup and deployment of the software. Once launched, Virtual Peaker will provide ongoing support and maintenance to the SDCP team. The Virtual Peaker team will work with SDCP staff to set up an ongoing cadence for check-ins that is convenient for both teams. Virtual Peaker will not provide direct support, like call centers, to SDCP's customers or program participants.

Virtual Peaker will also provide training sessions on the use of Virtual Peaker platform's functionality for SDCP personnel, including technical or customer-facing staff.

Pricing and Schedules

<u>Agreement Value</u>
This agreement has a not to exceed value of $2,400,000 over three years from the date of contract execution, with options for two one-year extensions.

<u>Annual Platform Fees</u>

[redacted]





Integration Fees









Implementation schedule



EXHIBIT B

SERVICE LEVEL AGREEMENT

1. Definitions

For the purposes of this SLA, the following definitions shall apply:

a. "**Outage**" means when the Services are affected by a Priority 1 (Critical) and Priority 2 (Serious) issue.
b. "**Response**" means Company's (i) acknowledgement that it has received the Support Request; and (ii) technical assessment of the issue and proposed course of action for resolution based on the information provided by Customer.
c. "**Response Time**" means the target time period for Company to provide a response to Customer, with such period commencing upon Company's receipt of Customer's Support Request.
d. "**Uptime Service Level"** shall mean the uptime service level described in Section 3 (Uptime Service Levels) of this SLA.
e. "**Severity Level**" means the level of severity of a reported issue, as determined by Company at its sole discretion:

"**Priority 1 (Urgent)**" means a problem that renders the Services unfit for use and/or unable to be utilized for all users.

"**Priority 2 (High)**" means a problem that produces intermittent loss of function or degraded performance that affects all users of the Services. Operation can continue in a restricted fashion.

"**Priority 3 (Medium)**" means a problem that impedes, but does not prevent one or more users from accomplishing the desired function.

"**Priority 4 (Low)**" means a minor problem that does not impede users from accomplishing any desired function.

f. "**SLA**" means this Service Level Agreement.
g. "**Target Resolution Time**" means the time targeted by Company to resolve the problem, with such time period commencing upon Company's Response.

2. Service Scope

This SLA covers the services described in the Statement of Work [Exhibit A] (collectively, the "**Services**"). The scope of coverage under this SLA expressly excludes the performance and availability of any of services connected to the Services provided by Company's third-party suppliers. Third-party services that connect to the Services are subject to their respective service level agreements set for in the applicable third-party supplier's terms of service.

If a third-party service fails to comply with the service levels contained in the third-party supplier's terms of service, Customer may be eligible to receive those remedies set out in the third-party supplier's terms of service and must request such remedies directly from the third-party supplier. Customer's sole and exclusive remedy in the event of a third-party service failure will be the remedies set forth in the third-party supplier's terms of service.

COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS OR OTHER DAMAGE RESULTING FROM PROBLEMS BEYOND COMPANY'S REASONABLE CONTROL AND COMPANY DISCLAIMS ALL LIABILITY FOR DISRUPTIONS OR DAMAGES RESULTING FROM SERVICES PROVIDED BY ITS THIRD-PARTY SUPPLIERS.

3. Uptime Service Levels

The Services will be available and operable 24/7/365 at least 99.9% of the time, calculated on a monthly basis as follows:

*(([hours in the month] – [hours of Outage rounded up to the nearest 10 minutes]) / [hours in the month]) * 100*.

The calculation of Uptime Service Level availability shall not include Force Majeure Events, Scheduled Maintenance, Emergency Maintenance, or maintenance otherwise requested by Customer.

4. Response and Resolution Service Levels

Company will provide technical support to Customer on weekdays during the hours of 9:00 am through 11:59 pm Eastern time, with the exclusion of federal holidays.

Customer shall immediately notify Company of any problem, defect, malfunction, error, or other technical issue Customer experiences with the Services ("**Support Request**"). Customer may initiate a Support Request at any time by emailing support@virtual-peaker.com or filing a ticket through the support link inside the application. Company will provide support via phone, email, or through the web-based support portal.

Upon receipt and acknowledgement of such Support Request, Company shall endeavor to respond and resolve the reported issue in accordance with the following schedule:

Priority Level	**Response Time During Support Hours**	**Target Resolution Time**
Priority 1 (Urgent)	30 minutes	2 hours
Priority 2 (High)	60 minutes	4 hours
Priority 3 (Medium)	120 minutes	1 business day
Priority 4 (Low)	1 business day	1-5 business days

The level of priority of a reported issue shall be determined by Company at its sole discretion. If extended delays are expected or anticipated, Company will promptly update Customer. The response and resolution service levels set out above are guidelines and non-binding statements by Company. The parties agree to cooperate in good faith to investigate any service disruption.

5. Maintenance

Company reserves the right to perform regularly scheduled system maintenance, upgrades, and enhancements ("**Scheduled Maintenance**"). Scheduled Maintenance may temporarily prevent the Services from being accessed or used. Company shall provide at least twenty-four (24) hours' notice to Customer of any Scheduled Maintenance. Scheduled Maintenance shall not constitute an Outage for the purposes of calculating Uptime Service Level compliance.

Company further reserves the right to perform unscheduled, emergency maintenance as necessary ("**Emergency Maintenance**"). Emergency Maintenance may temporarily prevent the Services from being accessed or used. Company will make efforts to provide prompt notice to Customer of any Emergency Maintenance. Emergency Maintenance shall not constitute an Outage for the purposes of calculating Uptime Service Level compliance.

6. Bug Fixes

Company will fix any bug, defect, or malfunction of the Services at no additional charge that Company becomes aware of or that has been reported by any entity to Company, whether or not Customer has reported such bug, defect, or malfunction. Whether a reported issue with the Services constitutes a bug, defect, or malfunction shall be determined by Company at its sole discretion. The foregoing obligation shall only apply to bugs, defects, or malfunctions related to a release (version) of the Services made available to Customer.

7. Security Breach Notifications

Company shall provide notice to Customer of any actual security incident affecting Company's computer systems upon discovery and reasonable determination that a security incident has occurred in accordance with Company's Security Incident Response Policy. Company will reasonably cooperate with Customer in connection with the investigation and remediation of such security incident.

8. Service Credits

If the Services do not meet the Uptime Service Level, upon Customer's request and Company's reasonable investigation, Company will credit to Customer a percentage of the monthly fees charged for the affected month ("**Service Level Credit**"), calculated as follows:

Uptime Percentage	Credit Percentage
99.97%-99.98%	1%
99.5%-99.96%	3%
<99.5%	5%

If the Services experience an Outage resulting in a loss of DER control during a peak demand window (defined as hour ending 16:00 to hour ending 22:00) on any day of the affected month, Company will provide a 5x multiplier on credits owed to Customer based on the table above.

As a condition of Company's obligation to provide the Service Level Credit, Customer must request such Service Level Credit within forty-five (45) days following any disruption of the Services ("**Credit Request**"). Such Credit Request must be emailed to support@virtual-peaker.com and contain a sufficient description of the disruption including the date, time, and duration of the disruption. The Service Level Credit will appear as a credit on the next Customer invoice (or, if such Service Level Credit accrues in the final billing period of the term hereof, Company shall promptly refund such amount to the Customer), unless Company determines within thirty (30) days of request that credit is not owed. If there is a dispute in the validity of a Credit Request, the parties will make a good faith effort to resolve. If resolution cannot be reached, parties agree to the arbitration process outlined herein.

Failure of Customer to submit a Credit Request to Company within forty-five (45) days following any disruption of the Services shall result in Customer's forfeiture of its right to receive a Service Level Credit for the period in which the disruption occurred. Except as otherwise provided in this SLA, Service Level Credits may not be redeemed for cash.

9. <u>Service Level Exclusions</u>

Uptime Service Level availability and the Company's obligations with respect to the other service measures set forth herein may be subject to limitations, delays, and other problems inherent to the general use of the internet and other public networks or caused by Customer, authorized users, third-party suppliers, or other third parties. The following shall not be deemed to have failed to meet an Uptime Service Level or other Company obligation under this SLA if the failure, disruption, or malfunction was due to:

a. Scripts, data, applications, software, equipment, networks, systems, or services under Customer's control or another third party's control, including Company's third-party suppliers;
b. Customer's lack of availability or untimely response time to service disruptions that require its participation for source identification and/or resolution;
c. Customer's negligence, recklessness, wrongful actions, acts, omissions, or breach of its material obligations under this SLA, the SaaS Agreement, or any other agreement between Customer and Company;
d. Customer's failure to comply with applicable law;
e. An act or omission taken by Company or its third-party suppliers resulting from a request or direction of Customer;
f. Scheduled Maintenance or Emergency Maintenance taken to prevent a disruption of the Services;
g. Company's blocking of data communications or other services in accordance with its policies; or
h. Other events, delays, or damages caused by circumstances beyond the Company's reasonable control including, but not limited to: natural disasters (e.g. lightning, earthquakes, hurricanes, floods); utility outages, internet outages, spam attacks, virus attacks, and cyber attacks; wars, riots, terrorist activities, and civil commotions; explosions and fires; embargoes, strikes and labor disputes; national and global endemics and pandemic; and governmental decrees (collectively, a "**Force Majeure Event**").

SAN DIEGO COMMUNITY POWER
Staff Report – Item 12

To: San Diego Community Power Board of Directors

From: Maricela Hernandez, Clerk of the Board

Via: Karin Burns, Chief Operating Officer

Subject: Adoption of Resolution No. 2024-07, Approving 2025 Board Meeting Schedule for San Diego Community Power (Community Power)

Date: September 26, 2024

RECOMMENDATION

Adopt Resolution No. 2024-07, approving Community Power Board meeting schedule for 2025.

BACKGROUND

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

ANALYSIS AND DISCUSSION

During the 2024 calendar year, the Board of Directors held their meetings every fourth Thursday of the month at 5 p.m., except when holidays required an adjustment. Moving forward, staff recommends maintaining the same schedule. Community Power Board of Directors meetings are scheduled to be held at the City of San Diego Public Utilities Department's Metropolitan Operations Complex, located at 9192 Topaz Way, San Diego, CA 92123.

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

Below are proposed 2025 Board meeting dates with a start time of 5 p.m. (exceptions noted):

- January 23, 2025
- February 27, 2025
- March 27, 2025
- April 24, 2025
- May 22, 2025

- June 26, 2025
- July 24, 2025
- August 28, 2025
- September 25, 2025
- October 23, 2025
- November 20, 2025 (Third Thursday)
- December 11, 2025 (Second Thursday)

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

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: Resolution 2024-07 establishing 2025 Board meeting schedule.

ITEM 12
ATTACHMENT A

RESOLUTION NO. 2024-07
A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER ESTABLISHING ITS REGULAR MEETING SCHEDULE FOR CALENDAR YEAR 2025.

A. San Diego Community Power (SDCP) is a joint powers agency formed pursuant to the Joint Exercise of Powers Act (Cal. Gov. Code § 6500 *et seq.*), California Public Utilities Code § 366.2, and a Joint Powers Agreement effective on October 1, 2019, and amended and restated December 16, 2021 (JPA Agreement).

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

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

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

Section 1. For calendar year 2025, regular meetings of the Board of Directors shall take place on the dates set forth below and shall begin at 5:00 p.m. All regular meetings shall take place at the Metropolitan Operations Complex 9192 Topaz Way, San Diego, CA 92123. Teleconferencing or virtual meetings may occur only as authorized under Government Code section 54953 or other applicable law.

Regular Meeting Dates:

- January 23, 2025
- February 27, 2025
- March 27, 2025
- April 24, 2025
- May 22, 2025
- June 26, 2025
- July 24, 2025
- August 28, 2025
- September 25, 2025
- October 23, 2025
- November 20, 2025 (Third Thursday)
- December 11, 2025 (Second Thursday)

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

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

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power held on September 26, 2024.

_____
Joe LaCava, Chair
San Diego Community Power

ATTEST:

_____
Maricela Hernandez, MMC, CPMC
Clerk of the Board/Board Secretary
San Diego Community Power

APPROVED AS TO FORM

_____
Veera Tyagi, General Counsel
San Diego Community Power

SAN DIEGO COMMUNITY POWER
Staff Report – Item 13

To: San Diego Community Power Board of Directors

From: Eric Washington, Chief Financial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Presentation and Update on Clean Energy Prepayment Financing

Date: September 26, 2024

RECOMMENDATION

Receive and File Presentation and Update on Clean Energy Prepayment Financing.

BACKGROUND

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

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

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

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

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

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

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

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

On November 7, 2023, Community Power issued a request for bids from qualified and experienced firms to provide a full range of municipal advisory services necessary for Community Power to evaluate, structure, and execute prepayment transactions. Shortly thereafter, on December 18, 2023, Community Power entered into an agreement with PFM Financial Advisors LLC (PFM) to provide these services.

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

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

On August 22, 2024, Community Power Board of Directors approved Chapman and Cutler LLP to facilitate in the capacity of Disclosure Counsel services.

Through the RFPs issued on April 19, 2024, Community Power also recommended Orrick, Herrington & Sutcliffe LLP to facilitate in the capacity of Tax and Bond Counsel services. Agreement will be with the Bond Issuer.

ANALYSIS AND DISCUSSION

Staff are providing an update and presentation to the Board on the current timeline for a potential clean prepayment financing. Below is a draft timeline, subject to change.

- **Nov 7, 2023**: RFP was issued for Municipal Financial Advisor (MFA)
- **Dec 28, 2023**: PFM was selected as MFA
- **Feb 15, 2024**: FRMC Prepaid Financing Presentation
- **Feb 22, 2024**: Board Presentation Prepaid Financing Presentation
- **Apr 19, 2024**: RFP issued for underwriter and legal services (bond, tax, disclosure)
- **Aug 22, 2024**: Legal counsel agreement with Chapman & Cutler for disclosure services approved
- **Sep 19, 2024**: FRMC – Presentation and potential recommendation for Board approval of Resolution for Bond Issuer
- **Sep 26, 2024**: Board – Presentation and potential approval of Resolution for Bond Issuer
- **Oct 17, 2024**: FRMC – Presentation and potential recommendation for Board approval on Resolution to authorize documents
- **Oct 24, 2024**: Board – Presentation and potential recommendation for Board approval on Resolution to authorize documents
- **Nov 21, 2024**: Execute prepaid agreement
- **Dec 5, 2024**: Closing

COMMITTEE REVIEW

The report was reviewed by the Finance and Risk Management Committee (FRMC) on September 19, 2024.

FISCAL IMPACT

N/A

ATTACHMENTS

N/A

SAN DIEGO COMMUNITY POWER
Staff Report – Item 14

To: San Diego Community Power Board of Directors

From: Eric Washington, Chief Financial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Adoption of Resolution No. 2024-06, Approving California Community Choice Financing Authority as a Bond Issuer for Energy Prepayment Transaction

Date: September 26, 2024

RECOMMENDATION

Adopt Resolution No. 2024-06, approving the selection of California Community Choice Financing Authority (CCCFA), a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act, as the Bond Issuer for potential San Diego Community Power's (Community Power) energy prepayment financing transactions and authorizing Community Power to join the CCCFA as an Associate Member.

BACKGROUND

As part of an energy prepayment financing transaction, Community Power must work with a Bond Issuer to directly issue prepaid bonds. Specifically, the Bond Issuer uses the bond proceeds to pay the prepaid supplier in exchange for a long-term supply of energy. The Bond Issuer then would potentially deliver energy to Community Power in exchange for prepaid energy payments. The Bond Issuer then pays the bond investors.

The California Community Choice Financing Authority (CCCFA) is a Bond Issuer that was established in 2021 with the goal to reduce the cost of power purchases for member community choice aggregators (CCAs) through pre-payment structures. The founding members of CCCFA include Central Coast Community Energy, Clean Power Alliance, Ava Community Energy (formerly East Bay Community Energy), MCE, and Silicon Valley Clean Energy.

CCCFA's joint powers agreement (JPA) specifies that pursuant to Section 6508.1 of the Government Code, no debt, liability or obligation of CCCFA shall be a debt, liability or obligation of a CCCFA member. Any bonds issued by CCCFA do not constitute general obligations of CCCFA and the costs and expenses of each prepaid transaction are

allocated solely to the members participating in such prepaid transaction. Community Power would not be liable for any other member's prepaid-related obligations.

CCCFA, as a public joint powers agency (JPA), can issue tax-exempt bonds and enter a 30-year, non-recourse, tax-exempt prepay transaction with a taxable, prepaid supplier of energy. CCCFA is a conduit agency to issue bonds; it is not intended for joint procurement. Prepayment transactions are codified in the US Tax law, and Congress enacted legislation specifically allowing for such transactions as part of the National Energy Policy Act of 2005. CCCFA will take advantage of this structure to increase the amount, and reduce the cost, of clean energy on the California grid, combating climate change and fulfilling customers' needs for non-polluting resources.

On July 25, 2024, CCCFA also adopted membership criteria that defines eligibility to join either as an Associate Member or as a Founding Member. Under this criteria, CCCFA states that to join as a Founding Member, an entity must have either:

- Received energy deliveries through a CCCFA prepayment transaction for a minimum of one year, or
- Employ a Director/Manager-level staff member with at least one year's direct oversight of prepay issuances and prepay operations while employed by a Founding Member CCA.

ANALYSIS AND DISCUSSION

CCCFA is a Joint Powers Authority which can help member CCAs save up to 10% or more on power purchase agreements, helping reduce costs for ratepayers and increase available funding for local programs. The Board of CCCFA consists of one director representing each member agency. A majority vote is sufficient to act on most items before the Board, with a 2/3 majority vote required for some actions including the addition of more member agencies, terminating a Founding or Associate Member, terminating the JPA, or amending specific portions of the JPA.

CCCFA has no permanent staff. A "working group" consisting of staff from Founding Member CCAs performs or oversees essential operating activities. CCCFA also contracts with a small number of professional service providers, such as an accounting firm to prepare audited financial statements and an auditor to perform the annual financial audit. A Community Power staff member will not initially be expected to participate in the "working group" given that SDCP would join as an Associate Member. CCCFA adopts an annual budget covering operating expenses, which are allocated equally to each member. CCCFA has expressed an intent to keep operating costs and overhead low to maximize prepay savings for its members which, in general, is consistent with Community Power's objectives. Consistent with this goal, the JPA specifies that CCCFA will not have the power to and will not enter any retirement contract with any public retirement system for any reason.

Per CCCFA's membership criteria, Community Power only has the option to join as an Associate Member given that Community Power has neither received energy deliveries through a CCCFA prepay transaction nor employed a Director/Manager-level staff member with at least one year's direct oversight of prepay issuances and prepay operations while employed by a Founding Member CCA. Community Power intends on requesting membership as a Founding Member in one year from a potential clean prepayment financing transaction completing, given the potential volume of transactions that Community Power might undertake compared to other Founding Members.

Joining CCCFA as an Associate Member requires the following steps:

- Community Power to adopt a Resolution of Board authorizing Community Power to join CCCFA.
- Community Power to execute CCCFA's Joint Powers Agreement.
- Community Power to request that CCCFA accept Community Power joining CCCFA as an Associate Member.
- CCCFA's Board to approve Community Power's membership request with a 2/3rd vote of the CCCFA Board.
- Community Power to pay a one-time $50,000 new membership fee, a $20,000 transaction fee to cover the project costs of the prepayment transaction, and an agreement to pay, on an ongoing basis, COMMUNITY POWER's share of CCCFA's annual general and administrative costs.

Either Community Power CEO or their delegation would be Community Power's representative on the CCCFA Board. Current members of the CCCFA Board include three CEOs and one Director of Finance.

Through SDCP's recommendation from the RFPs issued on April 19, 2024, for Tax and Bond Counsel services, CCCFA will also contract directly with Orrick, Herrington & Sutcliffe LLP.

COMMITTEE REVIEW

The report was reviewed by the Finance and Risk Management Committee (FRMC) on September 19, 2024. Additional clarity regarding the fiscal impact was added subsequent to their review.

FISCAL IMPACT

The costs of joining CCCFA will comprise a one-time up-front $50,000 membership fee; a $20,000 transaction fee for the prepayment transaction; and an equal share (one-fifth, given current CCCFA membership) of ongoing general and administrative costs. The $50,000 one-time joining fee is intended to represent Community Power's share of CCCFA's start-up costs and is approximately equal to the initial amount contributed by the other member agencies.

ATTACHMENTS

Attachment A: Resolution No. 2024-06, Approving San Diego Community Power Joining California Community Choice Financing Authority (CCCFA) as an Associate Member and to Approve the Entry into a Joint Powers Agreement Related Thereto and Delegating Authority to the San Diego Community Power Authorized Representatives to Execute and Deliver Such Joint Powers Agreement

ITEM 14
ATTACHMENT A

RESOLUTION NO. 2024-06

RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER TO APPROVE SAN DIEGO COMMUNITY POWER JOINING CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY (CCCFA) AS AN ASSOCIATE MEMBER AND TO APPROVE THE ENTRY INTO A JOINT POWERS AGREEMENT RELATED THERETO AND DELEGATING AUTHORITY TO THE SAN DIEGO COMMUNITY POWER AUTHORIZED REPRESENTATIVES TO EXECUTE AND DELIVER SUCH JOINT POWERS AGREEMENT

THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER DOES HEREBY FIND, RESOLVE, AND ORDER AS FOLLOWS:

WHEREAS, **SAN DIEGO COMMUNITY POWER** (**"San Diego Community Power"** or **"SDCP"**) was formed on October 1, 2019 under the provisions of the Joint Exercise Powers Act of the State of California, Government Code section 6500 *et seq*. (the "**JPA Law**");

WHEREAS, San Diego Community Power is duly organized, validly existing, and in good standing under and by virtue of the laws of the State of California, is duly authorized to transact business, having obtained all necessary filings, governmental licenses and approvals in the State of California, and has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage;

WHEREAS, San Diego Community Power is a community choice aggregator (as defined in Section 331.1 of the Public Utilities Code of the State of California (the "**Public Utilities Code**"), and is a public agency (as defined in the JPA Law) that has implemented a CCA program pursuant to Section 366.2 of the Public Utilities Code, and possesses the power to purchase and sell electric energy and enter into related contracts for such purposes;

WHEREAS, San Diego Community Power, acting pursuant to the JPA Law, may enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them and, pursuant to Government Code Section 6588, to exercise certain additional powers;

WHEREAS, the California Community Choice Financing Authority ("CCCFA") is a joint exercise of powers agency established under JPA Law and a Joint Powers Agreement (the "JPA Agreement") among various California Community Choice Aggregators ("CCAs") for the purpose of undertaking the financing and refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of its members by, among other things, issuing or incurring bonds and entering into related contracts;

WHEREAS, San Diego Community Power is considering an energy prepayment transaction and using CCCFA as the issuer of bonds for the purpose of financing such transaction, and in connection therewith has determined that it is in the best interests of San Diego Community Power to join CCCFA as an Associate Member (as defined in the JPA Agreement hereinafter defined) and to execute and deliver the JPA Agreement in order to establish such membership;

WHEREAS, there has been submitted to this meeting (i) a copy of theJPA Agreement, and (ii) the by-laws of CCCFA as in effect on the date hereof (the "**By-Laws**");

WHEREAS, CCCFA has established a new membership entry fee of $50,000 for a new associate member's portion of organization, planning, and other costs, in addition to each member's equal share of general and administrative costs as determined by the CCCFA and a transaction fee of $20,000 to cover the "Prepayment Project" costs as defined in Section 1.11 of the CCCFA JPA Agreement;

WHEREAS, under the JPA Law and the JPA Agreement, CCCFA is a public entity separate and apart from the parties to the JPA Agreement, and the debts, liabilities, and obligations of the CCCFA will not constitute debts, liabilities, or obligations of San Diego Community Power.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED as follows:

Section 1. **AUTHORIZED REPRESENTATIVES**. The following named individuals are the authorized representatives of San Diego Community Power with the respective titles specified below (collectively referred to as "**Authorized Representatives**" and individually referred to as an "**Authorized Representative**"):

NAMES	TITLES
Joe LaCava	Chair of the Board
Karin Burns	Chief Executive Officer
Eric Washington	Chief Financial Officer
Jack Clark	Chief Operating Officer
Veera Tyagi	General Counsel

Section 2. **AUTHORIZATION TO JOIN CCCFA AS AN ASSOCIATE MEMBER**. The Board of Directors of San Diego Community Power does hereby authorize and approve San Diego Community Power joining CCCFA as an Associate Member, subject to approval by CCCFA by a majority vote of the Board of Directors of CCCFA as required by the JPA Agreement.

Section 3. **JOINT POWERS AGREEMENT AND BY-LAWS**. The JPA Agreement, attached hereto as Exhibit A, and the By-Laws of CCCFA, attached hereto as Exhibit B, are hereby approved.

Section 4. **ACTIONS AUTHORIZED**. Any one of the Authorized Representatives is authorized and approved to (a) execute and deliver the JPA Agreement as an Associate Member, (b) pay any and all fees and costs and execute and deliver such other documents and agreements as may be required of an Associate Member under the terms of the JPA Agreement or the By-Laws, and (c) do and perform such other acts and things as any Authorized Representative may in his or her discretion deem reasonably necessary or proper in order comply with the terms and intent of the JPA Agreement and to carry into effect the provisions of this Resolution.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that the Authorized Representatives are duly elected, appointed, or employed by or for San Diego Community

Power, as the case may be. This Resolution now stands of record on the books of San Diego Community Power, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that this Resolution shall take effect upon its passage, shall be continuing and shall remain in full force and effect unless and until expressly revoked by further resolution of the Board of Directors.

ADOPTED AND APPROVED this 26th day of September 2024.

By:_____
Joe LaCava, Chair of the Board of Directors

ATTEST:

_____
Maricela Hernandez, Secretary to the Board of Directors

APPROVED AS TO FORM:

_____
Veera Tyagi, General Counsel

EXHIBIT A

JOINT POWERS AGREEMENT

(see attached)

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CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY JOINT POWERS AGREEMENT

This Joint Powers Agreement (this "Agreement") is made by and among those public agencies who are signatories to this Agreement, and those public agencies which may hereafter become signatories to this Agreement (all such parties, except those which have withdrawn as provided herein, are referred to herein as the "Members" and those parties initially executing this Agreement are referred to as the "Founding Members"), creating a separate joint powers agency, which is named "California Community Choice Financing Authority" ("CCCFA").

WITNESSETH

WHEREAS, each Member is a "community choice aggregator," as that term is defined in Section 331.1 of the Public Utilities Code of the State of California (the "Public Utilities Code"), having duly adopted, established and implemented a community choice aggregation program pursuant to Section 366.2 of the Public Utilities Code, with the authority to group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers, and to enter into agreements for services to facilitate the sale and purchase of electricity and other related services, and to study, promote, develop, conduct, operate and manage energy-related programs; and

WHEREAS, each Member is a "public agency," as that term is defined in Section 6500 of the Government Code of the State of California (the "Government Code"); and

WHEREAS, Chapter 5 of Division 7 of Title 1 of the Government Code, being Section 6500 and following (the "Act"), authorizes a joint exercise by two or more public agencies of any power which is common to each of them and the creation of an entity that is separate from the parties to the joint exercise of powers agreement; and

WHEREAS, it is to the mutual benefit of the Members and in the public interest that an agency by the name of the California Community Choice Financing Authority be created, by which the Members jointly exercise for their common benefit and for the purposes specified herein certain powers that they have in common or are otherwise provided for by applicable law, including but not limited to (i) the acquisition and operation of power supplies, resource adequacy and renewable attributes, and (ii) the provision of other energy services or programs which may be of benefit to one or more Members; and

WHEREAS, the Act conveys upon joint exercise of powers authorities certain additional powers, including but not limited to the power to issue revenue bonds and incur other evidences of indebtedness for such purposes as are specified in the Act; and

WHEREAS, CCCFA's purpose is to assist Members by undertaking the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of the Members by, among other things, issuing or incurring Bonds (as such term is defined herein) and entering into related contracts with Members.

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do hereby agree as follows:

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Article I. DEFINITIONS

In addition to the other terms defined herein, the following terms, whether in the singular or in the plural, when used herein and initially capitalized, shall have the meanings specified throughout this Agreement.

Section 1.01 "Act" means Chapter 5 of Division 7 of Title 1 of the Government Code (Section 6500 *et seq.*), as supplemented and amended from time to time, including without limitation the Marks-Roos Local Bond Pooling Act of 1985.

Section 1.02 "Agreement" means this Joint Powers Agreement, as it may be supplemented and amended from time to time in accordance with the terms hereof.

Section 1.03 "Associate Member" means any Public CCA Agency that is a signatory to this Agreement and that has met the requirements of Section 3.02 below to become an Associate Member. The term "Associate Member" shall, however, exclude any Associate Member which shall have withdrawn or been excluded from CCCFA pursuant to Section 3.04 below.

Section 1.04 "Board" means the Board of Directors of CCCFA as established by this Agreement.

Section 1.05 "Bonds" means bonds, notes, commercial paper, installment purchase, lease purchase and similar agreements and certificates of participation therein, and any other evidences of indebtedness.

Section 1.06 "CCCFA" means the California Community Choice Financing Authority, the Joint Powers Authority established by this Agreement.

Section 1.07 "Director" means each Director duly appointed and serving on the Board as provided in Article IV of this Agreement.

Section 1.08 "Founding Member" means each of the Public CCA Agencies initially executing this Agreement, and any Public CCA Agency that becomes a Founding Member pursuant to Section 3.01 below. The term "Founding Member" shall, however, exclude any Founding Member which shall have withdrawn or been excluded from CCCFA pursuant to Section 3.04 below. The initial Founding Members are Central Coast Community Energy, East Bay Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy.

Section 1.09 "Government Code" means the Government Code of the State of California.

Section 1.10 "Member" means a Founding Member or an Associate Member.

Section 1.11 "Prepayment Project" means, in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations: (i) the purchase and sale of electric energy and associated capacity and environmental attributes, (ii) the design, acquisition, maintenance, or operation of any Public Capital Improvement (as defined in the Act) or other facility or improvement, or the leasing thereof, (iii) the provision of working capital, and (iv) any other project, program, public capital improvement or purpose authorized by the Act or other law to be undertaken, financed, or refinanced by CCCFA, subject to CCCFA's approval of an application from one or more Members for support of such project, program, public capital improvement or authorized purpose and in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations.

Section 1.12 "Prepayment Project Contract" means a contract among any Members and CCCFA in connection with the undertaking, financing or refinancing of a Prepayment Project by such Members and CCCFA in accordance with the terms of this Agreement.

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Section 1.13 **"Public CCA Agency"** means any community choice aggregator, as such term is defined in Section 331.1 of the Public Utilities Code, that is a public agency, as such term is defined in the Act, which has implemented a CCA program pursuant to Section 366.2 of the Public Utilities Code.

Section 1.14 **"Public Utilities Code"** means the Public Utilities Code of the State of California.

Article II. FORMATION OF AUTHORITY

Section 2.01 **Creation of CCCFA.** Pursuant to the Act, there is hereby created a public entity, to be known as the "California Community Choice Financing Authority," which shall be a public entity separate and apart from its Members. The debts, liabilities and obligations of CCCFA shall not constitute debt, liabilities or obligations of any Member.

Section 2.02 **Purpose.** This Agreement is made, and CCCFA is being established, pursuant to the Act to provide for the joint exercise of powers common to the parties hereto to assist the Members in financing or refinancing energy prepayments that can be financed with tax advantaged bonds and other obligations on behalf of one or more of the Members, including by undertaking, financing or refinancing Prepayment Projects on behalf of one or more of the Members and/or CCCFA, all as further described in Section 2.03 hereof. CCCFA will fulfill the purposes of this Agreement by, among other things, undertaking the sale and issuance or incurrence of Bonds to finance or refinance Prepayment Projects on behalf of one or more of the Members and/or CCCFA in accordance with the Act. CCCFA is not being formed for the purposes of providing municipal services within the meaning of Section 6503.6 or Section 6503.8 of the Act.

Section 2.03 **Powers.** CCCFA, in its own name, shall have any and all power to undertake Prepayment Projects on behalf of one or more of the Members and/or CCCFA, and to finance or refinance such Prepayment Projects through the sale and issuance or incurring of Bonds for the purposes set forth in Section 2.02 hereof. CCCFA is empowered to exercise any and all common powers of the Members, and any other powers provided to it by any applicable laws, beneficial for the issuance or incurrence from time to time of such Bonds pursuant to Article VII hereof. Without limiting the generality of the foregoing, CCCFA, in its own name, shall have the power:

(a) to acquire, purchase, finance, operate, maintain, utilize and/or dispose of one or more Prepayment Projects and any facilities, programs or other authorized costs relating thereto;
(b) to make and enter contracts (including without limitation interest rate, commodity, basis and similar hedging contracts intended to hedge payment, rate, cost or similar exposure);
(c) to employ agents and employees;
(d) to acquire, manage, maintain or operate any building, works or improvements;
(e) to acquire, hold, lease or dispose of property;
(f) to incur debts (including without limitation through the issuance or incurrence of Bonds), liabilities or obligations (which shall not constitute debts, liabilities, or obligations of any of the Members);
(g) to sue and be sued in its own name;
(h) to receive gifts, contributions and donations of real or personal property, funds, services and other forms of assistance from any source;
(i) to receive, collect, invest and disburse moneys;
(j) to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;
(k) to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer energy-related programs;
(l) to defend, hold harmless, and indemnify, to the fullest extent permitted by law, each Member from any liability, claims, suits, or other actions;

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(m) to exercise any other power and take any other action permitted by law to accomplish the purposes of this Agreement.

Such powers shall be exercised by CCCFA subject only to such restrictions upon the manner of exercising such power as are imposed upon Silicon Valley Clean Energy in the exercise of similar powers, as provided in Section 6509 of the Act, and, should Silicon Valley Clean Energy withdraw or be excluded from this Agreement pursuant to Section 3.04 hereof, the manner of exercising any power shall be subject only to the restrictions upon the manner of exercising such powers as are imposed upon Marin Clean Energy in the exercise of similar powers; *provided, however*, that nothing herein shall limit the powers of CCCFA under Article 4 of the Act.

Any Bonds issued or incurred by CCCFA shall not constitute general obligations of CCCFA, but shall be payable solely from the moneys pledged to the payment of principal of or interest on such Bonds under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which the Bonds are issued or incurred, as further described in Article VII hereof. Such Bonds shall not constitute debts, liabilities or obligations of the Members.

Any of the Prepayment Projects acquired, financed or refinanced by CCCFA shall be operated by a Member or CCCFA for and on behalf of CCCFA, either directly or pursuant to contract or agreement with a third party designated by the applicable Member or Members and approved by CCCFA. None of the Members or CCCFA shall have liability for the breach, negligence or willful misconduct of any such third party.

Article III. MEMBERSHIP

Section 3.01 Founding Members. A Public CCA Agency will be qualified to join as a Founding Member only if it possesses the power to purchase and sell electric energy and enter into related contracts for such purposes. Public CCA Agencies may be added as parties to this Agreement and become Founding Members, and existing Associate Members may be elevated to Founding Members, upon: (1) the filing by such Public CCA Agency with the Board of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such Public CCA Agency approving this Agreement and the execution and delivery hereof, and requesting to be added as a Founding Member of CCCFA; (2) the approval at a regular or special meeting of the Board by at least two-thirds (2/3) of the entire Board, and the adoption of a resolution of the Board approving the addition of such Public CCA Agency as a Founding Member; and (3) the deposit with, or the written agreement to pay to, CCCFA a share of organization, planning and other costs and charges as determined by the Board to be appropriate, if any. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing. Upon completion of the foregoing, the Public CCA Agency shall become a Founding Member for all purposes of this Agreement.

Section 3.02 Associate Members. A Public CCA Agency will be qualified to join as an Associate Member only if it possesses the power to purchase and sell electric energy and enter into related contracts for such purposes. Public CCA Agencies may be added as Associate Members of CCCFA upon: (1) the filing by such Public CCA Agency with the Board of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such Public CCA Agency approving this Agreement and the execution and delivery hereof, and requesting to be added as an Associate Member of CCCFA; (2) the approval at a regular or special meeting of the Board by a majority vote of the Directors in attendance, provided a quorum is established and maintained, and the adoption of a resolution of the Board approving the addition of such Public CCA Agency as an Associate Member; and (3) the deposit with, or the written agreement to pay to, CCCFA a share of organization, planning and other costs and charges as determined by the Board to be appropriate, if any. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing. Upon completion of the foregoing, the Public CCA Agency shall become an Associate Member for all purposes of this Agreement.

Section 3.03 Cost Allocations.

(a) Unless otherwise determined by a two-thirds (2/3) vote of the entire Board, each Member shall pay an equal share of one Member one share for general and administrative costs as determined by the Board associated with all operations of CCCFA. General and administrative costs do not include any costs that relate solely to any specific Prepayment Project Contract.

(b) The costs of each Prepayment Project shall be allocated solely to the Member or Members undertaking or participating in such Prepayment Project or on whose behalf CCCFA undertakes such Prepayment Project, which allocation shall be described in a Prepayment Project Contract relating to such Prepayment Project.

Section 3.04 Withdrawal or Exclusion of Member.

(a) Any Member may withdraw from CCCFA upon the following conditions:

(i) The Member shall have filed with the Board Secretary a certified copy of a resolution of its governing body expressing its desire to so withdraw. If a Founding Member files a resolution to withdraw with the Board Secretary, that Founding Member no longer has any voting rights on the Board;

(ii) Members undertaking or participating in Prepayment Projects or on whose behalf CCCFA undertakes a Prepayment Project shall remain subject to the cost allocation, participation and withdrawal terms and conditions, as applicable, set forth in the applicable Prepayment Project Contract; and

(iii) Prior to the Board accepting the Member's filing of such resolution, any Member so terminating shall be obligated to pay its share of general and administrative costs then due. However, this obligation shall take into account any refunds due to the Member and shall not extend to debts, liabilities and obligations of CCCFA. The debts, liabilities and obligations of CCPFA shall not constitute debt, liabilities or obligations of any Member.

(iv) No such withdrawal shall, or shall be permitted if it would, result in (a) CCCFA having fewer than three Founding Members; or (b) the dissolution of CCCFA so long as any Bonds remain outstanding under any resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.

(b) Upon compliance with the conditions specified in Section 3.04(a), the Board shall accept the withdrawing Member's resolution and the withdrawing Member shall no longer be considered a Member for any reason or purpose under this Agreement and its rights and obligations under this Agreement shall terminate. The withdrawal of a Member shall not affect any obligations of such Member under any Prepayment Project Contract or other program agreement.

(c) Any Member which has (i) defaulted under this Agreement, a Prepayment Project Contract, or other program agreement, (ii) if such Member is a Founding Member, failed to appoint a Director to serve on the Board in accordance with Section 4.02 below, or (iii) failed to pay any required share of costs in accordance with Sections 3.01, 3.02, and 3.03 above, may have its rights under this Agreement terminated and may be excluded from participation in CCCFA by the vote (taken at a regular or special meeting of the Board) of at least two-thirds (2/3) of the entire Board (including the Director representing the defaulting Member, if such Member is a Founding Member). Prior to any vote to terminate participation of any Member, written

notice of the proposed termination and the reason(s) for such termination shall be delivered to the Member whose termination is proposed at least 60 days prior to the Board meeting at which such matter shall first be discussed as an agenda item. The written notice of the proposed termination shall specify the particular provisions of this Agreement or a Prepayment Project Contract or other program agreement which the Member has allegedly defaulted on, or whether the proposed termination is based on failure to appoint a Director (if such Member is a Founding Member) or pay any required share of costs. The Member subject to possible termination shall have the opportunity to cure the violation prior to the meeting at which termination will be considered. At the meeting where termination of the Member is considered, the Member shall be given the opportunity to respond to any reasons and allegations that may be cited as a basis for termination prior to a termination vote. Any excluded Member shall continue to be liable for its obligations under any Prepayment Project Contract or other program agreement and for any unpaid contribution, payment, or advance approved by the Board prior to such Member's exclusion. No such termination shall, or shall be permitted if it would, result in (a) CCCFA having fewer than three Founding Members; or (b) the dissolution of CCCFA so long as any Bonds remain outstanding under any resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.

(d) The withdrawal or termination of a Member shall not affect the provisions or obligations set forth in Article VIII or Section 11.04 below.

Section 3.05 Contributions and Advances. Contributions or advances of public funds and of personnel, equipment or property may be made to CCCFA by any Member for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of such purpose. Any such advance shall be made subject to repayment, and shall be repaid in the manner agreed upon by such Member and CCCFA at the time of making such advance. It is mutually understood and agreed that no Member is under any obligation to make advances or contributions to CCCFA to provide for the costs and expenses of administration of CCCFA, even though any Member, in its sole discretion, may do so. Any Founding Member may allow the use of personnel, equipment or property in lieu of other contributions or advances to CCCFA.

Article IV. POWERS OF BOARD & MANAGEMENT OF CCCFA

Section 4.01 Board. CCCFA shall be administered by a Board which shall consist of one Director representing each Founding Member. Such Board shall be the governing body of this CCCFA, and, as such, shall be vested with the powers set forth in this Agreement, and shall execute and administer this Agreement in accordance with the purposes and functions provided herein. The Board shall have the authority to provide for the general management and oversight of the affairs, property and business of CCCFA.

Section 4.02 Appointment and Vacancies. Each Director shall be the Chief Executive Officer, General Manager, Executive Director, or designee of the Chief Executive Officer, General Manager, or Executive Director, of each Founding Member and shall be appointed by and serve at the pleasure of the Founding Member that the Director represents, and may be removed as Director by such Founding Member at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed by the Founding Member to fill the position of the previous Director in accordance with the provisions of this Article IV within 60 days of the date that such position becomes vacant or the Founding Member shall be subject to the exclusion procedures in Section 3.04(c) above. Each Director may appoint an alternate to serve in their absence.

Section 4.03 Notices. The Board shall comply with the applicable provisions of Sections 6503.5, 6503.6 and 53051 of the Government Code requiring the filing of notices and a statement with the Secretary of State and the State Controller.

Section 4.04 Committees. The Board may create committees to provide advice to the Board or conduct the business of CCCFA subject to delegation of authority from the Board as permitted in the bylaws and any applicable laws.

Section 4.05 Director Compensation. Compensation for work performed by Directors, including alternates, on behalf of CCCFA shall be borne by the Founding Member that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.

Section 4.06 Board Officers. At its first meeting in every second calendar year, the Board shall elect or re-elect a Chair and a Vice-Chair, each of whom shall be selected from among the Directors and shall also appoint or re-appoint a Secretary, and a Treasurer/Controller, each of whom may, but need not, be selected from among the Directors.

(a) **Chair and Vice-Chair**. The duties of the Chair shall be to preside over the Board meetings, sign all ordinances, resolutions, contracts and correspondence adopted or authorized by the Board, and to help ensure the Board's directives and resolutions are carried out. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair.

(b) **Treasurer/Controller.** The Board shall appoint a qualified person to act as the Treasurer/Controller, who does not need to be a Director. Where a certified public accountant has been designated as Treasurer/Controller of CCCFA, the auditor of one of the Founding Members or of a county in which one of the Founding Members is located shall be designated as auditor of CCCFA. Subject to the provisions of any resolution, indenture, trust agreement or other instrument providing for a trustee or other fiscal agent in connection with any Bonds, and, except as may otherwise be specified by resolution of CCCFA, the Treasurer/Controller shall be the depository of CCCFA to have custody of all the money of CCCFA, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Government Code. The Treasurer/Controller is hereby designated as the public officer or person who has charge of, handles, or has access to any property of CCCFA, and such officer shall file an official bond in an amount determined from time to time by the Board as required by Section 6505.1 of the Government Code. The Treasurer/Controller shall cause an independent audit to be made by a certified public accountant, or public accountants, in compliance with Section 6505 of the Government Code. The Treasurer/Controller shall also create or caused to be created a report in writing on the first day of each fiscal quarter to CCCFA and each Founding Member, which report shall describe the amount of money held by the Treasurer/Controller, the amount of receipts since the last such report, and the amount paid out since the first such report.

(c) **Secretary.** The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of CCCFA, and responding to public records requests of the JPA.

Section 4.07 Management of CCCFA. The Board may appoint a part-time or full-time General Manager, and may appoint one or more part-time or full-time Assistant General Managers, to serve at the pleasure of the Board. If a General Manager has been appointed, the General Manager shall be responsible for the day-to-day operation and management of CCCFA. If no General Manager shall have been appointed, the Treasurer/Controller shall be responsible for the day-to-day operation and management of CCCFA. The General Manager, if any, and the Treasurer/Controller may each enter into and execute contracts in accordance with the policies established and direction provided by the Board, and shall file an official bond in the amount determined from time to time by the Board.

Section 4.08 Other Officers and Employees. The Board shall have the power to appoint such other officers, deputies, legal counsel (which may be the legal counsel to one or more of the Members) and staff as it may deem necessary who shall have such powers, duties and responsibilities as are determined by the Board, and to retain independent accountants, legal counsel, engineers and other consultants. The Founding Members may contract with CCCFA to provide staff to perform services for CCCFA, but such employees shall at all times, and for all purposes including benefits and compensation, remain employees of the Founding Member only.

Section 4.09 Budget. The budget shall be approved by the Board. The Board may revise the budget from time-to-time as may be reasonably necessary to address contingencies and expected expenses. All subsequent budgets of CCCFA shall be approved by the Board in accordance with rules as may be adopted by the Board from time to time. All expenditures must be made in accordance with the adopted budget.

Section 4.10 Fiscal Year. Unless changed by resolution of the Board, the fiscal year of CCCFA shall be the period from January 1 of each year to and including the following December 31.

Article V. MEETINGS OF THE BOARD

Section 5.01 Regular Meetings. The Board shall hold at least one regular meeting per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution of the Board. Regular meetings may be adjourned to another meeting time.

Section 5.02 Special Meetings. Special and emergency meetings of the Board may be called in accordance with the provisions of Government Code Sections 54956 and 54956.5, as amended.

Section 5.03 Brown Act Compliance. All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*), and as augmented by rules of the Board not inconsistent therewith. Directors may participate in meetings telephonically or by other electronic means, with full voting rights, to the extent permitted by law.

Section 5.04 Minutes. The Secretary shall cause to be kept minutes of the meetings of the Board, both regular and special, and shall cause a copy of the minutes to be forwarded promptly to each Director.

Section 5.05 Quorum. A quorum of the Board shall consist of a majority of the Directors, except that less than a quorum may adjourn from time to time in accordance with law.

Section 5.06 Voting. Each Founding Member shall have one vote, which may be cast on any matter before the Board by each Director or alternate. Except to the extent otherwise specified in this Agreement, or by law, a vote of the majority of the Directors in attendance shall be required and sufficient to constitute action, provided a quorum is established and maintained.

(a) Special Voting Requirements as specified in this Agreement:

(i) Action of the Board on the matters set forth in Section 3.01 related to addition of Founding Members shall require the affirmative vote of at least two-thirds (2/3) of the Entire Board.

(ii) Action of the Board on the matters set forth in Section 3.04(c) related to involuntary termination of a Member shall require the affirmative vote of at least two-thirds (2/3) of the entire Board.

(iii) Action of the Board on the matters set forth in Section 9.01 related to termination of this Agreement shall require the affirmative vote of at least two-thirds (2/3) of the entire Board approved by resolution of each Founding Member's governing body.

(iv) Action of the Board to amend any other provision of this Agreement shall be subject to the voting requirements set forth in Section 11.03 below.

Section 5.07 Rules and Regulations. CCCFA may adopt, from time to time, by resolution of the Board such bylaws, policies or rules and regulations for the conduct of its meetings and affairs as may be required.

Article VI. PREPAYMENT PROJECTS

Section 6.01 Prepayment Projects. The Board has the power, upon majority vote of the Directors in attendance, provided a quorum is established and maintained, to approve the application of any Member for the undertaking, financing, or refinancing of any Prepayment Projects within the purpose and power of CCCFA and to adopt guidelines for their implementation.

Section 6.02 Prepayment Project Contract. The costs and other expenses of each Prepayment Project, including without limitation applicable administrative costs of CCCFA with respect to the Prepayment Project, shall be allocated solely to the Member or Members undertaking or participating in such Prepayment Project or on whose behalf CCCFA undertakes such Prepayment Project, which allocation shall be described in a Prepayment Project Contract relating to such Prepayment Project, which will be separate and distinct from this Agreement.

Article VII. BONDS AND OTHER INDEBTEDNESS

In addition to the other powers conferred on CCCFA by this Agreement, CCCFA shall have the power to issue, incur, sell and deliver Bonds in accordance with the provisions of the Act and other applicable laws for the purpose of acquiring, undertaking, financing, or refinancing one or more Prepayment Projects. The terms and conditions of the issuance or incurrence of any such bonds or indebtedness shall be set forth in a resolution, indenture trust agreement, or other instrument pursuant to which the Bonds are issued or incurred, as required by law and as approved by the Board. CCCFA's debts, liabilities and obligations with respect to Bonds issued or incurred under this Agreement and contracts or obligations entered into to carry out the purposes for which Bonds are issued or incurred, shall not constitute a debt, liability or obligation of any of the Members.

Any Bonds issued or incurred by CCCFA shall not constitute general obligations of CCCFA, but shall be payable solely from the moneys pledged to the payment of principal of or interest on such Bonds under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which the Bonds are issued or incurred.

Article VIII. LIMITATION ON LIABILITY OF MEMBERS

Section 8.01 Pursuant to Section 6508.1 of the Government Code, no debt, liability or obligation of CCCFA shall be a debt, liability or obligation of any Member. Nothing contained in this Article VIII shall in any way diminish the liability of any Member with respect to any Prepayment Project Contract such Member enters into pursuant to this Agreement.

Section 8.02 Notwithstanding anything to the contrary in this Agreement or otherwise, CCCFA shall not have the power to and shall not enter into any retirement contract with any public retirement system (as defined in Section 6508.1 of the Government Code) for any reason. The provision in this paragraph is intended to

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benefit Members and to be a confirming, irrevocable obligation of CCCFA which may be enforced by Members individually or collectively.

Article IX. TERM; TERMINATION; LIQUIDATION; DISTRIBUTION

Section 9.01 Term and Termination. This Agreement shall become effective when at least three Founding Members execute this Agreement. This Agreement shall continue in full force and effect until terminated as provided in this Article; *provided, however*, this Agreement cannot be terminated while either (a) any Bonds of CCCFA remain outstanding under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred, or (b) CCCFA is the owner, lessor or lessee of any real or personal property financed from the proceeds of any Bonds. This Agreement may be terminated by a two-thirds (2/3) vote of the entire Board that is approved by resolution of each Founding Member's governing body; *provided, however*, that this Agreement and CCCFA shall continue to exist after termination for the purpose of disposing of all claims, distribution of assets and all other functions necessary to conclude the obligations and affairs of CCCFA. In any event, CCCFA shall cause all records regarding its formation, existence, the Prepayment Projects, any Bonds issued or incurred by it and proceedings pertaining to its termination to be retained for at least six years (or as otherwise required by law) following termination of CCCFA or final payment of any Bonds issued or incurred by CCCFA, whichever is later.

Section 9.02 Liquidation; Distribution. Upon termination of this Agreement, the Board shall liquidate the business and assets and the property of CCCFA as expeditiously as possible, and distribute any net proceeds, after the conclusions of all debts and obligations of CCCFA, to any Members in proportion to the contributions made or in such manner as otherwise provided by law. The Board is vested with all powers of CCCFA for the purpose of concluding and dissolving the business affairs of CCCFA. Notwithstanding the foregoing, no dissolution of CCCFA shall be permitted while either (a) any Bonds of CCCFA remain outstanding, or (b) CCCFA is the owner, lessor or lessee of any real or personal property financed from the proceeds of any Bonds.

ARTICLE X. ACCOUNTS AND REPORTS

Section 10.01 Establishment and Administration of Funds. CCCFA is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with every provision of law relating to the establishment and administration of funds, including without limitation Section 6505 of the Government Code. CCCFA shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any resolution, indenture or other instrument of CCCFA securing its bonds or other indebtedness, except insofar as such powers, duties and responsibilities are assigned to a trustee appointed pursuant to such resolution, indenture or other instrument. The books and records of CCCFA shall be open to inspection at all reasonable times to each Member and its representatives.

Section 10.02 Annual Audits and Audit Reports. The Treasurer/Controller shall cause an annual independent audit of the accounts and records of CCCFA to be made by a certified public accountant or public accountant in accordance with all applicable laws. If permitted by applicable law and authorized by the Board, the audit(s) may be conducted at the longer interval authorized by applicable law. A report of the financial audit will be filed as a public record with each Member not later than 270 days after the close of the fiscal year or fiscal years under examination. CCCFA will pay the cost of the financial audit and charge the cost against the Members in the same manner as other administrative costs.

ARTICLE XI. GENERAL PROVISIONS

Section 11.01 Conflict of Interest Policy. CCCFA, unless otherwise exempt, shall adopt a conflict of interest policy as required under applicable laws of the State of California. Counsel to CCCFA for financing

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matters, including bond counsel, shall not be considered a consultant or other designated position for purposes of the conflict of interest policy.

Section 11.02 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, neither a Member nor CCCFA may assign any right or obligation under this Agreement without the consent of all other Members.

Section 11.03 Amendments. Subject to any requirements of law, a two-thirds (2/3) vote of the entire Board will be required to amend Articles II, III, VIII, and IX of this Agreement, and an amendment of Section 8.02 and Section 11.03 of this Agreement shall require an affirmative vote of the entire Board. Once an amendment of Articles II, III, VIII, or IX is adopted by the Board, the amendment must be approved by two-thirds of the Founding Members pursuant to each Founding Member's applicable approval process, and an amendment of Section 8.02 and Section 11.03 of this Agreement shall require an affirmative vote of all Founding Members pursuant to each Founding Member's applicable approval process. All other provisions of this Agreement may be amended at any time or from time to time by an amendment approved by at least two-thirds (2/3) vote of the entire Board. Written notice shall be provided to all Members of proposed amendments to this Agreement, including the effective date of such amendments, at least thirty (30) days prior to the date upon which the Board votes on such amendments. Each Member hereby agrees to take any actions necessary on its part to approve any amendment adopted pursuant to this Section 11.03, and if any Member fails to perform any such actions, such Member shall be deemed to have submitted a resolution of withdrawal pursuant to the provisions of Section 3.04 hereof.

Notwithstanding the foregoing, this Agreement shall not terminate while any Bonds of CCCFA remain outstanding under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.

Section 11.04 Indemnification and Insurance. To the fullest extent permitted by law, CCCFA shall defend, indemnify, and hold harmless the Members and each Director, alternate, officer, employee and agent from any and all claims losses damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of CCCFA under this Agreement to the extent not otherwise provided under a Prepayment Project Contract. CCCFA shall acquire such insurance coverage as the Board deems is necessary and appropriate to protect the interests of CCCFA and the Members.

Section 11.05 Waiver of Personal Liability. No member, director, commissioner, officer, agent or employee of CCCFA or the Members, respectively, past, present or future, shall be individually or personally liable for the observance or performance of any terms, conditions or provisions hereof or for any claims, losses, damages, costs, injury and liability of any kind, nature or description arising from the actions of CCCFA or the actions undertaken pursuant to this Agreement; provided, however, that nothing herein shall relieve any such person from the performance of any official duty provided hereby or by applicable provision of law.

Section 11.06 Limitation of Rights. All of the covenants, agreements, terms and conditions in this Agreement to be observed or performed by or on behalf of CCCFA or the Members shall be for the sole and exclusive benefit of CCCFA and the Members, whether so expressed or not, and nothing contained herein, express or implied, is intended to or shall give any other person other than CCCFA and the Members any legal or equitable right, remedy or claim hereunder.

Section 11.07 Notices. The Board shall designate its principal office as the location at which it will receive notices, correspondence, and other communications, and shall designate one of its Directors or staff as an officer for the purpose of receiving service of process on behalf of CCCFA. Any notice given pursuant to this Agreement shall be in writing and shall be dated and signed by the Member giving such notice. Notice to each Member under this Agreement is sufficient if mailed to the Member, and separately to the Director appointed by such Founding Member, to their respective addresses on file with CCCFA.

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Section 11.08 Severability. Should any portion, term, condition, or provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the remaining portions, terms, conditions, and provisions shall not be affected thereby.

Section 11.09 Section Headings. The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section to which they refer.

Section 11.10 Choice of Law. This Agreement will be governed and construed in accordance with the laws of the State of California.

Section 11.11 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all Members had signed the same instrument.

Section 11.12 Dispute Resolution. The Members shall make reasonable efforts to informally settle all disputes arising out of, or in connection with, this Agreement. Should such informal efforts to settle a dispute fail, the dispute shall be mediated in accordance with policies and procedures established by the Board. In the event such mediation fails to settle a dispute, the parties may pursue any remedies provided by law.

[Signature Page Follows]

IN WITNESS WHEREOF, each Member hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

DocuSigned by:
By: Dawn Weisz
A59878416EBC4F8...

Name: Dawn Weisz

Title: CEO

CCA Name: MCE

Date: June 25, 2021

DocuSigned by:
By: Girish Balachandran
6CA64B9AC4C24C3...

Name: Girish Balachandran

Title: CEO

CCA Name: Silicon Valley Clean Energy

Date: June 25, 2021

DocuSigned by:
By:
9DF6BA3222CE44F...

Name: Nick Chaset

Title: CEO

CCA Name: East Bay Community Energy

Date: June 25, 2021

DocuSigned by:
By: Tom Habashi
69C253774488497

Name: Tom Habashi

Title: CEO

CCA Name: central coast community energy

Date: June 25, 2021

IN WITNESS WHEREOF, each Member hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

By: E-SIGNED by Donald Eckert on 2022-09-02 12:27:33 PDT

Name: Donald Eckert

Title: Executive Director

CCA Name: Pioneer Community Energy

Date: September 02, 2022

IN WITNESS WHEREOF, each Member hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

DocuSigned by:

By: _____
DCE57B93C1DA48A...

Name: Ted Bardacke

Title: Chief Executive Officer

CCA Name: Clean Power Alliance of Southern California

Date: 9/6/2022

IN WITNESS WHEREOF, each Member hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

By: Lori Mitchell

Name: Lori Mitchell
Lori Mitchell (Jun 17, 2024 10:54 PDT)

Title: Director Community Energy

CCA Name: San Jose Clean Energy

Date: 06/17/2024

EXHIBIT B

BY-LAWS

(see attached)

BYLAWS OF THE

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

Adopted June 25, 2021

BYLAWS OF THE CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

ARTICLE I - THE AUTHORITY

Section 1.1 Name. The official name of the Authority shall be the "California Community Choice Financing Authority."

Section 1.2 Board Members. The Authority shall be administered by a board of directors (the "Board") whose members (the "Directors") shall be as set forth in Article IV of the Joint Powers Agreement, dated June 25, 2021 (the "Agreement"). Directors shall, to the extent required by law, comply with the requirements of the California Political Reform Act, as amended from time to time, the provisions of the Joint Exercise of Powers Act, as amended from time to time, and any other requirements applicable to members of the governing body of a joint powers authority.

Section 1.3 Office and Place of Meetings. The business office of the Authority shall be at 1125 Tamalpais Avenue, San Rafael, California 94901 or at such other place as may be designated by resolution by the Board. Regular meetings shall be held at 1125 Tamalpais Avenue, San Rafael, California 94901 or at such other place as the Board may designate.

ARTICLE II - OFFICERS

Section 2.1 Officers. The Officers of the Authority shall be the Chair, Vice Chair, Treasurer/Controller, and Secretary. The Officers of the Authority may also include a General Manager.

Section 2.2 Chair and Vice Chair. The Chair and Vice Chair of the Authority shall be elected by the Board. The term of office for the respective officers shall be from the date of his or her election as Chair or Vice Chair through the date of the first regular meeting of the Authority in the second succeeding calendar year following such election: provided, that each person shall serve until a successor has been duly elected. The Chair shall preside at all meetings of the Authority. If the Chair is absent, then the Vice Chair shall act in the Chair's place.

Section 2.3 General Manager. A General Manager may be appointed by the Board and may, but need not, be a Director. The General Manager shall submit such information and recommendations to the Board as he or she may consider proper concerning the business, policies and affairs of the Authority. Except as otherwise specified by resolution of the Board, the General Manager or the General Manager's designee shall have the power to sign all contracts, deeds and other instruments executed by the Authority, shall have the power to direct employees, borrowed or seconded staff and consultants in implementing policy set by the Board, and shall have the power to perform all duties incident to the office or delegated by the Board. The General Manager may designate one or more officers of the Authority or employees of the Authority to act as his or her designee in exercising the power and performing the duties of the General Manager.

Section 2.4 Secretary. The Secretary shall be appointed by the Board, and such Secretary may, but need not, be a Director. The Secretary shall keep the records of the Authority, shall act as Secretary of the meetings of the Authority and record all votes, and shall keep a record of the proceedings of the Authority in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to the office.

Section 2.5 Treasurer/Controller. The Treasurer/Controller shall be appointed by the Board, and may, but need not, be a Director. The Treasurer/Controller shall perform the duties set forth in the Agreement. The Treasurer/Controller may submit such information and recommendations to the Board as he or she may consider proper concerning the business, policies and affairs of the Authority. The Treasurer/Controller shall be responsible for preparation and submission of any reports required to be provided to holders of the Authority's Bonds (as such term is defined in Section 1.05 of the Agreement) pursuant to any continuing disclosure undertakings entered into by the Authority. Except as otherwise specified by resolution of the Board, the Treasurer/Controller or the Treasurer/Controller's designee shall have the power to sign all contracts, deeds and other instruments executed by the Authority, shall have the power to direct employees, borrowed or seconded staff and consultants in implementing policy set by the Board,

and shall have the power to perform all duties incident to the office or delegated by the Board. The Treasurer/Controller may designate one or more officers of the Authority or employees of the Authority to act as his or her designee in exercising the power and performing the duties of the Treasurer/Controller.

Section 2.6 Election of Officers. Election of officers shall be the first order of business at the first regular meeting of the Authority held in every second calendar year; provided, that failure to elect any or all officers at such meeting shall not affect the title to office of any officer duly elected and then holding office as of such meeting.

Section 2.7 Authority to Bind Authority. No Director, officer, agent or employee of the Authority, without prior specific or general authority by a vote of the Board, shall have any power or authority to bind the Authority by any contract, to pledge its credit, or to render it liable for any purpose in any amount.

ARTICLE III - MEETINGS

Section 3.1 Regular Meetings. The Board shall hold at least one regular meeting each year, and, by resolution, may provide for the holding of regular meetings at more frequent intervals in accordance with the provisions of Section 54956 of the Government Code of the State of California. Regular meetings shall be held as set forth in Section 1.3, on dates and at times as fixed by resolution of the Authority and at such places as are determined by the Board. If at any time any regular meeting falls on a legal holiday, such regular meeting shall be held on the next business day at the same time.

All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part I of Division 2 of Title 5 of the Government Code of the State of California (Sections 54950-54961)), as supplemented and amended, or any successor legislation hereafter enacted, and other applicable law.

The Secretary of the Authority shall cause minutes of all meetings of the Board, both special and regular, to be kept and shall cause a copy of the minutes to be forwarded promptly to each Director.

Section 3.2 Special Meetings. A special meeting may be called in accordance with the provisions of Sections 54956 and 54956.5 of the Government Code of the State of California, as amended.

Section 3.3 Closed Sessions. Nothing contained in these Bylaws shall be construed to prevent the Board from holding closed sessions during a regular or special meeting concerning any matter permitted by law to be considered in a closed session.

Section 3.4 Public Hearings. All public hearings held by the Board shall be held during regular or special meetings of the Board.

Section 3.5 Adjourning Meetings and Continuing Public Hearings to Other Times or Places. Any public hearing being held, or any hearing noticed or ordered to be held at any meeting, may by order or notice of continuance be continued or re-continued to any subsequent meeting in the same manner and to the same extent set forth herein for the adjournment of the meetings: provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing a copy of the order or notice of continuance shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

Section 3.6 Meetings to be Open and Public. All meetings of Directors to take action or to deliberate concerning Authority business and its conduct shall be open and public and all persons shall be permitted to attend any such meetings, except as otherwise provided or permitted by law, including as permitted by Section 3.3 of these Bylaws.

Section 3.7 Quorum, Voting Requirements, and Manner of Action. A quorum of the Board, the minimum voting thresholds for actions of the Board, and the manner in which the Board may act shall be as set forth in Article V of the Agreement.

Section 3.8 Parliamentary Procedure. The rules of parliamentary procedure set forth in Robert's Rules of Order shall govern all meetings of the Authority, except as otherwise herein provided.

ARTICLE IV - MISCELLANEOUS

Section 4.1 Statements of Economic Interest. Each Director shall comply with the Authority's Conflict of Interest Code, fully respond to all requests from Authority staff in regard to conflict of interest issues that may arise and timely submit all applicable forms, including Statements of Economic Interest (Form 700), Assuming, Annual, and Leaving Office Statements with the Secretary. The Secretary shall make and retain copies of these forms in compliance with applicable law and the Authority's Conflict of Interest Code.

Section 4.2 No Reimbursement for Travel Expenses. Directors, officers, and employees shall not be reimbursed by the Authority for any travel expenses incurred by those persons in attending events, meetings, and conferences on behalf of the Authority. Non-reimbursable travel expenses shall include all charges for meals, lodging, airfare, and costs of travel by automobile.

Notwithstanding the foregoing, the Board may vote to permit reimbursement of any such reasonable and necessary travel expenses incurred for Directors, officers, or employees to attend non-Authority events, meetings, and conferences, only if that person's sole purpose is to attend on behalf of the Authority. "Reasonable and necessary" travel expenses, with respect to any Director, shall be only those expenses which the Director would not have incurred in performing the normal business of the Founding Member (as defined in Section 1.08 of the Agreement) that appointed such Director. The Treasurer/Controller, upon approval of the Board, shall be authorized to pay all such expenses deemed reasonable and necessary so long as sufficient funds have been budgeted therefor.

Section 4.3 Bonds and Other Indebtedness. The Authority may issue or incur Bonds (as such term is defined in Section 1.05 of the Agreement) in accordance with Article VII of the Agreement, and such Bonds shall not constitute general obligations of the Authority or a debt, liability or obligation of any of the Members (as such term is defined in Section 1.10 of the Agreement), but shall be payable solely from the moneys pledged to the payment of principal of or interest on such Bonds under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which the Bonds are issued or incurred.

ARTICLE V - AMENDMENTS

Section 5.1 Amendments to Bylaws. These Bylaws may be amended by the Authority at any regular or special meeting by majority vote of the Board, provided, that the proposed amendment to any particular section is included in the notice of such meeting.

SAN DIEGO COMMUNITY POWER
Staff Report – Item 15

To: San Diego Community Power Board of Directors

From: Kenny Key, Director of Power Contracts

Via: Karin Burns, Chief Executive Officer

Subject: Approval of Amended and Restated Power Purchase Agreement with JVR Energy Park, LLC

Date: September 26, 2024

RECOMMENDATION

Approve Amended and Restated Power Purchase Agreement with JVR Energy Park, LLC, and authorize the CEO to execute the agreement.

BACKGROUND

As SDCP strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) of at least 10 years in duration will become 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.

In May 2021, SDCP's board approved a PPA with BayWa, the project developer of the JVR Energy Park ("JVR") project. The parties entered into a PPA, dated as of June 4, 2021 (the "Original PPA"). In June 2022, BayWa sent Development Cure Period notice due to litigation of the project's Major Use Permit ("MUP"). In October 2022 a final ruling was in favor of JVR on all 40 disputes raised in litigation of the MUP. The opposing party filed an appeal.

SDCP staff worked with BayWa and the two parties entered into a Letter Agreement on November 18, 2022, which, among other things, waived damages until March 2023 and contemplated an amendment to the PPA. Without an executed amendment in early 2023, the project would owe the damages to SDCP, and the project's viability would be at risk.

In March 2023, SDCP's board approved an amendment to the original PPA to allow BayWa and the courts to resolve the litigation risk. In March of 2024, the appeals court ruled in favor of JVR on counts. That ruling was not appealed.

Once the litigation was resolved, SDCP staff worked with BayWa to understand the viability of the project and what, if any, modifications needed to be made to the Original PPA to maintain viability of the project.

ANALYSIS AND DISCUSSION

Staff and outside procurement counsel at Keyes & Fox negotiated the attached Amended & Restated PPA ("A&R PPA") for the purchase of renewable energy and resource adequacy from JVR Energy Park, which is a solar-plus-battery-storage project to be developed near Jacumba Hot Springs, CA in San Diego County.

A&R PPA Contract Overview – JVR Energy Park, LLC

- Project:
  - 90 MW Solar Photovoltaic generation
  - 70 MW/280 MWh – Battery Energy Storage System (BESS)
    - The capacity from this project is especially valuable given the project's proximity to SDCP communities and eligibility for San Diego-Imperial Valley (SD-IV) Local Resource Adequacy ("RA").
- Project location: Jacumba Hot Springs, San Diego County, CA
- Contract term: 20 years
- Expected annual energy production: approximately 280,000 MWh (equivalent power for approximately 52,000 homes)
- Energy price:
  - Solar – Fixed energy price applicable to the full term of the agreement
  - Battery Energy Storage System – Fixed capacity price adjusted for efficiency, availability and verified capacity
- No credit or collateral obligations for SDCP
- SDCP would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones

Community Benefits:

- Construction will create 350 jobs using local unions and a Project Labor Agreement. Very substantial direct spending and indirect spending will occur with local merchants.
- BayWa has committed $4M in cash contributions to the community through a separate commitment that was a condition to permitting
  - $450k has already been allocated to San Ysidro Health, Jacumba Community Services District, and the Imperial Valley Desert Museum Society
  - $3.5M+ still open for allocation

- The NREL Jobs and Economic Impact Model (JEDI) projects $46MM of local spending
- Project will create $264MM in tax revenues, including roughly $8.7MM in real estate taxes for San Diego County
- BayWa has committed 435 acres of land for conservation will remain untouched in perpetuity and managed by the San Diego Foundation.

The project's value to SDCP's customers and to the SDCP portfolio warrants consideration of the A&R PPA. SDCP staff believes the project's benefits to the community, labor commitments, local renewable resource value, and the project's role in meeting California's need for significant development of reliable, renewable energy generation capacity favor moving forward with an A&R PPA.

The competitive, fixed energy and capacity pricing of the A&R PPA are confidential. Both were increased in the A&R PPA due to increased cost to the project, including increased EPC pricing and tariff updates, caused by the litigation delay on the project's development timeline. The increased rates are still competitive to market rates for projects with 2026 expected commercial operation dates. Further, SDCP was able to alleviate some of the contractual risk with adjustments to the A&R PPA that could allow SDCP to take advantage of price reductions should the project qualify for Energy Community Bonus Credits from the IRS.

SDCP can set itself apart from other renewable energy purchasers by working closely and collaboratively with local and regional developers. Flexibility in portfolio management and contracting will allow SDCP to access more market opportunities but needs to be balanced with sound procurement planning and risk management. The JVR project is a local project, the only renewable project in SDCP's portfolio in San Diego County, with an established relationship with SDCP. As such, staff recommend approving the A&R PPA to allow the project to move forward with development.

COMMITTEE REVIEW

The terms of this A&R PPA were reviewed with the Energy Contract Working Group (ECWG) on July 8, 2024, and July 17, 2024, and the ECWG recommended Staff to move forward in negotiations of the A&R PPA with BayWa.

FISCAL IMPACT

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

ATTACHMENTS

Attachment A: Amended and Restated Renewable Power Purchase Agreement with JVR Energy Park, LLC

ITEM 15
ATTACHMENT A

AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: JVR Energy Park, LLC, a California limited liability company

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

Description of Facility: A 90 MW_{AC} solar photovoltaic Generation Facility combined with a 70 MW_{AC} / 280 MWh_{AC} DC-coupled battery energy storage facility, limited to 90 MW_{AC} deliveries at the Delivery Point, as further described herein. The Facility shall be limited to a size of up to 127.5 MW_{DC}.

Milestones:

Milestone	Expected Date for Completion
Evidence of Site Control	Complete
Executed Interconnection Agreement	Complete
CEC Pre-Certification Obtained	Complete
Major Use Permit	Complete
Network Upgrades Completed	[redacted]
Expected Construction Start Date	[redacted]
Full Capacity Deliverability Status Obtained	Complete, subject to annual confirmation
Initial Synchronization	[redacted]
Expected Commercial Operation Date	[redacted]
Guaranteed Commercial Operation Date	Expected Commercial Operation Date

Delivery Term: The period for Product delivery will be for Twenty (20) Contract Years.

Expected Energy:

Contract Year	Expected Energy (MWh_{AC})
1	[redacted]
2	[redacted]
3	[redacted]
4	[redacted]
5	[redacted]
6	[redacted]
7	[redacted]
8	[redacted]
9	[redacted]
10	[redacted]
11	[redacted]
12	[redacted]
13	[redacted]
14	[redacted]
15	[redacted]
16	[redacted]
17	[redacted]
18	[redacted]
19	[redacted]
20	[redacted]

Guaranteed PV Capacity: 90 MW_{AC}

Storage Contract Capacity: 70 MW_{AC}

Storage Contract Output: 280 MWh_{AC}

Guaranteed Storage Availability: [redacted]

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1 (COD)	[redacted]
2	[redacted]
3	[redacted]
4	[redacted]
5	[redacted]

6	[redacted]
7	[redacted]
8	[redacted]
9	[redacted]
10	[redacted]
11	[redacted]
12	[redacted]
13	[redacted]
14	[redacted]
15	[redacted]
16	[redacted]
17	[redacted]
18	[redacted]
19	[redacted]
20	[redacted]

Minimum Efficiency Rate: [redacted]

Maximum storage facility Cycles per year: [redacted]

Maximum storage facility Cycles per day: [redacted]

Capacity Attributes: Local RA within the SD-IV Area

Delivery Point: Facility PNode, as further described in Exhibit A

Contract Price:

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 20	[redacted] MWh_{AC} (flat) with no escalation

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	[redacted] kW_{AC}-mo. (flat) with no escalation

Product:

☒ PV Energy

☐ Wind Energy
☒ Discharging Energy
☒ Green Attributes (Portfolio Content Category 1)
☒ Storage Capacity
☒ Capacity Attributes (select options below as applicable)
  ☐ Energy Only Status
  ☒ Full Capacity Deliverability Status (completed)
☒ Ancillary Services

Scheduling Coordinator: A party to be designated by Buyer, for the avoidance of doubt, other than Seller

Development Security: [redacted]

Performance Security: [redacted]

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AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT

This Amended and Restated Renewable Power Purchase Agreement ("**Agreement**") is entered into as of _____, 2024 (the "**Effective Date**"), between San Diego Community Power, a California joint powers authority ("**Buyer**") and JVR Energy Park, LLC, a California limited liability company ("**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, permit, construct, own or otherwise control, and operate the Facility; and

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

WHEREAS, the Parties entered into that certain Renewable Power Purchase Agreement, dated as of June 4, 2021, as amended (the "**Original PPA**"); and

WHEREAS, the Parties hereby agree to amend, restate, replace and supersede the terms of the Original PPA as provided herein; and

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 3.12(d).

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

"**Adjusted Facility Energy**" means, for the applicable period, the *sum* expressed in MWh_{AC} of (a) the total Facility Energy for such period, *plus* (b) Charging Energy *multiplied by* (1- Efficiency Rate); *provided*, the Efficiency Rate used for the calculation of (b) shall not be less than the Guaranteed Efficiency Rate.

"**Administrative NQC Reduction**" means a reduction in the maximum achievable Net Qualifying Capacity of the Generating Facility or Storage Facility, as applicable, due to (a) a reduction that has been generally applied to resources materially similar to the Generating Facility or Storage Facility, as applicable, in terms of type, market and operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including any methodology that incorporates fleet averages or other average outage rates, or (b) a reduction that

is specifically applied based on the operational characteristics of the Facility (e.g. any changes with respect to storage duration requirements) to the extent such reduction is not caused by Seller's failure to meet its obligations under this Agreement.

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transferee", "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

"**Agreement**" has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements and amendments hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

"**Alternative Dispatches**" has the meaning set forth in Section 4.5(f).

"**Ancillary Services**" means those Ancillary Services, as defined in the CAISO Tariff, that can be produced from the Storage Facility at any relevant time consistent with the terms and conditions of this Agreement, including spinning reserve, non-spinning reserve, regulation up, regulation down, as each is defined in the CAISO Tariff, and any other ancillary services added to the Agreement in accordance with Section 4.1(c) and the Operating Restrictions. For clarity, "Ancillary Services" as used herein does not include, at any relevant time, any ancillary services that the Facility is not actually physically capable of providing consistent with the terms and conditions of this Agreement, the Operating Restrictions, and the Interconnection Agreement. Ancillary Services does not include black start capabilities.

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

"**Approved Forecast Vendor**" means (a) any of Clean Power Research SolarAnywhere, SolarGIS, CAISO, AWS Truepower/UL, DNV GL, or Tenaska Power Services Co., or (b) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

"**Automated Dispatch System**" or "**ADS**" has the meaning set forth in the CAISO Tariff.

"**Automated Dispatches**" has the meaning set forth in Section 4.5(f).

"**Automatic Generation Control**" or "**AGC**" has the meaning set forth in the CAISO Tariff.

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

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

"**Available Generating Capacity**" means the capacity of the Generating Facility, expressed in whole MW_{AC} that is mechanically available to generate Energy assuming no Charging Energy or Discharging Energy during such period.

"**Available Storage Contract Capacity**" means the capacity of the Storage Facility, expressed in whole MW_{AC} that is mechanically available to accept Charging Energy, deliver Discharging Energy and provide Ancillary Services.

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

"**Battery Augmentation Hours**" means up to [redacted] scheduled in accordance with Section 4.6(a) for the purpose of changing the Storage Facility equipment to increase its ability to store Energy.

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

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

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Facility to deliver less Facility Energy for a period of time than the full amount of PV Energy that is forecasted for the Generating Facility for such period of time in accordance with the most recent forecast available under Section 4.3; and

(b) for the same period of time referenced in (a), the Facility either (i) did not submit a Self-Schedule for the MWhs subject to the reduction; or (ii) did submit a Self-Schedule in the Day-Ahead Market for the MWhs subject to the reduction, but thereafter submitted an Energy Supply Bid (as defined in the CAISO Tariff) in the Real-Time Market for such MWhs subject to the reduction.

If either the Generating Facility or Storage Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period for all or any portion of the period covered in the curtailment notice from the CAISO described in paragraph (a), then the calculation of Deemed Delivered Energy during such period shall not include any Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

"**Buyer Curtailment Order**" means the instruction from Buyer to Seller to reduce PV Energy from the Generating Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or Curtailment Order. If either the Generating Facility or Storage Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period for all or any portion of the time period covered in the Buyer Curtailment Order, then the calculation of Deemed Delivered Energy during such period shall not include any Energy from the Generating Facility that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

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

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

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

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

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

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

"**CAISO Dispatch**" means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC, Alternative Dispatches or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW_{AC} rate for a specified period of time or amount of MWh_{AC}.

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

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

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including

the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

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

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

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

"**Capacity Test**" or "**CT**" means the Commercial Operation Storage Capacity Test, Storage Capacity Test, or any other test conducted pursuant to Exhibit O.

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

"**CEC Certification and Verification**" means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified, as such date may be extended pursuant to Section 3.9) that the Facility or Generating Facility (as applicable) is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy or PV Energy (as applicable) delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

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

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

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

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

"**Charging Energy**" means all Energy produced by the Generating Facility that is delivered to the Storage Facility pursuant to a Charging Notice. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility. For avoidance of doubt, Charging Energy shall be measured at the Storage Facility Meter.

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to the Facility, directing the Storage Facility to charge Charging Energy at a specific MW_{DC} rate for a specified period of time or to an amount of MWh_{DC}, *provided* (a) any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff and (b) if, during a period when the Storage Facility is so instructed to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable "Charging Notice", such "Charging Notice" shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility (as adjusted to reflect Electrical Losses). For the avoidance of doubt, (i) any Buyer request to initiate a Storage Capacity Test consistent with Section 4.9 shall not be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

"**Claim**" has the meaning set forth in Section 16.2(a).

"**Clipped PV Energy**" means the amount of direct current Energy produced at the Generating Facility in excess of what can be delivered as $90MW_{AC}$ at the Delivery Point.

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

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

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

"**Commercial Operation Delay Damages**" means an amount equal to [redacted]

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

"**Compliance Actions**" has the meaning set forth in Section 3.12.

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

"**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. For the avoidance of doubt, the Contract Price is each of the Renewable Rate and the Storage Rate, each as may be modified pursuant to Section 2.5.

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

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

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

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

"**COVID-19**" means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

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

"**CPUC**" means the California Public Utilities Commission or any successor agency performing similar statutory functions.

"**CPUC Master Resource Database**" means the CPUC database of generation, energy storage and other resources qualified to provide Resource Adequacy Benefits to load-serving entities.

"**CPUC System RA Penalty**" means the system RAR 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; *provided*, that CPUC System RA Penalties shall not include any CPUC penalty multipliers resulting from Buyer's prior or aggregate RA deficiencies.

"**Credit Rating**" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements)

or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

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

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

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

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

(d) a curtailment in accordance with Seller's obligations or limitations under its Interconnection Agreement with the CAISO, Participating Transmission Owner or distribution operator, including curtailments arising from Seller not possessing Full Capacity Deliverability Status as to one hundred percent (100%) of the Installed Capacity, or other limitations on transfer capability under the Interconnection Agreement; or

(e) a curtailment resulting from the operation of any Storage Facility capacity in excess of the Installed Storage Capacity.

provided, however, that a Curtailment Order will not include any curtailment that is a Buyer Bid Curtailment.

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

"**Cycles**" means, at any point in time during any day or Contract Year, as applicable, the number of full equivalent charge/discharge cycles of the Storage Facility, calculated as: (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such day or such Contract Year, as applicable (expressed in MWh_{AC}) *divided by* (b) the Storage Contract Capacity for such day or weighted average Storage Contract Capacity for such Contract Year to date, as applicable, *multiplied by* four (4).

"**Daily Delay Damages**" means an amount equal to [redacted]

"**Damage Payment**" means a dollar amount equal to [redacted]

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

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

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

"**Deemed Delivered Energy**" means the amount of Energy expressed in MWh_{AC} that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected PV Energy produced by the Generating Facility) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of Energy delivered to the Delivery Point or to the Storage Facility directly from the Generating Facility; *provided*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility's PNode during any Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in such Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

"**Deemed Delivered PV RA**" means, for the applicable Showing Month, the amount of Net Qualifying Capacity, expressed in MW, that the Generating Facility would have been able to deliver as Resource Adequacy Benefits for the hour corresponding to the Maximum Hourly RA Capacity, but for (a) a Force Majeure Event as provided in Section 10.1, and (b) Planned Outages permitted by the terms of this Agreement to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Generating Facility for the hour corresponding to the Maximum Hourly RA Capacity.

"**Deemed Delivered Storage RA**" means, for the applicable Showing Month, the amount of Net Qualifying Capacity, expressed in MW, that the Storage Facility would have been able to deliver as Resource Adequacy Benefits, but for (a) a Force Majeure Event as provided in Section 10.1, and (b) Planned Outages permitted by the terms of this Agreement to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Storage Facility.

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

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

"**Delivered PV RA**" means an amount, expressed in MW, calculated for the applicable Showing Month as the sum of (a) the amount of Net Qualifying Capacity of the Generating Facility for the hour corresponding to the Maximum Hourly RA Capacity for such Showing Month able to be shown on Buyer's monthly or annual Resource Adequacy Plans to the CAISO and CPUC and

able to be counted as Resource Adequacy Benefits by both the CAISO and CPUC, (b) Deemed Delivered PV RA, and (c) Replacement RA.

"**Delivered Storage RA**" means an amount, expressed in MW, calculated for the applicable Showing Month as the sum of (a) the amount of Net Qualifying Capacity of the Storage 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 Storage RA and (c) Replacement RA.

"**Delivery Point**" means the Facility PNode.

"**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; or (c) in the sole discretion of Buyer, a Guaranty.

"**Discharging Energy**" means all Energy delivered to the Delivery Point from the Storage Facility pursuant to a Discharging Notice, net of the Electrical Losses and Station Use, as measured at the Storage Facility Metering Point by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer or Buyer's SC or CAISO to the Facility, directing the Storage Facility to discharge Discharging Energy at a specific MW_{AC} rate for a specified period of time or amount of MWh_{AC}, *provided* that any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) if, during a period when the Storage Facility is so instructed to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such "Discharging Notice" shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer's SC or CAISO issues a further modified Discharging Notice. For the avoidance of doubt, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

[redacted]

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

"**Efficiency Rate**" means the measured efficiency rate of the Storage Facility, as measured at the Delivery Point, expressed as a percentage, calculated pursuant to a Storage Capacity Test by

dividing Energy Out by Energy In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

"**Electrical Losses**" means subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) within the Generating Facility before the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) from within the Generating Facility to the Storage Facility Metering Point associated with delivery of Charging Energy. If any amounts included within the definitions of "Electrical Losses" and "Station Use" hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts not be double counted or otherwise duplicated.

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

"**Energy**" means the amount of electricity either used or generated, charged, or discharged over a period of time, expressed in terms of kilowatt-hours ("kWh") or megawatt-hours ("MWh"), as context dictates.

"**Energy In**" has the meaning set forth in Exhibit O.

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

"**Energy Out**" has the meaning set forth in Exhibit O.

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

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

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

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

"**Executed Interconnection Agreement Milestone**" means the date for completion of execution of the Interconnection Agreement by Seller and the PTO as set forth on the Cover Sheet.

"**Expected Commercial Operation Date**" is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

"**Expected Construction Start Date**" is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.

"**Expected Energy**" means the quantity of Adjusted Facility Energy expressed in MWh_{AC} that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year or other time period in the quantity specified on the Cover Sheet, which amount shall be

adjusted proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

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

"**Facility Energy**" means PV Energy and/or Discharging Energy, as applicable, at the Delivery Point, during any Settlement Interval or Settlement Period, as measured by the Facility Meter and adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

"**Facility Meter**" means the CAISO Approved Meter that will measure all Facility Energy.

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

"**Flexible RAR**" means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff or the CPUC pursuant to the Resource Adequacy Rulings.

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

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

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

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

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

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

the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

"**Gains**" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes, Renewable Energy Incentives, any Future Environmental Attributes (to the extent such are in existence at the time "Gains" are applicable under this Agreement), and Capacity Attributes. A Party shall use commercially reasonable efforts to obtain third-party information in order to determine Gains and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third-party information.

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

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

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

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

"**Green Tags**" means a unit accumulated on a MWh_{AC} basis where one (1) represents the Green Attributes associated with one (1) MWh_{AC} of Facility Energy.

"**Guaranteed Commercial Operation Date**" means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

"**Guaranteed Construction Start Date**" means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

"**Guaranteed Efficiency Rate**" means the guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

"**Guaranteed Energy Production**" means an amount of Adjusted Energy Production, as measured in MWh_{AC}, equal to the Guaranteed Energy Production Percentage *multiplied by* the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement Period.

"**Guaranteed Energy Production Percentage**" means [redacted]

"**Guaranteed PV Capacity**" means the amount of generating capacity of the Generating Facility, as measured in MW_{AC} at the Delivery Point, set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 5(a) of Exhibit B.

"**Guaranteed PV RA Amount**" means, for any Showing Month, the Qualifying Capacity assigned to the Generating Facility by the CPUC during the hour corresponding to the Maximum Hourly RA Capacity, *minus* Administrative NQC Reduction in the applicable Showing Month.

"**Guaranteed Storage Availability**" has the meaning set forth in Section 4.8.

"**Guaranteed Storage RA Amount**" means, for any Showing Month, an amount of Qualifying Capacity, expressed in MW, equal to the Installed Storage Capacity of the Storage Facility, *minus* Administrative NQC Reduction in the applicable Showing Month.

"**Guarantor**" means, with respect to Seller, (a) a Person that is reasonably acceptable to Buyer, or (b) any Person that (i) Buyer does not already have any material credit exposure to under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (ii) has an Investment Grade Credit Rating, (iii) has a tangible net worth of at least [redacted], (iv) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (v) 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, or as reasonably acceptable to Buyer.

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

"**Indemnifiable Loss(es)**" has the meaning set forth in Section 16.1.

"**Indemnified Group**" has the meaning set forth in Section 16.1.

"**Initial Synchronization**" means the initial delivery of Facility Energy to the Delivery Point.

"**Installed Capacity**" has the meaning set forth in Exhibit I.

"**Installed PV Capacity**" means the actual PV generating capacity of the Generating Facility, as measured in MW_{AC} at the Delivery Point, that achieves Commercial Operation, as demonstrated by a performance test, adjusted for ambient conditions on the date of the performance test, and evidenced by a certificate substantially in the form attached as Exhibit I hereto; *provided* the Installed PV Capacity shall not exceed 90 MW_{AC} / 127.5 MW_{DC}.

"**Installed Storage Capacity**" means the maximum dependable operating capability of the Storage Facility to discharge electric energy, as measured in MW_{AC} at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto. It is acknowledged that Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Storage Contract Capacity amount set forth on the Cover Sheet; *provided*, Buyer shall have no rights to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW_{AC}) in excess of the Installed Storage Capacity; (ii) charge the Storage Facility to a level (in MWh_{AC}) in excess of the Installed Storage Capacity times four (4) hours; or iii) otherwise violate the Operating Restrictions.

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"**Interconnection Capacity Limit**" means the maximum instantaneous amount of power that is permitted to be delivered to the Delivery Point under Seller's Interconnection Agreement, in the amount of 90 MW_{AC}.

"**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 8.2.

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

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

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

"**IRS Guidance**" has the meaning set forth in Section 2.5(a).

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

"**Joint Powers Act**" means the Joint Exercise of Powers Act of the State of California (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.

"**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, 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), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any Person directly or indirectly providing financing or refinancing for the Facility, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

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

"**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 14.5.

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

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

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

"**Lost Output**" has the meaning set forth in Section 4.7.

"**Major Project Development Milestone**" has the meaning set forth in in Exhibit B.

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

"**Maximum Charging Capacity**" has the meaning set forth in in Exhibit Q.

"**Maximum Discharging Capacity**" has the meaning set forth in in Exhibit Q.

"**Maximum Hourly RA Capacity**" means, for any Showing Month, the highest hourly quantity of Qualifying Capacity for the Generating Facility in such Showing Month.

"**Milestones**" means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

"**Minimum Efficiency Rate**" means the percentage specified on the Cover Sheet.

"**Monthly Capacity Payment**" means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Storage Product, as calculated in accordance with Exhibit C.

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

"**Moody's**" means Moody's Investors Service, Inc., or its successors.

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

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

"**MSA**" has the meaning set forth in Section 2.5(a).

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

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

"**NERC**" means the North American Electric Reliability Corporation or any successor entity performing similar functions.

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

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

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

"**non-MSA**" has the meaning set forth in Section 2.5(a).

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

"**Notice of Claim**" has the meaning set forth in Section 16.2.

"**On-Peak Hour**" means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

"**Operating Restrictions**" means those rules, requirements, and procedures set forth on Exhibit Q and any other restriction pursuant to Prudent Operating Practice.

"**Original PPA**" has the meaning set forth in the Recitals.

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

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

"**Performance Measurement Period**" means [redacted]

[redacted]

"**Performance Security**" means (a) cash or (b) a Letter of Credit or (c) a Guaranty (if permitted by Buyer, in its sole discretion) in the amount set forth on the Cover Sheet.

"**Permitted Transferee**" means (a) any Affiliate of Seller or (b) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) either (i) has a tangible net worth of not less than [redacted], or (ii) provides a replacement of the Development Security or Performance Security, as applicable; and

(b) At least [redacted] of experience in the ownership and operations of power generation facilities and energy 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.

"**PIS Date**" has the meaning set forth in Section 2.5(a).

"**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 accordance with Section 4.6(a).

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

"**Portfolio**" means the single portfolio of electrical energy generating, 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 Content Category**" means PCC1, PCC2 or PCC3, as applicable.

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

"**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.

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

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

"**Prudent Operating Practice**" means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable 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.

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

"**PV Energy**" means Energy that is generated using photovoltaic cells at the Generating Facility and delivered directly to the Delivery Point, net of Electrical Losses, and is not Charging Energy or Discharging Energy.

"**PV RA Shortfall**" means, for a given Showing Month, the difference, expressed in MW, of (a) the Guaranteed PV RA Amount *minus* (b) the Delivered PV RA. If the result of the calculation is a negative number, the PV RA Shortfall shall be deemed to be zero MW for such Showing Month.

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

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

"**RA Deficiency Amount**" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

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

"**RA Shortfall Amount**" means, for a given Showing Month, collectively any PV RA Shortfall and Storage RA Shortfall.

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month, commencing on the RA Guarantee Date, during which there is a Storage RA Shortfall and/or a PV RA Shortfall.

"**Real-Time Forecast**" has the meaning set forth in Section 4.3(d).

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

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

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

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

"**Renewable Energy Incentives**" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including any cash grant or similar or substitute payment in lieu of federal Tax credits available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

"**Renewable Rate**" has the meaning set forth on the Cover Sheet, as may be modified pursuant to Section 2.5.

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

"**Replacement Green Attributes**" has the meaning set forth in Exhibit G.

"**Replacement Product**" has the meaning set forth in Exhibit G.

"**Replacement RA**" means Resource Adequacy Benefits, if any, equivalent in all respects to those that would have been provided by the Generating Facility or the Storage Facility, as applicable, with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, including, as applicable, Flexible RAR, and any successor criteria applicable to the

Facility, and any Local RAR, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's Resource Adequacy Requirements, as those obligations are set forth in any ruling issue by a Governmental Authority, including the Resource Adequacy Rulings, or the CAISO Tariff, and shall include RAR, Flexible RAR, and Local RAR, and any successor criteria applicable to the Facility.

"**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 or by the CPUC pursuant to the Resource Adequacy Rulings.

"**Resource Adequacy Rulings**" means all CPUC rulings and decisions governing resource adequacy that are currently in effect and applicable to the performance of this Agreement and any future 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.

"**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**" has a corollary meaning.

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

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

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

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

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

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

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

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

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

"**Shared Facilities**" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

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

"**Site**" means the real property on which the Facility is or will be located, as further described in Exhibit A.

"**Site Control**" means that 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 (a) Stored Energy Level, as defined at whatever point is measured of the Storage Facility relative to (b) the result of *multiplying* (i) the Storage Contract Capacity *by* (ii) four (4) hours; expressed as a percentage.

"**Station Use**" means the Energy (including Energy produced or discharged by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems, and other electrical loads that are necessary for operation of the Facility.

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

"**Storage Contract Capacity**" means the total capacity (in MW_{AC}) of the Storage Facility initially equal to the Storage Contract Capacity amount set forth on the Cover Sheet, as the same

may be adjusted pursuant to Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

"**Storage Facility**" means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility) and in Exhibit R, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such energy storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

"**Storage Facility Meter**" means, as applicable, all or part of the equipment and software, including the EMS, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Points and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility may contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

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

"**Storage Product**" means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Contract Capacity, and (d) Ancillary Services arising from or relating to the Storage Facility.

"**Storage RA Shortfall**" means, for a given Showing Month, the difference, expressed in MW, of (a) the Guaranteed Storage RA Amount, *minus* (b) Delivered Storage RA. If the result of the calculation is a negative number, the Storage RA Shortfall shall be deemed to be zero MW for such Showing Month.

"**Storage Rate**" has the meaning set forth on the Cover Sheet, as may be modified pursuant to Section 2.5.

"**Stored Energy Level**" means, at a particular time, the amount of Energy in the Storage Facility available to be discharged as Discharging Energy, as defined at whatever point is measured. The Parties acknowledge that, taking into account Electrical Losses to the Delivery Point, the actual amount of Energy (expressed in MWh_{DC}) physically stored in the Storage Facility at any moment in time shall be greater than the Stored Energy Level as measured at the Delivery Point (expressed in MWh_{AC}) as defined in the preceding sentence, and the Facility's energy management system shall provide a continuous monitoring and read out of the Stored Energy Level as defined in the preceding sentence as measured at the Delivery Point.

"**System Emergency**" means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or

property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

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

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

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

"**Test Energy**" means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO grid, and (b) ending upon the occurrence of the Commercial Operation Date.

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

"**Transmission System**" means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service within the CAISO grid 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 BayWa r.e. Solar Projects, LLC, a Delaware limited liability company.

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

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

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

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

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating

Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(l) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein ("**Contract Term**"); *provided*, *however*, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

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

2.2 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

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

(d) All applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all required conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

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

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

(g) Seller has obtained CAISO Certification for the Facility, and a copy of the CAISO Certification has been delivered to Buyer;

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

(i) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Daily Delay Damages and Commercial Operation Delay Damages.

2.3 **Development; Construction; Progress Reports**. Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (b) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report, and when requested by Buyer, shall conduct telephonic meetings (unless office meetings are agreed to by the Parties) between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E, and shall include such additional information as may be reasonably requested by Buyer from time to time. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan**. If Seller (a) misses the Guaranteed Construction Start Date, (b) misses three (3) or more Milestones (other than the Guaranteed Construction Start Date), or (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days after the occurrence of (a), (b) or (c), a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment

procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

2.5 [redacted].

(a) [redacted]

(i) [redacted]

(ii) [redacted]

(b) [redacted]

ARTICLE 3
PURCHASE AND SALE

3.1 **Purchase and Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all of the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility (net of applicable losses). At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, and/or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to pay Seller the Renewable Rate for any Product from the Generating Facility for which the associated PV Energy or Discharging Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Sale of Green Attributes**. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy**. Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.

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

3.5 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs and risks associated with the transfer,

qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to bear any costs, losses or liability, or alter the Facility or the operation of the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); *provided*, that the Parties acknowledge and agree such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy**. No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of and expected duration of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to [redacted] the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes**. Seller shall request Full Capacity Deliverability Status 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 and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term and subject to Section 3.12, Seller shall take all commercially reasonable administrative actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure**.

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

(b) RA Deficiency Amount Calculation. Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the sum of (i) the product of (A) the RA Shortfall Amount, and (B) the CPUC System RA Penalty and/or the CPM Soft Offer Cap assessed against Buyer as a result of such RA Shortfall Amount, if any, and (ii) Buyer's cost of procuring replacement Resource Adequacy Benefits in a quantity up to the amount of the RA Shortfall Amount, or if Buyer did not purchase replacement Resource Adequacy Benefits, the market cost of Resource Adequacy Benefits not purchased by Buyer in a quantity up to the amount of the RA Shortfall Amount, as reasonably determined by Buyer. The RA Deficiency Amount shall be capped at [redacted] for the Showing Months of June through October and [redacted] for all other Showing Months. If Seller anticipates it will have an RA Deficiency Amount in any month of the Delivery Term, Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA up to the anticipated RA Shortfall Amount; *provided*, any Replacement RA capacity shall be communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable Showing Month.

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

3.10 **[Reserved]**.

3.11 **RPS Standard Terms and Conditions**.

(a) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement.

(b) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by

the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially reasonable efforts" as used in this Section 3.11 means efforts consistent with and subject to Section 3.12.

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

3.12 **Compliance Expenditure Cap**.

(a) If a change in Law occurring after the Effective Date has increased Seller's known or reasonably expected cost to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) Green Attributes or Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses ("**Compliance Costs**") Seller shall be required to bear to comply with all of such obligations shall be capped at [redacted] of Guaranteed Capacity, in the aggregate, during the Delivery Term ("**Compliance Expenditure Cap**"). Seller's internal administrative costs association with obtaining, maintaining, conveying or effectuating, Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

(b) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."; *provided* that Compliance Actions shall not require Seller to install any additional MW_{AC}, $MW_{DC,}$ MWh_{AC}, or MWh_{DC} of energy storage or generation capacity, or otherwise alter the design of the Facility in any material manner as a result of any change in Law occurring after the Effective Date.

(c) If 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.

(d) If the Compliance Costs exceed the Compliance Expenditure Cap, then 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 a portion of the costs that exceed the Compliance

Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**") on terms and conditions to be set forth in a written amendment to this Agreement, 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 3.12 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take 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.

(e) If Buyer agrees to pay for all or a portion of the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties in a commercially reasonable timeframe and Buyer shall reimburse Seller for it share of the Accepted Compliance Costs within sixty (60) days from receipt of an invoice, or as otherwise agreed upon by the Parties.

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

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point (except for Charging Energy), and Buyer shall take delivery of the Product at the Delivery Point (except for Charging Energy) in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, and including without limitation Station Use, any costs associated with delivering the Charging Energy from the Generating Facility to the Storage Facility, and any operation and maintenance charges imposed on Seller by the PTO directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The PV Energy, Charging Energy, and Discharging Energy will be scheduled with the CAISO by Buyer (or Buyer's designated Scheduling Coordinator for the Facility) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Facility Energy during the Delivery Term are exclusively dedicated to and will be conveyed to Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and

Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

(c) Ancillary Services; Environmental Attributes. Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing during the Delivery Term, with characteristics and quantities determined in accordance with the CAISO Tariff and the Storage Facility's CAISO Certification. Seller shall operate and maintain the Facility throughout the Delivery Term so as to be able to provide Ancillary Services in accordance with the Storage Facility's CAISO Certification. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different environmental attributes or Ancillary Services that may become recognized from time to time in the CAISO market (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

4.2 **Title and Risk of Loss**.

(a) Energy. Notwithstanding Section 4.1(a), title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

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

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

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

(b) Monthly Delivery Forecast. 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 for the Facility (if applicable) a non-binding forecast of the hourly expected PV Energy, hourly expected Clipped PV Energy, Available Generating Capacity, and Available Storage Contract Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 for Available Generating Capacity and such other form as reasonably acceptable to Buyer for expected PV Energy, hourly expected Clipped PV Energy, and Available Storage Contract Capacity ("**Monthly Delivery Forecast**").

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

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW_{AC} or more or one (1) MWh_{AC} or more, as applicable, in (i) Available Generating Capacity, (ii) Available Storage Contract Capacity, (iii) hourly expected PV Energy, or (iv) hourly expected Clipped PV Energy ("**Real-Time Forecast**"), in each case whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If any of (i) through (v) changes by at least one (1) MW_{AC} or more or one (1) MWh_{AC} or more, as applicable, as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Available Storage Contract Capacity, hourly expected Clipped PV Energy, or hourly expected PV Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. Seller shall also provide access to routinely updated forecasts for each Settlement Interval of each hour of the hourly expected PV Energy and hourly expected Clipped PV Energy. Such Real-Time Forecasts shall be provided by an Approved Forecast Vendor. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer; *provided* that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event

Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to the SC and by email to the Buyer.

(e) Forced Facility Outages. Seller shall promptly Notify Buyer and the SC for the Facility (if applicable) of any Forced Facility Outage affecting the Storage Facility and/or Generating Facility. Notwithstanding anything to the contrary herein, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage, and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Storage Facility and/or Generating Facility during or after the end of the outage.

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

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

(h) Meteorological and Storage Facility Status Data. Seller shall provide to Buyer's SC the following real-time data at a granularity required for settlement purposes, and in no event less than five (5)-minutes:

(i) Generating Facility point-of-array irradiance;

(ii) PV Energy delivered to the Facility Meter;

(iii) Ambient temperature at the Site;

(iv) Storage Facility operational capacity;

(v) State of Charge;

(vi) Stored Energy Level; and

(vii) ADS and AGC set points.

4.4 **Dispatch Down/Curtailment**.

(a) General. Seller agrees to reduce the amount of PV Energy and/or Discharging Energy produced by the Facility, by the amount and for the period set forth in any applicable Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided* that Seller is not required to reduce such amount to the extent

such reduction or any such Curtailment Order, Buyer Curtailment Order or notice is inconsistent with the (i) limitations of the Facility set out in the Operating Restrictions and (ii) with a directive from CAISO or the Transmission Provider.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders; *provided* that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate.

(c) Charging during curtailment. Seller may at its discretion automatically use PV Energy that is subject to an applicable Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, as Charging Energy, by the amount and for the period set forth in any applicable Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided* that such charging is consistent with the (i) limitations of the Facility set out in the Operating Restrictions and (ii) with a directive from CAISO or the Transmission Provider.

(d) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh_{AC} of Facility Energy that is delivered by the Facility to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh_{AC} at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh_{AC} (excluding any excess MWhs delivered to reasonably comply with the limitation of the Facility set out in the Operating Restrictions) and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh_{AC} in each Settlement Interval and the Negative LMP for such Settlement Interval (excluding any excess MWhs delivered to reasonably comply with the limitation of the Facility set out in the Operating Restrictions), and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, in each case that are not related to any excess MWhs delivered to reasonably comply with the limitation of the Facility set out in the Operating Restrictions.

(e) Seller Equipment Required for Curtailment Instruction Communications. Subject to the last sentence of this Section 4.4(e), Seller shall acquire, install, and maintain such SCADA Systems, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as reasonably directed by the CAISO or Buyer's SC in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies applicable to the Facility, Seller shall, subject to the last sentence of this Section 4.4(e), take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.4(d) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or

other equipment, protocols or practices are not in compliance with this Section 4.4(e). For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If Seller is directed by Buyer to install or implement facilities, communications links or other equipment, protocols or practices facilities pursuant to this Section 4.4(e) that are not otherwise required for the Facility pursuant to the CAISO Tariff, then the installation or implementation of such facilities, communications links or other equipment, protocols or practices facilities will be deemed Compliance Actions subject to the Compliance Expenditure Cap as set forth in Section 3.12.

4.5 **Charging Energy Management**.

(a) Upon receipt of a valid Charging Notice, Seller shall take all actions that are in accordance with Prudent Operating Practice and are necessary, to deliver the Charging Energy from the Generating Facility to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement (including the Operating Restrictions), including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility. CAISO costs and charges associated with charging of the Storage Facility shall be allocated in accordance with this Agreement.

(b) Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically; *provided*, that Buyer's right to issue Charging Notices is subject to Prudent Operating Practice and the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the availability of Charging Energy and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice in order to maintain compliance with the Operating Restrictions), or as pursuant to 4.4.(c), or in connection with a Storage Capacity Test, Planned Outage, Forced Facility Outage, or pursuant to a notice from CAISO, the PTO, or any other Governmental Authority, or as otherwise required by applicable law. If, during the Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), or (c) charges the Storage Facility in connection with maintenance of the Storage Facility or to achieve any Operating Restrictions (which charging shall not be a violation of the first sentence of this Section 4.5(c)), then (x) Seller shall be responsible for all energy costs associated with such charging of the Storage Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging

Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the existing State of Charge of the Storage Facility. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Charging Notice in order to maintain compliance with the Operating Restrictions), or in connection with a Storage Capacity Test, Planned Outage, Forced Facility Outage, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority, or as otherwise required by applicable law. If at any time the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, then (i) the applicable Discharging Notice shall be deemed to be modified to reduce the amount of Discharging Energy such that the total Facility Energy does not exceed the Interconnection Capacity Limit; (ii) Seller shall provide Notice to Buyer's SC of such condition; and (iii) Buyer shall have the right to issue a modified Discharging Notice and Buyer Curtailment Order.

(f) During the Delivery Term, Seller shall maintain SCADA Systems, the EMS, communications links and other equipment consistent with Section 4.4, including as may be necessary to receive automated Charging Notices and Discharging Notices consistent with CAISO protocols and practice, if applicable ("**Automated Dispatches**"). In the event of the failure or inability of the Storage 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 Storage 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 Charging Notices or Discharging Notices ("**Alternative Dispatches**").

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

4.6 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1, 3.8 or Exhibit G. or any rights expressly provided hereunder of Seller in relation to operation of the Facility:

(a) Facility Maintenance. Seller will provide to Buyer written schedules for Planned Outages for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller will in good faith take into account any such comments. Seller will deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to change any Planned Outages within the current Contract Year if such changes are required to comply with Prudent Operating Practices, or by providing at least sixty (60) days' notice, in both cases subject to consent by Buyer not to be unreasonably withheld, conditioned or delayed. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages. Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

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

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

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

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

(f) Payments. Seller shall remain responsible to Buyer for any payment or penalty otherwise due under this Agreement as a result of a reduction in delivery of Product.

4.7 **Guaranteed Energy Production**. Seller shall be required to deliver to Buyer Adjusted Energy Production no less than the Guaranteed Energy Production in each Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Transmission System Outage, Storage Capacity Tests, Curtailment Periods, and Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (1) any Deemed Delivered Energy, plus (2) the amount of Energy expressed in MWh_{AC} Seller could reasonably have delivered to Buyer or the Storage Facility but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, Storage Capacity Tests, and Curtailment Periods ("**Lost Output**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP-15 Hub under a

Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) within the compliance period for which the Product that is being replaced would have been provided to Buyer unless otherwise agreed upon by Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed [redacted]

4.8 **Storage Availability and Efficiency Rate**.

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Availability during each Contract Year of no less than [redacted] (the "**Guaranteed Storage Availability**"), which Annual Storage Availability shall be calculated in accordance with Exhibit P.

(b) If the Annual Storage Availability for any Contract Year is less than the Guaranteed Storage Availability, then Seller shall owe Buyer an Availability Adjustment Payment (as determined in accordance with Exhibit P). Seller shall provide Buyer with monthly updates on Seller's Contract Year-to-date Annual Storage Availability.

(c) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate, calculated pursuant to a Storage Capacity Test, of no less than the Guaranteed Efficiency Rate. Buyer's sole remedy for Seller's failure to maintain an Efficiency Rate that is equal to or greater than the Guaranteed Efficiency Rate is the payment of liquidated damages by Seller in accordance with Exhibit C.

4.9 **Storage Capacity Tests**.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. Except as otherwise specified in Exhibit O, all other costs or revenues associated with any Storage Capacity Test shall be borne by, or accrue to, Seller, as applicable.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test differs from the then current Storage Contract Capacity and/or Efficiency Rate, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

(d) Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage

Facility is able to respond to Buyer or CAISO dispatch instructions. Any testing of the Storage Facility requested by Buyer after the Commercial Operation Capacity Tests shall be deemed Buyer-instructed dispatches of the Facility ("**Buyer Dispatched Test**"). Any other test of the Facility (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Storage Contract Capacity immediately prior to such Storage Capacity Test is below [redacted] of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain CAISO Certification), and other Seller-requested discretionary tests or dispatches 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, (considering the circumstances that led to the need for a retest), which shall be within no more than five (5) Business Days of the initial required test) shall be deemed a "**Seller Initiated Test**". For all Seller Initiated Tests, (i) Seller shall provide all Energy necessary to complete such test from the Generating Facility, (ii) Buyer shall not be required to pay Seller the Renewable Rate or any other amount for such Energy, and (iii) Seller shall be entitled to any CAISO revenues associated with Energy that is discharged. For any Buyer Dispatched Test, (x) Seller shall provide all Energy necessary to complete such test from the Generating Facility, (y) Buyer shall pay Seller the Renewable Rate for such Energy, and (z) Buyer shall be entitled to any CAISO revenues with associated Energy that is discharged. No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test. Any amounts owed by or due to Buyer or Seller as a result of this Section 4.9(d) shall be debited or credited to the applicable Party on Seller's next monthly invoice.

(i) For any Seller Initiated Test, other than a Storage Capacity Test, 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). For any Seller Initiated Test that is a Storage Capacity Test, Seller shall notify Buyer no less than five (5) Business Days prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

4.10 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit, it being acknowledged that Seller may not be able under WREGIS rules to complete all WREGIS registration requirements prior to the Commercial Operation Date. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g) provided that Seller fulfills its obligations under Sections 4.10(e) through (g) below. In addition:

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

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

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

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

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (taking into account the timing of WREGIS' issuance of WREGIS Certificates in normal course) ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided*, *however*, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month, (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) that reflect a production vintage in the same calendar year in which the WREGIS Certificate Deficit occurs unless otherwise acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If (i) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, or (ii) the Parties enable the Storage Facility to be charged from the grid in accordance with Section 3.13, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) The Parties acknowledge and agree that this Section 4.10 reflects an understanding between the Parties that WREGIS Certificates will be created equivalent to the amount of Facility Energy that is generated by the Generating Facility. If the RPS (or other applicable Law) is applied or changes in a manner inconsistent with such understanding, subject to Section 3.12, the parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent that Seller shall have the right to all WREGIS Certificates available from the Facility, such agreement not to be unreasonable delayed, conditioned, or withheld.

4.11 **Green-E Certification**. Seller shall, at its sole expense but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that the Facility is eligible for Green-e certification.

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 the Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the Delivery Point. 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 Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation**. Each Party shall use commercially reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, *however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of PV Energy or Discharging Energy to the Delivery Point or Charging Energy to the Storage Facility.

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 Participating Transmission Owner, Seller's Affiliates, and/or third parties. Seller agrees that any agreements regarding Shared Facilities (a) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility's sole use in an amount not less than the Interconnection Capacity Limit; (b) shall provide for separate metering of the Facility; (c) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource ID; and (d) shall provide that any curtailment of the capacity of Shared Facilities that is ordered by Transmission Provider that Seller and its Affiliates have discretion to allocate across generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. Seller shall not, and shall not permit any Affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement minus the Interconnection Capacity Limit.

METERING

7.1 **Metering**. Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. All meters will be operated pursuant to Prudent Operating Practices and any required CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for Electrical Losses and Station Use from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each meter shall be kept under

seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface (MRI-S) web and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall request permission from the CAISO to test the 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. If such a test is conducted at the request of Buyer, Buyer shall pay for such test unless the testing shows the Facility Meter is inaccurate by more than [redacted] in which case Seller shall pay for such test. If a meter is inaccurate it shall be promptly repaired or replaced. If it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; *provided*, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer for Product within fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy produced by the Generating Facility as read by the Facility Meter, the amount of Charging Energy charged by the Storage Facility and the amount of Discharging Energy delivered from the Storage Facility to the Delivery Point, in each case, as read by the Storage Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Adjusted Facility Energy, Deemed Delivered Energy, Adjusted Energy Production, Seller's Contract Year-to-date Annual Storage Availability, and the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice; *provided*, *however*, that Seller

will give Buyer no less than ten (10) days notice of any account change with respect to the place of payment. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice or the end of the prior monthly billing period, whichever is later. 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 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 [redacted] (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 ten (10) Business 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; *provided*, *however*, that there shall be no adjustments to prior invoices based upon meter inaccuracies. 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 twenty-four (24) 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 twenty-four (24) months after the invoice is rendered or subsequently adjusted, except in the event of intentional fraud or misrepresentation by the Seller or to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twenty-four-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 increase the Development Security delivered to Buyer under the Original PPA to the amount set forth on the Cover Sheet within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall within ten (10) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. 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 in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with 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. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

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.

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

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

8.11 **Buyer's Covenants**.

(a) During any period during the Term, Buyer shall provide to Seller, both upon

request and as indicated below: (i) within ninety (90) days following the end of each fiscal quarter, unaudited quarterly financial statement of Buyer (including a balance sheet and statements of income and cash flows) prepared in accordance with generally accepted accounting principles as promulgated by the Government Accounting Standards Board in the United States, consistently applied; and (ii) within one hundred and eighty (180) days following the end of each fiscal year, annual financial statements of Buyer (including a balance sheet and statements of income and cash flows) prepared in accordance with the requirements of California law applicable to Joint Powers Authorities; *provided* that nothing in this Section 8.11(a) shall require Buyer to provide information that is not generally available to Buyer as part of its normal accounting and financing reporting processes; *provided*, *further*, that the covenants under this Section 8.11(a) will be deemed to have been satisfied if such financial statements are available at http://sdcommunitypower.org.

(b) During any period during the Term when Buyer does not have or maintain an Investment Grade Credit Rating, Buyer shall provide to Seller, both upon request and as indicated below: (i) as available, Buyer's annual report; (ii) reserve levels; (iii) subscription and opt out rates; and (iv) other financial and operational information as may be reasonably requested by the Seller's financing parties from time to time; *provided* that nothing in this Section 8.11(b) shall require Buyer to provide information that is not generally available to Buyer as part of its normal accounting and financing reporting processes.

(c) Cooperation with Financing Parties. Buyer shall cooperate with Seller and Seller's financing counterparties to execute and arrange for the delivery of consents and estoppels providing factual confirmations with respect to this Agreement within ten (10) business days of request therefore and other information reasonably requested in connection with the debt or equity (including tax equity) financing of the Facility.

ARTICLE 9
NOTICES

9.1 **Addresses for the Delivery of Notices**. Except as provided in Exhibit D, any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by 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; or (b) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (c) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions 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 electric energy at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (vii) Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs**. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default

of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

10.3 **Notice**. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, *however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.

10.4 **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 [redacted], then either Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any 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) days 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 (1) failure to deliver Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8; (2) failures to achieve the Guaranteed Energy Production that do not trigger the provisions of Section 11.1(b)(iii) or (v), the exclusive remedies for which are set forth in Section 4.7; (3) failures related to the Annual Storage Availability that do not trigger the provisions of Section 11.1(b)(vi), the exclusive remedies for which are set forth in Section 4.8; and (4) failures related to the Efficiency Rate that do not trigger the provisions of Section 11.1(b)(vii), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising 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 Section 14.1 or 14.2, as 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 electric energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to achieve Commercial Operation within [redacted] after the Guaranteed Commercial Operation Date, as such date may be extended hereunder by a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least [redacted] of the Expected Energy amount for such period, and Seller fails to either (x) demonstrate to Buyer's reasonable satisfaction, within fifteen (15) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the [redacted] minimum; or (y) deliver to Buyer within fifteen (15) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the [redacted] and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed [redacted]

(iv) if, in any [redacted], the average Annual Storage Availability is, on an annual basis, less than [redacted] in each Contract Year;

(v) if, in any [redacted] during the Delivery Term, the Adjusted Energy Production amount is not at least [redacted] of the Expected Energy amount;

(vi) if, for any full Contract Year, the Annual Storage Availability for such Contract Year is not at least [redacted] and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet [redacted] of the Annual Storage Capacity Availability, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed [redacted] ("**Storage Cure Plan**") and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(vii) if Seller fails to maintain an average Efficiency Rate equal to or greater than the Minimum Efficiency Rate [redacted], and Seller fails to (x) deliver to Buyer within thirty (30) Business Days after Notice from Buyer a Storage Cure Plan to cure such failure within [redacted], and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

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

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

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

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

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

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

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

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

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

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

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)) 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 remedy for the Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment**. The Termination Payment ("**Termination Payment**") for the Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. 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 a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, 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 liquidated 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. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from or arising out of any Event of Default of the other Party under this Agreement.

11.7 **Seller Pre-COD Liability Limitations**. Notwithstanding any other provision of this Agreement, Seller's aggregate liability under or arising out of a termination of this Agreement prior to the Commercial Operation Date shall be limited to an amount equal to the Damage Payment.

11.8 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date**. If the Agreement is terminated prior to the Commercial Operation Date for any reason other than 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 early termination date, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell 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 which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price, unless the termination is pursuant to Sections 11.1(b)(ii) following an extended Force Majeure Event and Seller has demonstrated to Buyer's reasonable satisfaction that such Force Majeure Event has materially increased Seller's cost to construct the Facility, then excluding price) or the terms and conditions to which a third party has agreed in principle, and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

11.9 **Mitigation**. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM 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, BY STATUTE, IN TORT OR CONTRACT.

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED OR ANY OTHER EXCLUSIVE REMEDLY IS SET FORTH HEREIN, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT G, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE

LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties**. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, 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) The Facility is located in the State of California.

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility.

13.2 **Buyer's Representations and Warranties**. As of the Effective Date, Buyer represents and warrants as follows:Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is limited within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; *provided*, *however* that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.)

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants**. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term: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, approvals and permits necessary for the operation of the Facility and for Seller 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 comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. 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**"). Buyer agrees that Seller's obligations under this Section 13.4 with respect to the Prevailing Wage Requirement will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, *however*, that a Change of Control of Seller shall not require Buyer's consent if the assignee or transferee is a Permitted Transferee. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, 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 by Seller. 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**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

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

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender (if Lender has provided the notice set forth in subsection (c) below) to provide to Buyer a report concerning:

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

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

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

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

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period under this Agreement, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of [redacted] (or [redacted] in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

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

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

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility

(including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date (other than any Event of Default personal to Seller and not reasonably capable of cure) and capable of cure in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

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

(ii) Not assume this Agreement;

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

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, and, promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or Lender's designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request which must be made within forty-five (45) days after Buyer receives notice of such rejection or termination, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof; *provided* that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee (if it is not a Permitted Transferee) shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment by Seller**. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

(i) the assignee is a Permitted Transferee;

(ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume 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.

Except as provided in the preceding sentence, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice has been received and accepted by Buyer.

14.4 **Shared Facilities; 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 (a) utilizing tax equity investment, and/or (b) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, *however*, that 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 **Limited 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 and substantially in the form of Exhibit S. 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 (a) 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 (b) 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 laws. To the extent enforceable, at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 **Venue**. 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 San Diego County, California.

15.3 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written 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 non-binding mediation prior to seeking any and all remedies available to it at Law in or equity; *provided*, *however*, that a dispute as to whether an Event of Default has occurred pursuant to Article 11 shall not be subject to mediation unless the Parties mutually agree. 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.

ARTICLE 16
INDEMNIFICATION

16.1 **Mutual Indemnity**.

(a) Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, employees and representatives (each an "**Indemnified Party**" and collectively, the "**Indemnified Group**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness 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 Indemnifying Party, its Affiliates, its directors, officers, employees or agents (collectively, "**Indemnifiable Losses**").

(b) Nothing in this Section shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Notice of Claim**. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly Notify the Indemnifying Party in writing of any damage, claim, loss, liability or expense which Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 ("**Claim**"). The Notice is referred to as a "Notice of Claim". A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.

16.3 **Failure to Provide Notice**. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and; *provided further*, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 **Defense of Claims**. If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; *provided*, *however*, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; *provided*, *however*, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.

16.5 **Subrogation of Rights**. Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; *provided* that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.6 **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 with a minimum of liability limits in the amount of [redacted] in the aggregate. Coverage shall include products and completed operations, personal & advertising injury insurance, contractual liability, specifically covering Seller's obligations under this Agreement. The policy shall include Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller. The coverage required under this Section 17.1(a) may be provided through a combination of general liability, umbrella liability and/or excess liability policies. Defense costs shall be provided as an additional benefit and not included with the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Umbrella or Excess Liability Insurance**. Seller shall maintain, or cause to be maintained at its sole expense, an Umbrella or Excess Liability Insurance policy in a minimum amount of liability of [redacted]

(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. Employer's Liability insurance shall be [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.

(d) **Business Auto Liability Insurance**. Seller shall maintain at all times during the Contract Term Business Auto Liability 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.

(e) **Construction All-Risk Insurance**. Seller shall maintain or cause to be maintained during the construction of the Facility, but only after major electrical generating equipment as arrived at the Facility, prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Lender (if any) as the loss payee where its interest may appear.

(f) **Subcontractor Insurance**. Seller shall require all of its subcontractors to carry the same levels of insurance as Seller where exposure exists. All subcontractors shall include Seller as an additional insured to (i) Commercial General Liability insurance; (ii) Employers' Liability coverage; and (iii) Business Auto Liability insurance for bodily injury and property

damage. All subcontractors shall provide a primary and non-contributory endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(g) **Evidence of Insurance**. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any cancellation of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

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.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "Receiving Party") if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the "Disclosing Party"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Cal. Government Code § 7920 et seq.).

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of

Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth 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 **Disclosure to Lenders, Etc..** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of their Affiliates, and Seller's actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **Public Records Act.** Seller and Buyer acknowledge and agree that this Agreement and any documents, notices or confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Cal. Government Code § 7920 et seq.). Buyer acknowledges that Seller may submit information to Buyer that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code § 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act. Seller acknowledges that Buyer may submit to Seller information that Buyer considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act. Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the "Confidential Information" and the disclosing Party, the "Disclosing Party"), the Party receiving such request (the "Receiving Party") as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

18.6 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

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 Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided* that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender) 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; Electronic Signatures**. 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. The Parties may rely on electronic, facsimile or

scanned signatures as originals.

19.8 **Electronic Delivery**. Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.

19.9 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer**. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

19.13 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of 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.

JVR Energy Park, LLC

By: _____
Name: _____
Title: _____

SAN DIEGO COMMUNITY POWER, a California joint powers authority

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: JVR Energy Park

Site includes all or some of the following APNs: 614-100-20-00 (portion); 614-100-21-00; 660-020-06-00; 661-010-15-00; 661-010-26-00; 614-110-04-00; 661-010-27-00; 660-020-05-00 (portion); 660-020-05-00 (portion); 614-100-20-00 (portion); 660-020-05-00 (portion); 660-150-04-00; 660-150-07-00,660-150-08-00,660-150-10-00; 660-150-14-00; 660-150-17-00; 660-150-18-00; 660-170-09-00; 661-010-02-00; 661-010-30-00; 661-060-12-00; 661-060-22-00; 660-150-16-00; 660-140-06-00; 660-140-08-00; 660-150-21-00;

County: San Diego

CEQA Lead Agency: San Diego County

Type of Generating Facility: Solar photovoltaic

Operating Characteristics of Generating Facility: See Cover Sheet

Type of Storage Facility: DC-coupled lithium-ion

Operating Characteristics of Storage Facility: See Exhibit Q

Operating Restrictions of Storage Facility: See Exhibit Q

Guaranteed PV Capacity: See definition in Section 1.1

Storage Contract Capacity: See definition in Section 1.1

Facility PNode: To be established prior to the Commercial Operation Date at Facility Interconnection Point

Facility Meter: See Exhibit R

Storage Facility Meter Location(s): See Exhibit R

Facility Interconnection Point: New switchyard to be named "Carrizo Gorge Switchyard," as further described in the Interconnection Agreement

Participating Transmission Owner: San Diego Gas & Electric Company

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. **Major Project Development Milestones**.

(a) "**Construction Start**" will occur upon Seller's execution of an engineering, procurement, and construction contract (or similar agreement) and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction 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 by Seller shall be the "**Construction Start Date**." The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

(b) If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily 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 Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Daily Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving 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)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when (i) Seller has provided Notice to Buyer substantially in the form of Exhibit H (the "**COD Certificate**"), and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation. The "**Commercial Operation Date**" shall be the later of (x) ninety (90) days before the Guaranteed Commercial Operation Date or (y) the date specified in the COD Certificate.

(a) Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least [redacted] efore the anticipated Commercial Operation Date.

(b) If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller, in addition to any interest actually accrued on such Daily Delay Damages. Seller shall include the request for refund of the Daily Delay Damages (and associated interest) with the first invoice to Buyer after Commercial Operation.

(c) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10^{th}) of each month, Buyer shall invoice Seller for Commercial Operation 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 Commercial Operation Delay Damages set forth in such invoice. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving 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 declare an Event of Default under Section 11.2(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation within [redacted] after the Guaranteed Commercial Operation Date, as such date 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 both shall, subject to notice and documentation requirements set forth below, be automatically extended, subject to reasonable verification by Buyer, 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) [redacted]

(b) [redacted]

(c) a Force Majeure Event occurs; or

(d) the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of commercially reasonable efforts by Seller; or

(e) Buyer has not made all necessary arrangements to receive the Facility Energy 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 shall not exceed [redacted], for any reason, including a Force Majeure Event, and no extension shall be given if the delay was the result of Seller's failure to take all reasonable actions to meet its requirements and deadlines; *provided* that the foregoing limitation shall not apply to extensions granted pursuant to clause 4(e) above. Notwithstanding anything to the contrary, no extension under the Development Cure Period 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 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 Expected 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 reasonable actions.

5. **Failure to Reach Guaranteed PV Capacity or Storage Contract Capacity**.

(a) *Guaranteed PV Capacity*. If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have [redacted] after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to the product of (i) [redacted] and (ii) each MW_{AC} (or portion thereof) that the Guaranteed PV Capacity exceeds the Installed PV Capacity, and the Guaranteed PV Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

(b) Storage Contract Capacity. If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Storage Contract Capacity amount set forth on the Cover Sheet, Seller shall have [redacted] after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity amount set forth on the Cover Sheet, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Storage Contract Capacity amount set forth on the Cover Sheet by such date, Seller shall pay Capacity Damages to Buyer, in an amount equal to the product of (i) [redacted] and (ii) each MW_{AC} (or portion thereof) at four hours of continuous discharge that the Storage Contract Capacity amount set forth on the Cover Sheet exceeds the Installed Storage Capacity, and the Installed Storage Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

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

(a) Renewable Rate. For each MWh of Adjusted Facility Energy in each Settlement Period, Buyer shall pay Seller the Renewable Rate.

(b) Deemed Delivered Energy. For each Settlement Period, Buyer shall pay Seller the Renewable Rate for each MWh of Deemed Delivered Energy.

(c) Excess Contract Year Deliveries Over [redacted]. If, at any point in any Contract Year, the amount of Adjusted Facility Energy plus the amount of Deemed Delivered Energy for such Contract Year exceeds [redacted] of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy or Deemed Delivered Energy in such Contract Year in excess of [redacted] of the Expected Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real Time Market for the applicable Settlement Interval in which the Adjusted Facility Energy or Deemed Delivered Energy is provided or (b) [redacted] of the Renewable Rate, but not less than [redacted]

If, at any point in any Contract Year, the amount of Adjusted Facility Energy plus the amount of Deemed Delivered Energy for such Contract Year exceeds [redacted] of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy or Deemed Delivered Energy in such Contract Year in excess of [redacted] of the Expected Energy shall be equal to [redacted]

(d) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers PV Energy in excess of the product of the Guaranteed PV Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such excess MWh_{AC} in such Settlement Interval shall be [redacted], and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh_{AC} ("**Negative LMP Costs**").

(e) Curtailment Payments. Seller shall receive no compensation from Buyer for Adjusted Facility Energy provided in violation of a Curtailment Order. Buyer shall pay for Deemed Delivered Energy in accordance with subsection (b) of this Exhibit C.

(f) Storage Rate. Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate *multiplied by* the applicable Storage Contract Capacity, as determined under Exhibit O. Without limiting Buyer's obligation to pay Seller for Discharging Energy included in Adjusted Facility Energy, such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Storage Contract Capacity is adjusted pursuant to a Storage Capacity Test effective as of a day other than the first day of a calendar month, the Storage Payment shall be calculated separately for each portion of the month in which the different Storage Contract Capacity is applicable.

(g) 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) the Renewable Rate, which amount Seller shall set off against amounts payable by Buyer in the applicable monthly invoice.

(h) Test Energy. Test Energy is compensated at the Test Energy Rate in accordance with Section 3.6.

(i) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid and through the end of the Delivery Term, Buyer 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 and the receipt of Test Energy and the Product at the Delivery Point and for the purposes of conducting Storage Capacity Tests. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically or by electronic mail transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except during a Storage Capacity Test or as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) 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, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of 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. 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 the 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 such CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template; Master Resource Database. The Parties will collaborate to comply with the applicable deadlines for filing and updating the information for the Facility in the CPUC Master Resource Database and Master Data File. Seller shall provide the data to Buyer that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement at least five (5) Business Days before the deadline for submission to CAISO and Buyer (as SC) shall promptly provide such data to CAISO. Seller shall provide the data that is required for the CPUC Master Resource Database for the Facility consistent with this Agreement to Buyer for review and approval at least five (5) Business Days before the deadline for submission of such to the CPUC. Neither Party shall change such CAISO or CPUC data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data

systems) and CPUC Master Resource Database for this Facility remains consistent with the actual operating characteristics of the Facility and provide such information to Buyer for review at least five (5) Business Days prior to submission to the CAISO or CPUC as applicable.

(h) 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.

(i) Clipped PV Energy. Scheduling Coordinator will utilize Clipped PV Energy as Charging Energy to the extent that is commercially reasonable.

(j) Charging and Discharging periods. Scheduling Coordinator will set Charging Notices and Discharging Notices at periods where it is commercially reasonable and in accordance with Operating Restrictions, the CAISO tariff, and the Interconnection Agreement.

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. Progress with respect to completion of interconnection with SDG&E.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Description of any material planned changes to the Facility or the site.

7. Summary of activities during the previous calendar quarter or month, as applicable.

8. Forecast of activities scheduled for the current calendar quarter.

9. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.

10. List of issues that are likely to potentially affect Seller's Milestones.

11. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.

12. If applicable, prevailing wage reports as required by Law.

13. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

14. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

15. Supplier Diversity Reporting (if applicable). Format to be mutually agreed by Buyer and Seller.

16. Any other documentation, reasonably requested by Buyer, evaluated by Seller and agreed if agreed to by both parties.

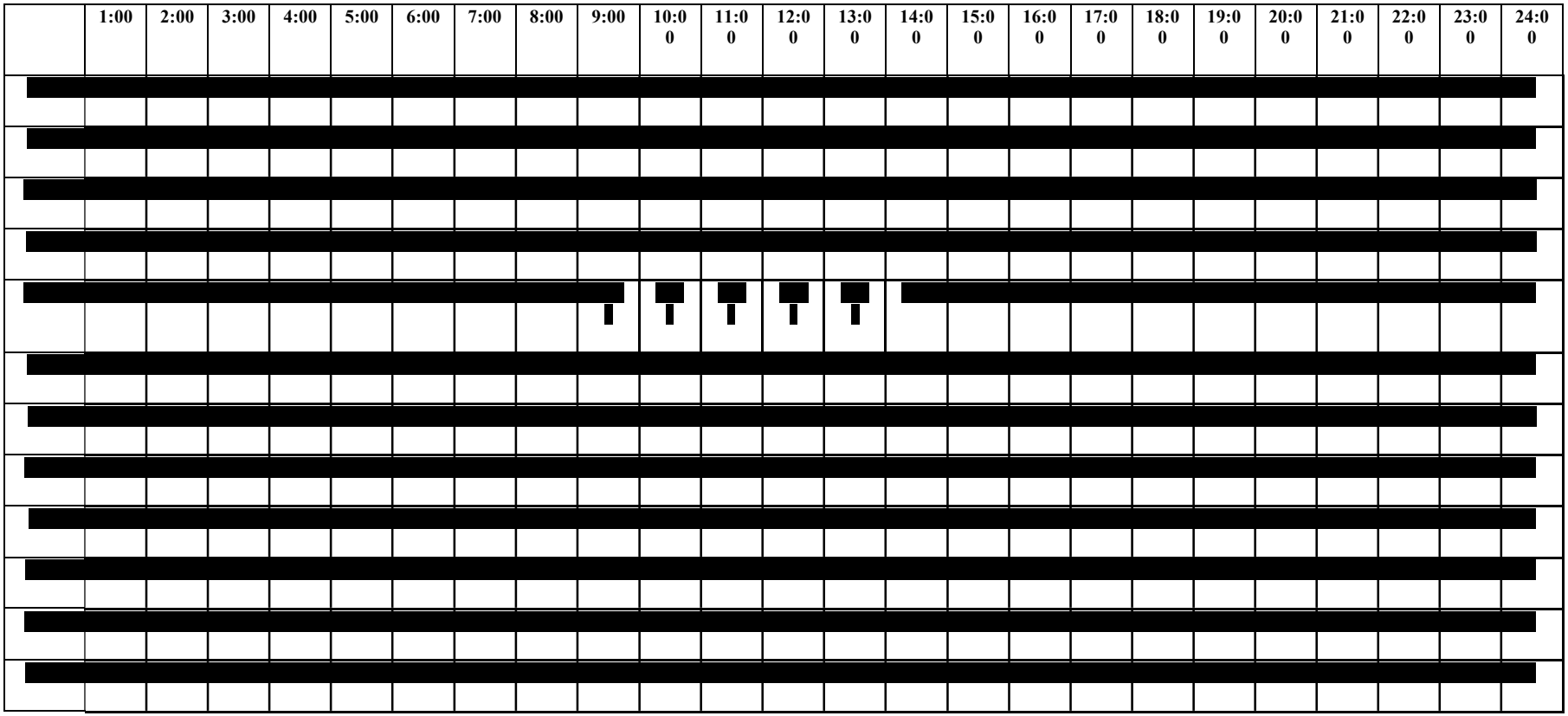
EXHIBIT F-1

Average Day Expected PV Energy for Contract Year 1

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Average Day Expected Clipped PV Energy for Contract Year 1



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

EXHIBIT F-2

Available Generating Capacity for Contract Year 1

The following tables are provided for informational purposes only, and shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Available Generating Capacity, MW_{AC} Per Hour – January

	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

Available Generating Capacity, MW_{AC} Per Hour – February

The following 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.

	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

Available Generating Capacity, MW_{AC} Per Hour – March

The following 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.

	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

Available Generating Capacity, MW_{AC} Per Hour – April

The following 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.

	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

Available Generating Capacity, MW_{AC} Per Hour – May

The following 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.

	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

Available Generating Capacity, MW_{AC} Per Hour – June

The following 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.

	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

Available Generating Capacity, MW_{AC} Per Hour – July

The following 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.

	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

Available Generating Capacity, MW_{AC} Per Hour – August

The following 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.

	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

Available Generating Capacity, MW_{AC} Per Hour – September

The following 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.

	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

Available Generating Capacity, MW_{AC} Per Hour October

The following 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.

	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

Available Generating Capacity, MW_{AC} Per Hour – November

The following 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.

	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

Available Generating Capacity, MW_{AC} Per Hour December

The following 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.

	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

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

[(A – B) * (C – D)]

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh_{AC}

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh_{AC}

C = Price for Replacement Product for the Contract Year, in $/MWh_{AC}$, which shall be calculated by Buyer in a commercially reasonable manner. Buyer is not required to enter into a replacement transaction in order to determine this amount.

D = the Renewable Rate for the Contract Year, in $/MWh_{AC}$

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

"**Lost Output**" has the meaning given in Section 4.7 of the Agreement. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

"**Replacement Energy**" means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that meet the same compliance requirements as the Energy being replaced, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

"**Replacement Green Attributes**" means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility.

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

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____[*licensed professional engineer*] ("**Engineer**") to San Diego Community Power, a California joint powers authority **(**"**Buyer**") in accordance with the terms of that certain Amended and Restated Renewable Power Purchase 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 Generating Facility is operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than [redacted] of the Guaranteed PV Capacity.

3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than [redacted] of the Storage Contract Capacity amount set forth on the Cover Sheet.

4. The Generating Facility's testing included a performance test demonstrating peak electrical output of no less than [redacted] of the Guaranteed PV Capacity for the Generating Facility at the Delivery Point, adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [*peak output in MW_{AC}*].

5. The Storage Facility is fully capable of charging, storing and discharging energy up to no less than [redacted] of the Storage Contract Capacity amount set forth on the Cover Sheet and is 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 Facility was obtained by the PTO, [Name of Participating Transmission Owner as appropriate] on _[DATE]_.

7. The PTO has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _[DATE]_.

8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _[DATE]_.

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**

By:_____

Its:_____

Date:_____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to San Diego Community Power, a California joint powers authority **(**"**Buyer**") in accordance with the terms of that certain Amended and Restated Renewable Power Purchase 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.

I hereby certify the following:

1. The performance test for the Generating Facility demonstrated peak electrical output of __ MW_{AC} at the Delivery Point, as adjusted for ambient conditions on the date of the performance test;

2. The Storage Capacity Test demonstrated a maximum dependable operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of __ MW_{AC} to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O ; and

3. The sum of 1. and 2. is __ MW_{AC} and shall be the Installed Capacity.

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**") to San Diego Community Power, a California joint powers authority **(**"**Buyer**") in accordance with the terms of that certain Amended and Restated Renewable Power Purchase 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: _____.

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. [XXXXXXX]

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

Beneficiary:

San Diego Community Power, a California joint powers authority

Ladies and Gentlemen:

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

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

The Drawing Certificate may be presented by (a) physical delivery, (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 the Beneficiary that all documents presented under and in compliance with

the terms of this Letter of Credit, that such drafts 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 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 shall be subject to the provisions (to the extent that such provisions are not inconsistent with this Letter of Credit) of the International Chamber of Commerce International Standby Practices (ICC publication no. 590, 1998) (the "ISP98") with regard to all matters not provided for herein, and, to the extent not inconsistent with the ISP98, this Letter of Credit shall be governed by and interpreted in accordance with the laws of the State of New York, without giving effect to any choice of law rules that would require the application of laws of another jurisdiction.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

[Bank Name]

_____

[Insert officer name]
[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

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

1. Applicant and Beneficiary are party to that certain Amended and Restated 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, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to San Diego Community Power, a California joint powers authority, by wire transfer in immediately available funds to the following account:

[Specify account information]

San Diego Community Power
a California joint powers authority

By: _____
Name: _____
Title: _____
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 Amended and Restated Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "**PPA**") dated as of [____], 20___.

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

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

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

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the "**Guaranteed Amount**"), provided, that Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars ($_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

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 Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty

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

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

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

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, 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.

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [***limited liability company][corporate***] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or

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

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four 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 8.

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 San Diego County, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force

and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[*Signature on next page*]

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

GUARANTOR:

[_____]

By:_____

Printed Name:_____

Title:_____

BUYER:

[_____]

By:_____

Printed Name:_____

Title:_____

By:_____

Printed Name:_____

Title:_____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [SELLER ENTITY] ("**Seller**") to San Diego Community Power, a California joint powers authority] ("**Buyer**") in accordance with the terms of that certain Amended and Restated Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information[1]

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

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

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

[SELLER ENTITY]

By:_____

Its:_____

Date:_____

EXHIBIT N

NOTICES

JVR Energy Park, LLC, a California limited liability company ("Seller")	**San Diego Community Power, a California joint powers authority** ("Buyer")
All Notices: JVR Energy Park, LLC c/o BayWa r.e. Solar Projects LLC 18575 Jamboree Road, Suite 850 Irvine, CA 92612 Attention: General Counsel Phone: 949-398-3915 Facsimile: 949-398-3914 Email: ussp.legal@baywa-re.com	**All Notices:** PO Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Chief Commercial Officer Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org
Reference Numbers: [redacted]	**Reference Numbers:** [redacted]
Invoices: Attn: Accounting Phone: 949-398-3915 Facsimile: 949-398-3914 E-mail: ussp.ap@baywa-re.com	**Invoices:** Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Scheduling: Attn: Services Phone: 949-398-3915 Facsimile: 949-398-3914 E-mail: ussp.service@baywa-re.com	**Scheduling:** Tenaska Power Services CO. Attn: Kara Whillock, Tenaska Power Services Co. Phone: 972-333-6122 Email: kwhillock@tnsk.com Day Ahead: (817) 303-1115 Real Time: (817) 303-1852 Facsimile: (817) 303-1104
Confirmations: Attention: General Counsel Phone: 949-398-3915 Facsimile: 949-398-3914 Email: ussp.legal@baywa-re.com	**Confirmations:** Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: Accounting Phone: 949-398-3915 Facsimile: 949-398-3914 E-mail: ussp.ap@baywa-re.com	**Payments:** Attn: Michael Maher Phone: (415) 526-3020 Email: mmaher@mahercpa.com

JVR Energy Park, LLC, a California limited liability company ("Seller")	**San Diego Community Power, a California joint powers authority** ("Buyer")
Wire Transfer: BNK: [To be provided before COD] ABA: [To be provided before COD] ACCT: [To be provided before COD]	**Wire Transfer:** [redacted]
With additional Notices of an Event of Default to: JVR Energy Park, LLC c/o BayWa r.e. Solar Projects LLC 18575 Jamboree Road, Suite 850 Irvine, CA 92612 Attention: General Counsel Phone: 949-398-3915 Facsimile: 949-398-3914 Attention: General Counsel Email: ussp.legal@baywa-re.com	**With additional Notices of an Event of Default to:** Attn: Veera Tyagi, General Counsel PO Box 12716 San Diego, CA 92112 Email: vtyagi@sdcommunitypower.org
Emergency Contact: JVR Energy Park, LLC c/o BayWa r.e. Solar Projects LLC 18575 Jamboree Road, Suite 850 Irvine, CA 92612 Attention: General Counsel Phone: 949-398-3915 Facsimile: 949-398-3914 Attention: General Counsel Email: ussp.legal@baywa-re.com	**Emergency Contact:** Attn: Byron Vosburg, Chief Commercial Officer Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity hereunder based on the actual Power capacity of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), but not more than once per Contract Year within the first quarter of each Contract Year, upon no less than ten (10) Business Days prior Notice to Seller, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the most recent Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Storage Contract Capacity has varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to perform a Storage Capacity Test or run a retest of any Storage Capacity Test at any time during any Contract Year upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Contract Capacity and Efficiency Rate. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(c) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Storage Contract Capacity and Efficiency Rate determined pursuant to such Capacity Test shall become the new Storage Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

A. Each Storage Capacity Test (including the Commercial Operation Storage Capacity Test, each subsequent Storage Capacity Test, and all re-tests thereof permitted under paragraph B above) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a "**SCT**". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment for verification purposes (at Buyer's sole cost).

B. Conditions Prior to Testing.

(1) The EMS shall be successfully configured to communicate and exchange data with the Battery Management System ("BMS"), Seller's SCADA system (if applicable), Buyer's SCADA device, and a historian device (if separate) for the calculation, recording and archiving of data points.

(2) The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Buyer's RTU and Seller's EMS interface and the ability to record SCADA Systems data.

(3) 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 BMS and EMS are configured.

(4) Any SCTs requiring the availability of Charging Energy shall be conducted when the Generating Facility is producing at a rate equal to or above the Storage Contract Output *divided by* four (4) hours, continuously for a five (5)-hour period; *provided* that Seller may waive such conditions at its sole discretion. Any SCTs that are required or allowed to occur under this Exhibit O that take place in the absence of the above condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such SCT, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

(5) Any SCTs measuring Discharging Energy shall be conducted when the Generating Facility is not delivering Energy to the Facility meter.

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Purpose of Test. Each SCT shall:

(1) Determine an updated Storage Contract Capacity;

(2) Determine the amount of Energy required to fully charge the Storage Facility;

(3) Determine the Storage Facility charge ramp rate;

(4) Determine the Storage Facility discharge ramp rate; and

(5) Determine an updated Efficiency Rate.

B. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at a minimum of two (2) second intervals:

(1) time (seconds);

(2) Charging Energy (MWh);

(3) Discharging Energy (MWh); and

(4) Stored Energy Level (MWh).

C. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg) at facility weatherstation nearest to Storage Facility; and

(3) Ambient air Temperature (°F).

D. Test Elements. Each SCT shall include the following test elements, during which time the Storage Facility may be regulated between 0.95 power factor leading and lagging as needed to comply with CAISO reactive power requirements:

(1) The discharging of the Storage Facility to its minimum SoC as allowed by the Storage Facility's control system and Operating Restrictions;

(2) Once at Minimum SoC, holding the Storage Facility in an active-standby state for at least thirty (30) minutes to allow for thermal normalization of batteries;

(3) The charging of the Storage Facility at a constant power charge rate no larger than per Operating Restrictions until the SoC reaches at least [redacted], continued by the receipt of charging Energy as sustained until the SoC reaches 100%, not to exceed five (5) hours of total charging time;

(4) The measurement of the time from when the charge signal is sent until the constant power charge rate is achieved (dividing the constant power charge rate by this measurement will determine the updated charging ramp rate);

(5) The measurement of Energy, as measured by the Storage Facility Meter, that is required to charge the Storage Facility until a 100% SoC is achieved ("**Energy In**");

(6) Once at Maximum SoC, the Storage Facility shall be held in an active-standby state for at least thirty (30) minutes to allow for thermal normalization of the batteries;

(7) The discharging of the Storage Facility for four (4) continuous hours at a constant power discharge rate (in MW_{AC} as measured at the Facility Meter) no greater than the Storage Contract Output divided by four (4) hours;

(8) The measurement of the time from when the discharge signal is sent until the constant power discharge rate is achieved (dividing the constant power charge rate by this measurement will determine the updated discharging ramp rate); and

(9) The measurement of Energy, as measured by the Facility Meter, that is discharged from the Storage Facility to the Delivery Point until the minimum SoC allowed by Operating Restrictions is achieved as indicated by the battery management system ("**Energy Out**").

E. Test Conditions.

(1) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for the Storage Facility. Buyer shall ensure that the Storage Facility has charged and discharged at least [redacted] prior to the beginning of the SCT.

(2) Abnormal Conditions. If abnormal operating or grid conditions that prevent the recordation of any required parameter occur during a SCT (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such SCT in accordance with Part II.F below.

(3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice, and as applicable, the CAISO Tariff.

F. Incomplete Test. Except as provided in Part I(D), If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

(1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for each parameter set forth in Part II.A through D, as applicable, including copies of the raw data taken during the test;

(3) the current level of Storage Contract Capacity, Energy In, Energy Out, Efficiency Rate, the amount of Energy required to fully charge the battery, the current charge and discharge ramp rate, and the Maximum Stored Energy Level, each determined by the SCT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party reasonably rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.F.

H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Storage Facility ("**Supplementary Storage Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Storage Contract Capacity. The result of dividing (i) the lesser of (a) the Storage Contract Output, and (b) the total amount of Facility Energy delivered to the Delivery Point as measured at the Facility Meter (expressed in MWh_{AC}) during the first four (4) hours of discharge; divided by (ii) four (4) hours; shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement.

J. Adjustment to Efficiency Rate. The total amount of Energy Out divided by the total amount of Energy In, and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for purposes of the Adjusted Facility Energy calculation and the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

EXHIBIT P

STORAGE FACILITY AVAILABILITY

Annual Storage Availability

Calculation of Annual Storage Availability. Seller shall calculate the "**Annual Storage Availability**" in a given Contract Year using the formula set forth below:

$$\text{Annual Storage Availability (\%)} = \frac{[\text{AVAILHRS}_y + \text{EXCUSEDHRS}_y]}{[\text{YEARHRS}_y]}$$

Where:

y = relevant year "y" in which Annual Storage Availability is calculated;

YEARHRS_y is the total number of hours for the Contract Year;

AVAILHRS_y is the total number of hours, or partial hours, in the relevant Contract Year during which the Storage Facility was designated as available to charge and discharge Energy between the Storage Facility and the Delivery Point and to provide Ancillary Services at the Delivery Point in Seller's real-time EMS data feed to Buyer for the Facility (excluding, for avoidance of doubt, all circumstances at the high-voltage side of the Delivery Point or beyond, including Force Majeure Events, that may limit Seller's delivery of Product). For avoidance of doubt, Buyer Bid Curtailments, Buyer Curtailment Orders, Curtailment Orders, System Emergencies, and Transmission System Outages shall not result in unavailability for the purposes of calculating the Annual Storage Availability so long as the Storage Facility is designated as available to charge and discharge Energy between the Storage Facility and the Delivery Point and to provide Ancillary Services at the Delivery Point in Seller's real-time EMS data feed. If the Storage Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the then applicable Storage Contract Capacity, the AVAILHRS_y for such time period shall be calculated by *multiplying* such AVAILHRS_y by a percentage determined by dividing (a) by (b); where (a) is the Storage Contract Capacity amount reported as available by Seller's real-time EMS data feed to Buyer for the Storage Facility for such hours, or partial hours, and (b) is the then applicable Storage Contract Capacity.

EXCUSEDHS_y is the total number of hours, or partial hours, in the relevant Contract Year that are not included as AVAILHRS_y due to a Buyer Default, Buyer Dispatched Test, Battery Augmentation Hours, or the Operating Restrictions in Exhibit Q (each, an "**Excused Event**"). EXCUSEDHRS_y do not include Force Majeure Events that result in direct, physical loss to the Storage Facility that prevent the Storage Facility from being able to charge and discharge Energy between the Facility and the Delivery Point or to provide Ancillary Services at the Delivery Point. If an Excused Event results in less than the full amount of the then applicable Storage Contract Capacity for the Storage Facility being unavailable during any applicable hour, or partial hour, the EXCUSEDHRS_y for such time period shall be calculated by *multiplying* such EXCUSEDHRS_y by a percentage determined by dividing (a) by (b); where (a) is the Storage Contract Capacity amount

that is not reported as available due the Excused Event by Seller's real-time EMS data feed to Buyer for the Storage Facility for such hours, or partial hours, and (b) is the then applicable Storage Contract Capacity. For avoidance of doubt, the total of $AVAILHRS_m$ plus $EXCUSEDHRS_m$ for any hour, or partial hour, shall never exceed 1.

Availability Adjustment. If the Annual Storage Availability for any Contract Year of the Delivery Term is less than the Guaranteed Storage Availability, then Seller shall owe Buyer an Availability Adjustment Payment for such Contract Year, where "**Availability Adjustment Payment**" means an amount equal to the difference between the amount paid by Buyer for Monthly Capacity Payments for such Contract Year and the *product of* (a) the sum of the Monthly Capacity Payments for the months in such Contract Year, *multiplied by* (b) the Availability Adjustment for such Contract Year.

The applicable "**Availability Adjustment**" or "**AA**" is calculated as follows:

(i) If the Annual Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

AA = 100%

(ii) If the Annual Storage Availability is less than the Guaranteed Storage Availability, but greater than or equal to [redacted], then:

AA = 100% - (Guaranteed Storage Availability - Annual Storage Availability) × [redacted]

(iii) If the Annual Storage Availability is less than [redacted], but greater than or equal to [redacted], then:

AA = 100% - (Guaranteed Storage Availability - Annual Storage Availability) × [redacted]

(iv) If the Annual Storage Availability is less than [redacted], then:

[redacted]

EXHIBIT Q

OPERATING RESTRICTIONS

The Storage Facility shall be subject to the following Operating Restrictions:

	Description	**Value**	**Notes**
1.	Storage Contract Capacity	70 MW_{AC}	
2.	Maximum Stored Energy Level	280 MWh_{AC}	
3.	Minimum Stored Energy Level	0 MWh_{AC}	
4.	Maximum Charging Capacity	70 MW_{AC}	
5.	Minimum Charging Capacity	0 MW_{AC}	
6.	Maximum Discharging Capacity	70 MW_{AC}	
7.	Minimum Discharging Capacity	0 MW_{AC}	
8.	Maximum State of Charge (SOC) during Charging	100%	
9.	Minimum State of Charge (SOC) during Discharging	0%	
10.	Annual Average State of Charge Range (SOC)	[redacted]	Measured during each Contract Year
11.	Annual Cycle Limit	[redacted]	Not to exceed the stated value Measured during each Contract Year
12.	Daily Dispatch Limits	[redacted]	Not to exceed the stated value See Cover Sheet
13.	Cycling Cool Down	In compliance with OEM protocols for cooling periods	

		between charge/discharge cycles	
14.	Ramp rate	0 – 1,000 MW_{AC}/min	
15.	Charging Energy source	The Storage Facility will only be charged by the Generating Facility	
16.	EMS/BMS limits	Any limits on imposed on Storage Facility operation by the EMS or BMS for the protection or preservation of person or property.	Limits shall be respected.

EXHIBIT R

METERING DIAGRAM

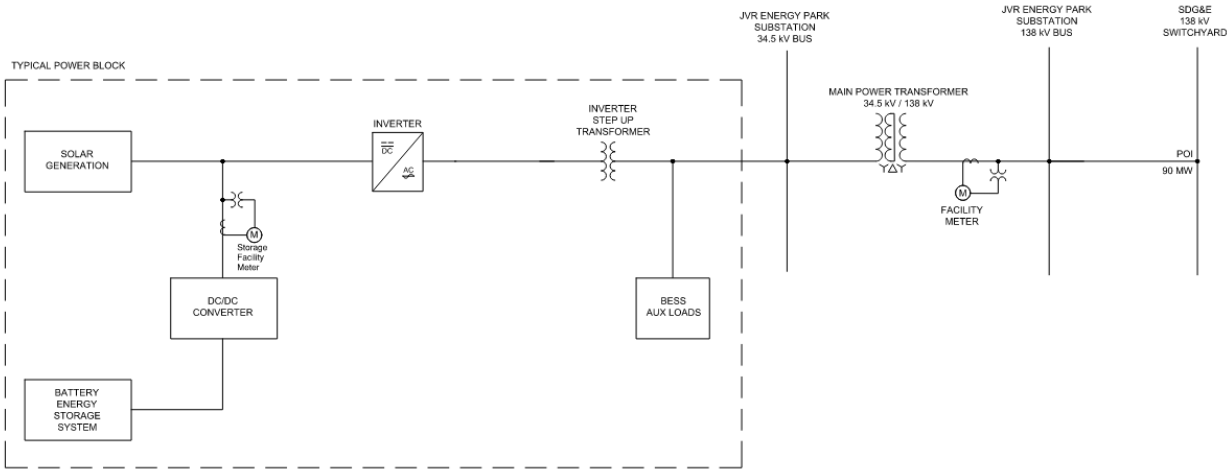


EXHIBIT S

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] will redeliver such Assigned Product to Issuer for ultimate redelivery to PPA Buyer; and

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



Exhibit S - 2



Exhibit S - 3

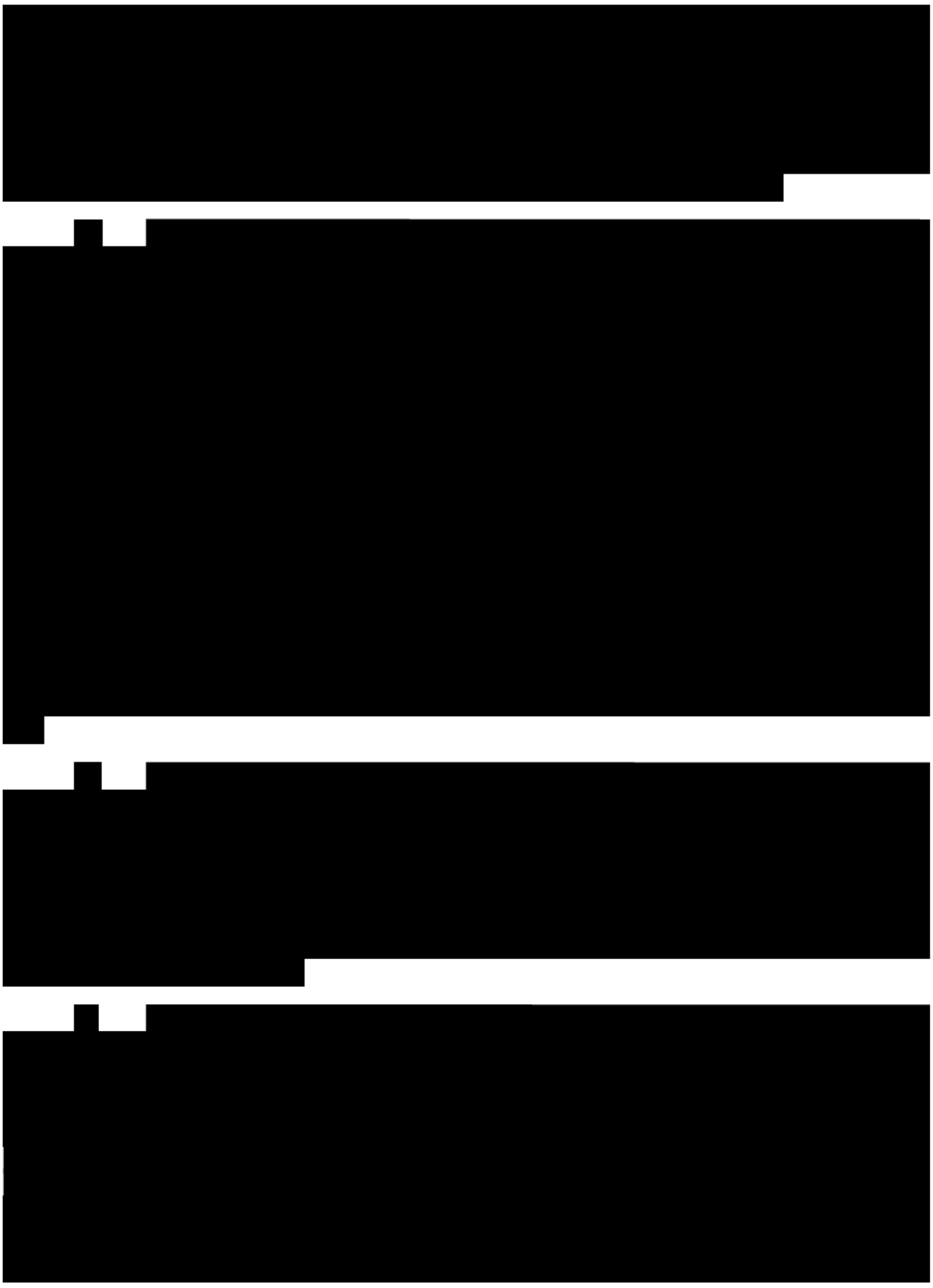


Exhibit S - 4



Exhibit S - 5



Exhibit S - 6

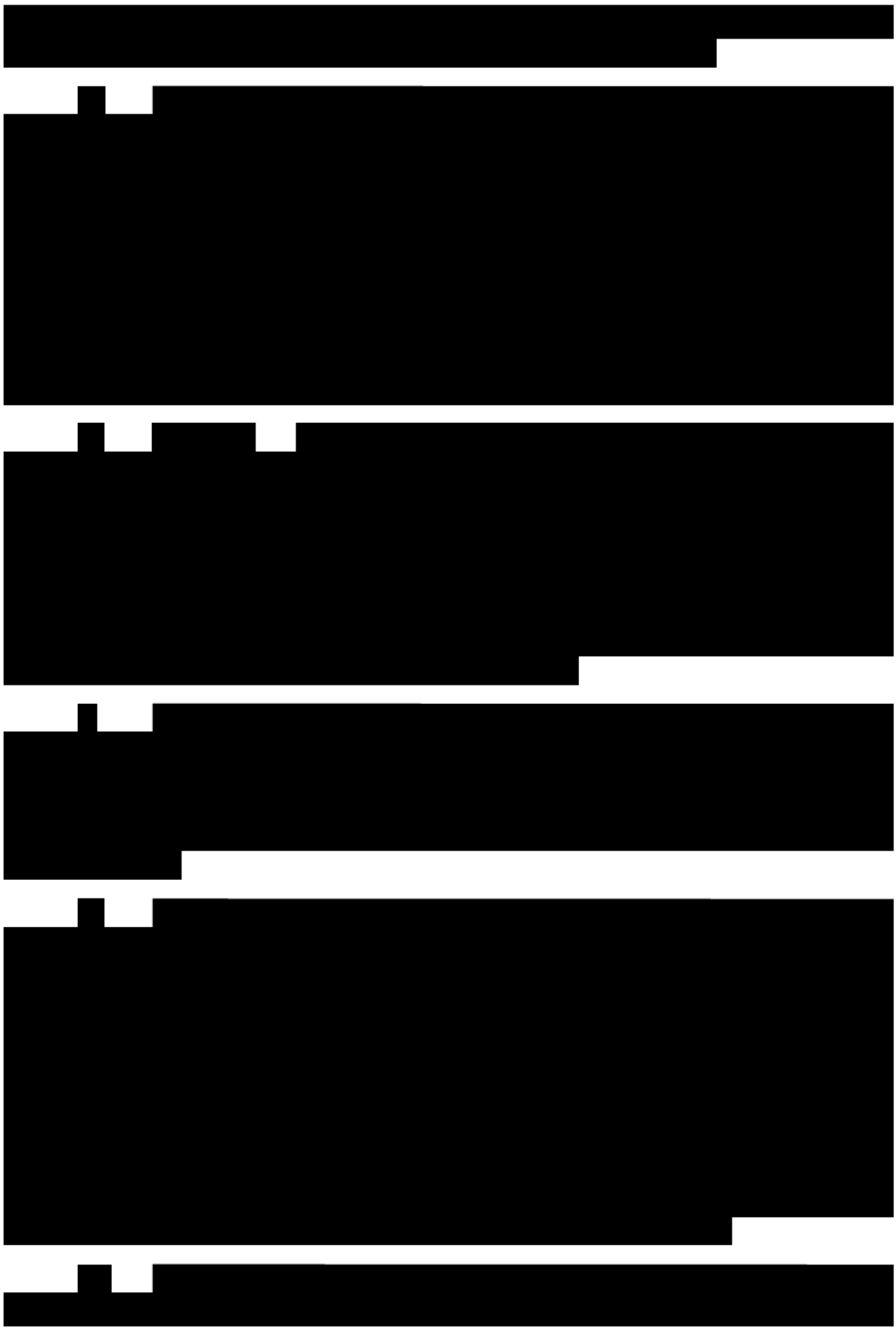


Exhibit S - 7



Exhibit S - 8

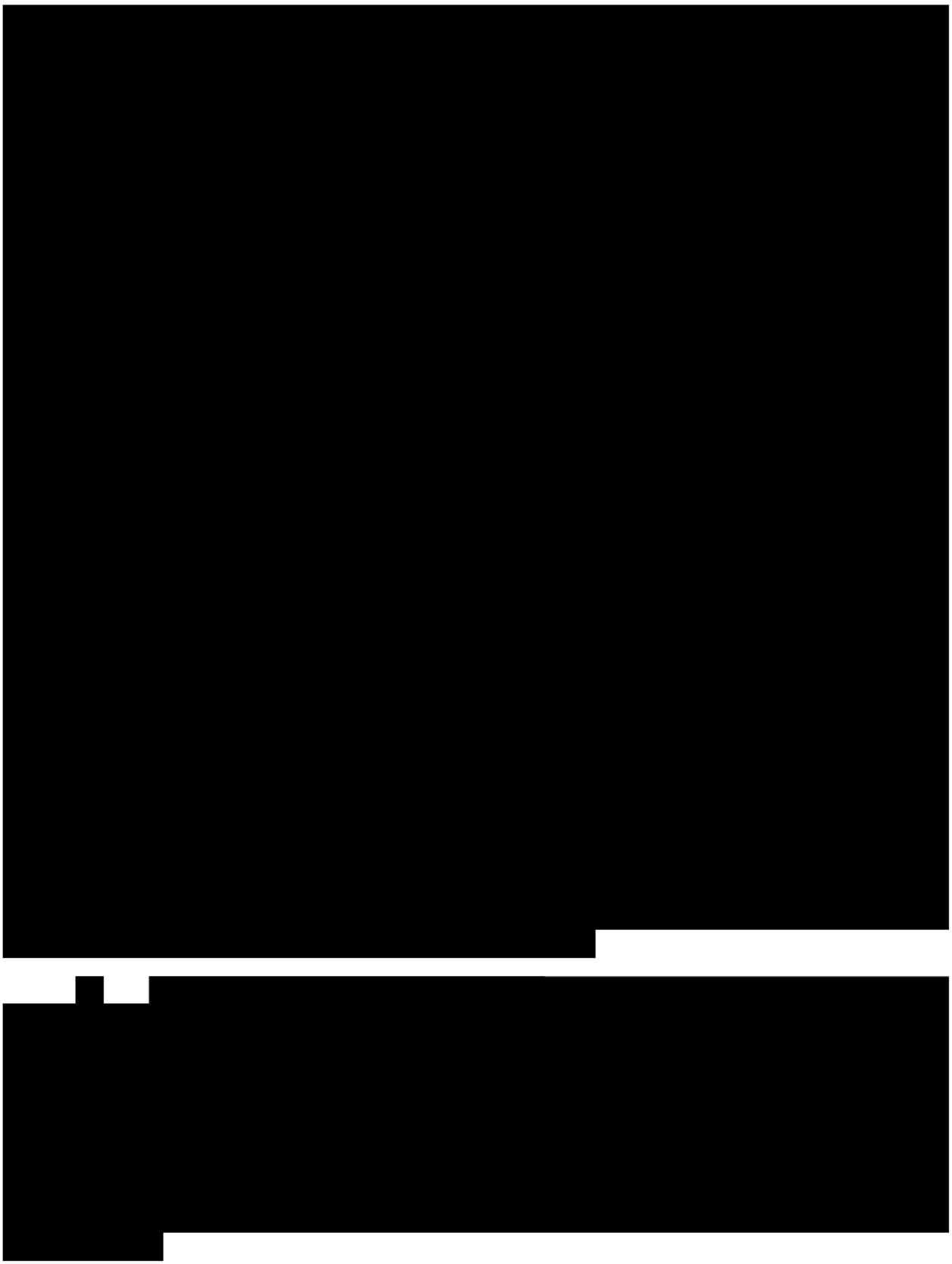


Exhibit S - 9

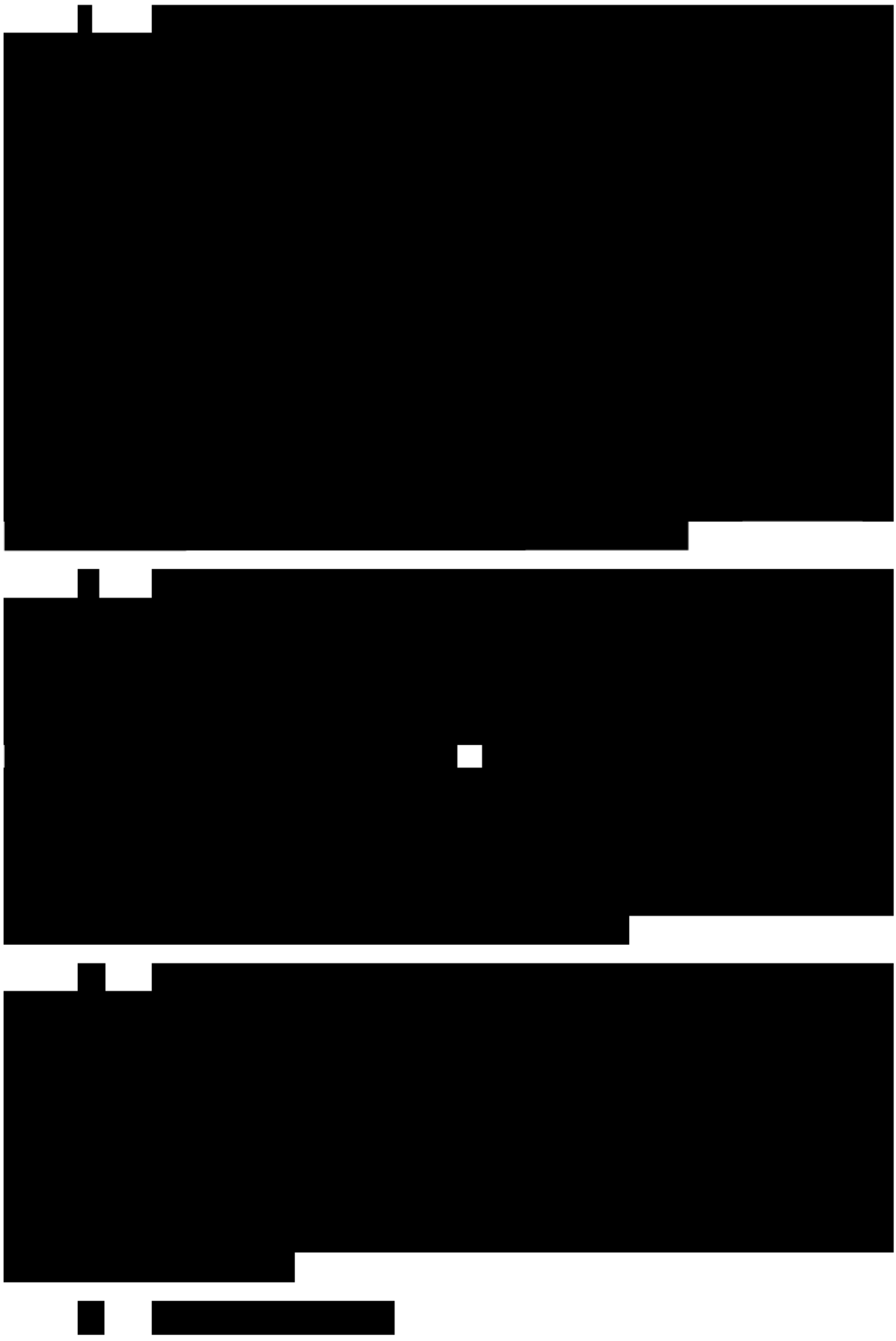


Exhibit S - 10



Exhibit S - 11



Exhibit S - 12

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Assignment Agreement Effective Date.

[PPA SELLER]

By: _____

Name:_____

Title:_____

SAN DIEGO COMMUNITY POWER

By: _____

Name:_____

Title:_____

[redacted]

By: _____

Name:_____

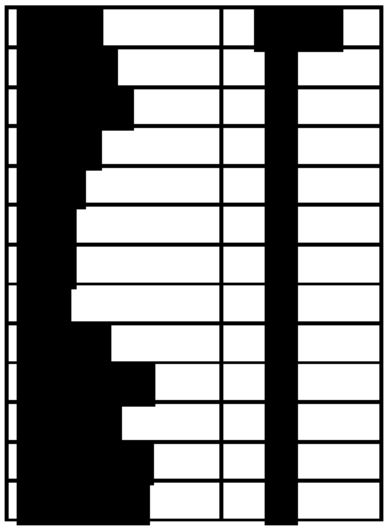
Title:_____

Appendix 1

[redacted]

Appendix 1

[redacted]



[redacted]

Appendix 3

Notice Information

[To be completed before signing.]

[redacted]

Appendix 4

Copy of PPA

[To be attached.]

[redacted]

SAN DIEGO COMMUNITY POWER
Staff Report – Item 16

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, Regulatory Manager
Dean Kinports, Senior Strategic Policy Manager

Via: Karin Burns, Chief Executive Officer

Subject: Update on Regulatory and Legislative Affairs

Date: September 26, 2024

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 August 22, 2024, the California Public Utilities Commission (CPUC) voted to approve a Final Decision making an initial need determination pursuant to Assembly Bill (AB) 1373 (Stats. 2023, Ch.367) under which the CPUC may request that the Department of Water Resources (DWR) procure electricity from diverse long lead-time (LLT) resources on behalf of customers of all load-serving entities (LSE).

As noted in the regulatory and legislative staff report for the August 2024 meeting of the Board of Directors (see pages 47-50 for a summary of the Proposed Decision) this initial need determination totals up to 10.6 gigawatts (GW) of nameplate capacity of four categories of emerging technologies intended to spur market transformation and support a diverse portfolio. The need determination quantities represent maximums, meaning once a procurement request is made, DWR will conduct solicitations and evaluate the

quality of bids, including costs and ratepayer risk provisions, and may procure between zero and the upper limits.

However, the Commission adopted several revisions to the Proposed Decision, including:

- Expanding the geothermal resource category to include both conventional and next-generation geothermal;
- Allowing pumped storage hydroelectric (PSH) projects to compete in either of the long duration energy storage (LDES) category solicitations given they are eligible under the provisions of Public Utilities Code Section 454.52(h)(2);
- Providing additional details on the procurement process, such as giving parties the opportunity to make requests for evidentiary hearings and setting other appropriate procedural steps that may be necessary for a full review of the proposed contracts; and
- Clarifying that centralized procurement of LLT resources should be considered by the Commission in a separate category from individual LSE procurement, but should be coordinated with individual LSE requirements resulting from the forthcoming reliable and clean power procurement program (RCPPP) or other procurement orders.

Eligible Resource	Quantity (Nameplate)
Offshore wind (OSW)	7.6 GW
Geothermal	1 GW
12-hour or more emerging long duration energy storage (LDES) technologies, that are not lithium-ion batteries	1 GW
Emerging multi-day LDES technologies, that are not lithium-ion batteries	1 GW

The CPUC recommends multiple rounds of competitive LLT solicitations, with the proposed initial timing:

- Late 2024 or 2025: DWR preparatory activities, including formation of procurement group
- 2025: DWR development of solicitation plans and materials, in consultation with Commission staff and procurement group
- Late 2026: First solicitation opens for LDES
- 2027: First solicitation opens for OSW and EGS

Provider of Last Resort

On August 23, 2024, the CPUC held a prehearing conference to kick-off Phase 2 of the provider of last resort (POLR) proceeding, R.21-03-011. This proceeding is charged with implementing Senate Bill (SB) 520 and addressing other matters related to the POLR, which is the entity responsible for providing uninterrupted electric service in the event that an LSE, such as a CCA, fails.

Phase 1 reviewed the existing framework including cost recovery mechanisms, registration processes, processes for governing mass involuntary return of customers, financial monitoring requirements, and updates to the financial security requirement calculation. A Final Decision was issued on April 22, 2024. Phase 2 will determine the requirements and process to enable a non-IOU LSE to serve as the POLR. The Ruling that set the prehearing conference included a preliminary scope for Phase 2.

The preliminary scope includes questions regarding the implementation of SB 520, as codified in PUC Section 387, divided into the following topic areas:

- Requirements for what an LSE must demonstrate within a joint application to become POLR and additional threshold attributes for an LSE.
- Details on the joint application process for requesting a transfer of responsibilities.
- Cost-recovery determinations and mechanisms for a non-IOU POLR.
- How the POLR will be regulated as "as a public utility for the services provided by the provider of last resort" per statute.
- Potential additional, regular reporting requirements.
- Technical, financial, and legal capacity thresholds required for non-IOU entities to serve as POLR.

Disconnections

On September 12, 2024, the CPUC adopted the "Decision Extending Current Proportional Allocation of Payment on Past-Due Bills Between Investor-Owned Utilities and Community Choice Aggregators" ("final decision"). The final decision is similar to the Proposed Decision (PD) summarized in Item 9 of the August 22, 2024 BOD agenda packet and adopts the proportional allocation approach to payments of past-due bills. The key difference between the PD and final decision is that the final decision was updated to address PD opening comments filed on August 28, 2024, and PD reply comments filed on September 3, 2024.

In the final decision, the Commission adopted CalCCA's requests (opening and reply comments), which asked the Commission to:

- **Disallow the "zig zag" method for all three IOUs**
  - SDG&E's PD comments asked that the Commission adopt the zig zag method of allocating past due payments. This method allocates payments to the oldest outstanding balance first, which effectively translates to IOUs receiving payment prior to CCAs. The Commission denied SDG&E's request because it has a "negative impact on CCA financial stability, and is overly complex from an operational standpoint." (Final decision at page 10)
- **Deny SDG&E's request to allow IOUs to "individually negotiate" their billing arrangements with CCAs**
  - SDG&E's PD comments asked the Commission for authorization to individually negotiate payment allocation methodologies with the CCAs in their service area, SD Community Power and Clean Energy Alliance. SDG&E argues this would be a good way to address any Commission concerns about CCA financial viability. The

Commission rejects SDG&E's request, ultimately stating that the record does not demonstrate how the proposal would benefit customers.

- **Deny PG&E's and SDG&E's request for a sunset date for the proportional allocation method**
  - The Commission rejects the request for a sunset date outright but does state that it may revisit the allocation methodology when it reevaluates the Arrearage Management Payment (AMP) program.

The Commission does reject one request made by CalCCA (as well as PG&E and SDG&E) to revise the IOU tariffs to reflect the adoption of the proportional allocation method. The Commission's rejection of this request is due to its plans to revisit the methodology upon the AMP program evaluation.

Overall, the final decision adopts the proportional allocation methodology because it results in more equitable treatment of bundled and unbundled customers and leads to increased financial stability of CCAs, which is in customers' collective best interest.

General Rate Case Phase 2

On August 16, 2024, SD Community Power, along with Clean Energy Alliance, (the Joint CCAs) filed an Opening Brief in Phase 2 of SDG&E's General Rate Case. In this brief, the Joint CCAs requested that the CPUC order SDG&E to delineate the bundled PCIA rate from other commodity rates and requested that the CPUC order SDG&E to clearly demonstrate the kilowatt-hour (kWh) usage and dollar per kWh rate used to determine monthly PCIA charges on bundled customer bills, similar to SDG&E's current PCIA bill presentation for unbundled customers. The Joint CCAs then filed a reply brief on August 30, 2024, in order to respond to arguments raised in SDG&E's Opening Brief, and to reiterate the same points made in the Joint CCA Opening Brief.

B) State Legislative Activities Update

The 2023-24 legislative session concluded on Saturday, August 31. The Governor has until September 30 to sign or veto legislation approved by the Legislature. The 2025-26 legislative session will convene on December 2.

SD Community Power supported legislation approved by the legislature and pending action by the Governor

SD Community Power supported the following bills that were approved by the Legislature before the August 31 deadline and are now waiting for action by the Governor:

- AB 1834 (Garcia) - This bill would require the CPUC to consider mitigating factors, such as resource scarcity, when developing the capacity payment unit cost when an LSE failed to meet its system RA requirements, and the Electricity Supply Strategic Reliability Reserve Program was used to meet an identified reliability need.
- AB 2666 (Boerner) - This bill would require the CPUC to review which IOU costs differed from their general rate case forecasts and to adjust their authorized revenue

requirement in the subsequent general rate case based on the actual past costs of the IOU.

- AB 2672 (Petrie-Norris) - This bill would make Project Homekey sites (which provide housing to the unhoused), including at least four in San Diego County, eligible for the 30-35% CARE rate discount.
- AB 2779 (Petrie-Norris) - This bill would require the CAISO to report on any new use of grid enhancing technologies, along with costs and efficiency savings, in its transmission planning process.
- SB 59 (Skinner) - This bill would authorize the CEC to require electric vehicles to be bidirectional capable if they determine there is a sufficiently compelling beneficial use case to the vehicle and the grid.
- SB 1006 (Padilla) - This bill would require the IOUs to study the feasibility of using grid-enhancing technologies to increase transmission capacity, reduce congestion and the curtailment of renewables, and increase reliability.

SD Community Power supported the following bills that were not approved by the Legislature.

- AB 817 (Pacheco) - This bill would have allowed subsidiary public bodies, like the CAC, to use modified remote meeting protocols.
- AB 2329 (Muratsuchi) - This bill would have established the California Affordable Decarbonization Authority to administer a Climate Equity Trust Fund for the benefit of electric ratepayers and to promote affordable electric rates.
- AB 2891 (Friedman) - This bill would have required the CEC to adopt a set of upfront technical requirements for LSEs to modify their electric demand forecast when aggregated resources are used.
- AB 3238 (Garcia) - This bill would have streamlined the CPUC's approval process for certain transmission projects.
- AB 3246 (Garcia) - This bill would have allowed the CPUC's approval of advanced conductors on transmission lines above 50 kilovolts through their informal advice letter process.
- SB 1165 (Padilla) - This bill would have allowed for an alternate CEQA process pathway through the CEC for certain transmission line projects.

Legislature approves transparency legislation on costs to ratepayers

Ratepayer affordability was a key theme of the 2024 legislative year. The Senate Energy, Utilities, & Communications Committee and the Assembly Utilities & Energy Committee both held oversight hearings to better understand why electric rates are rising and to hear about potential solutions. In June the chair of the Assembly Utilities & Energy Committee called for a legislative package that would reduce ratepayer bills by $10 a month. In anticipation that the legislation could seek to sunset ratepayer funds that support energy efficiency programs, SD Community Power signed a letter with other CCAs urging caution since the funding mechanism is critical to state and local clean energy, grid reliability, and equity goals. The joint-CCA letter, which is included as an attachment ("Joint CCA EE Letter"), noted that energy efficiency programs have historically been funded through a

state mandated public purpose program charge, which currently accounts for around 1.7% of total revenues collected annually from ratepayers. The joint CCAs expressed an interest in a dialogue with the Legislature to promote ratepayer affordability while also ensuring critical energy efficiency programs continue to have a viable operational pathway that avoids duplication and promotes transparency.

The legislature ultimately approved one bill, which was published shortly before the August 31 deadline, to enhance transparency of certain ratepayer costs. AB 3264 (Petrie-Norris & Rivas), if signed into law, would establish new transparency requirements for ratepayer funded energy efficiency programs, including SDREN as well as CCA funded demand side management programs. The goal of the bill is to give legislators more information on all the costs paid for by ratepayers so in a future legislative session they can have a more informed discussion about ratepayer affordability. Specifically, the bill would require the following:

- The CPUC would need to establish a framework by December 31, 2026, to assess the total energy costs (propane, gas, electricity, natural gas, diesel) paid by residential households, including projects costs for the next 10 years and annual growth rate by energy source. The CPUC will also need to develop scenarios that achieve a 5%, 10%, and 15% reduction in total annual energy costs paid by households by 2035. The CPUC would be authorized, but not required, to use the framework when evaluating proposed IOU costs for new spending.
- The three large IOUs would need to publish a cost dashboard on their website by January 1, 2026, of the cost categories in residential electric rates for the next calendar year, including distribution, wildfire mitigation, transmission, energization, net metering, commodity prices, energy efficiency programs, taxes, metering and billing, and unrecovered arrearages.
- The CPUC would need to provide enhanced reporting to the legislature on energy efficiency programs, by specifying the report - issued every three years - should include a list of all demand-side management programs it oversees or that are paid for by ratepayers, including CCA programs with evaluations for each program.
- The CPUC would need to consult with the CEC and the CAISO on recommendations to identify proposals to reduce the cost to ratepayers of expanding the transmission grid. The report must evaluate public financing of projects and other ownership models and lease agreements.

Another bill that was part of the affordability package, AB 3121 (Petrie-Norris), would have provided a one-time residential bill credit of around $30 by requiring the CPUC to start a process on January 1, 2025 to repay unreserved Self-Generation Incentive Program (SGIP) funds to residential customers, sunsetting the School Energy Efficiency Stimulus Program (CalSHAPE) as of July 1, 2024 and returning the remaining funds to each utility and distributing it to residential customers as a bill credit, and requiring the CPUC to credit no more than one-half of program funds from the Multifamily Affordable Housing Solar Roofs Program that are unencumbered as of January 1, 2025 to residential customers of electrical corporations. The bill was ultimately not put up for a vote, meaning it did not pass the legislature and did not make it to the Governor for signature.

Similarly, SB 1003 (Dodd), which would have made changes to the IOU wildfire mitigation process, including by requiring that wildfire mitigation costs are considered in an IOUs general rate case as opposed to separately in memorandum accounts, was not taken up for a final vote, therefore it also did not pass the Legislature.

C) Federal Legislative Activities Update

None

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

Joint CCA EE Letter

ITEM 16
ATTACHMENT A

July 25, 2024

The Honorable Mike McGuire
President Pro Tempore, California State Senate
1021 O Street, Suite 8518
Sacramento, CA 95814

The Honorable Robert Rivas
Speaker, California State Assembly
1021 O Street, Suite 8330
Sacramento, CA 95814

Subject: Preserving Energy Efficiency Programs that Uphold California's Clean Energy, Grid Reliability, Affordability, and Equity Goals

Dear President Pro Tem McGuire and Speaker Rivas,

We write to express interest in your efforts to explore legislative options to reduce costs to electric ratepayers. Community choice aggregators (CCAs), governed by boards of local elected officials, are at the forefront of the state's clean energy transition, having contracted for over 14 gigawatts (GWs) of clean energy resources. We believe that affordable electric rates and bills are critical not only to the clean energy transition, but also to California's broader decarbonization efforts. If rates and bills are too high, customers will be less willing to switch to electric vehicles and electric appliances powered by clean energy. We therefore support a continued focus on affordability.

We urge caution however, when considering reductions to spending on energy efficiency programs. Reducing energy efficiency programs will negatively impact our efforts to advance an equitable clean energy transition, customer affordability, and grid reliability. Energy efficiency funds collected from ratepayers represent a small portion of customer bills. Since 1996, the state's investor-owned utilities have been required by law to collect a non-bypassable charge on ratepayers known as the public purpose program (PPP) charge. The funds are used for prudent investments in energy efficiency, in addition to rate discounts for low-income customers, renewable energy, as well as research and development.

Although it fluctuates annually, based on information from the California Public Utilities Commission (CPUC), energy efficiency funds are just over 16% of PPP costs recovered from ratepayers and 1.7% of total annual revenue collected. While prudent grid investments are also needed to meet our clean energy and reliability goals, energy efficiency costs stand in contrast to other expenses, such as distribution, transmission, and wildfire investments. For example, according to the 2023 AB 67 California Electric & Gas Utility Costs Report, distribution costs increased 30% since 2013 and now represent nearly 44% of costs collected from ratepayers.

Energy efficiency programs have historically been run by IOUs and most of them still are to this day. Recognizing local governments are close to the residents they serve, state law authorized CCAs in 2003 to also provide energy efficiency programs in their service areas. In 2012, the state further authorized local governments to form regional energy networks (RENs) that can offer energy efficiency programs to benefit their communities. Our organizations administer, or are planning to administer, energy efficiency programs through these two pathways and are focused on customers who have historically not been served by energy efficiency programs or live in disadvantaged communities. This is a key aspect of our local control of energy efficiency programs. As an extension of the communities we serve, our programs are thoughtfully designed to meet local needs while simultaneously supporting progress toward statewide climate and clean energy goals.

Our programs offer, or will offer, traditional energy efficiency benefits such as installing insulation in homes, as well as more sophisticated benefits like automated HVAC and lighting controls that not only allow a customer to reduce their energy consumption but also provide tremendous grid reliability benefits. Some programs also offer measures designed to simultaneously deliver energy savings as well as health, safety, and comfort benefits. These benefits are essential for low-income and disadvantaged community residents historically underserved by energy efficiency programs and who face rising climate impacts.

Our programs directly contribute to the state's efforts to double energy efficiency savings by 2030 as required by SB 350 (Chapter 547, Statutes of 2015) the Clean Energy & Pollution Reduction Act of 2015, and the state's 7 GW load shift goal established by the CEC pursuant to SB 846 (Chapter 239, Statutes of 2022). The inaugural SB 100 Joint Agency Report required by SB 100 (Chapter 312, Statutes of 2018), the 100 Percent Clean Energy Act of 2018, recommended, among other things, to "continue to prioritize energy efficiency and load flexibility to minimize total implementation costs." California's Clean Energy Transition Plan released in May 2023 also opines that energy efficiency will be critical.

We look forward to engaging in a dialogue with your offices during the remaining weeks of the legislative session to promote ratepayer affordability while also ensuring critical energy efficiency programs – especially those with an equity focus – continue to have a viable operational pathway that avoids duplication and promotes transparency.

Please contact Amy Costa (amy@fullmoonstrategies.com) with any questions about our comments.

Sincerely,

Patrick Welch
Senior Legislative Manager, SDCP

Stephanie Chen
Director of Legislative Affairs, MCE

Alec Ward
Principal Legislative Manager, Ava

Marc Hershman
Director of Government Affairs, Peninsula Clean Energy

Scott Green

Scott Green
Senior Government Affairs Manager, SJCE

Richard Engel
Acting Executive Director, Redwood Coast Energy Authority

Cc: The Honorable Gavin Newsom, Governor of California
The Honorable Cottie Petrie Norris, Chair, Assembly Committee on Utilities & Energy
The Honorable Steven Bradford, Chair, Senate Committee on Energy, Utilities & Communications
The Honorable Jesse Gabriel, Chair, Assembly Committee on Budget
The Honorable Scott Wiener, Chair, Senate Committee on Budget & Fiscal Review
The Honorable Steve Bennett, Chair, Assembly Budget Subcommittee #4 on Climate Crisis, Resources, Energy and Transportation
The Honorable Josh Becker, Chair, Senate Budget Subcommittee #2 on Resources, Environmental Protection and Energy

SAN DIEGO COMMUNITY POWER
Staff Report – Item 17

To: San Diego Community Power Board of Directors

From: Emily Fisher, Senior Program Manager
Colin Santulli, Director of Programs

Subject: Update on Solar Battery Savings Program

Date: September 26, 2024

RECOMMENDATION

Receive and file the update on Community Power's Solar Battery Savings program.

BACKGROUND

The San Diego Community Power Board of Directors adopted the Net Billing Tariff ("NBT") policy at the October 2023 Board of Directors meeting, replacing Net Energy Metering ("NEM") 2.0 as the default billing mechanism for accounts with newly installed generating systems (e.g., solar, wind, biomass, geothermal or other renewable resources). In December 2023, NBT was operationalized within SDCP's billing system for customers with new generating systems and/or for customers who had reached the conclusion of their 20-year legacy period with NEM. NBT aligns the value of net export with avoided grid costs, increasing the value of solar systems paired with battery storage.

ANALYSIS AND DISCUSSION

Program Goals and Design

To support the transition to NBT and continue the growth of the regional solar market, Community Power sought to create a solar and storage incentive program with the goals below:

1. Install solar and storage in single-family homes through SDCP territory (50% of incentives to Communities of Concern)
2. Support clean energy and reliability by leveraging batteries on a daily basis during peak hours.
3. Build strong relationships with the industry and SDCP customers.
4. Leverage non-SDCP incentives to support customers in overcoming system costs.

To develop the program, staff spent several months considering different program design concepts. Staff researched existing utility programs throughout the nation to understand successes and lessons learned. Staff engaged with a wide range of stakeholders, including CALSSA, battery manufacturers and contractors on program design options. In January 2024, Staff held two industry workshops to present initial program concepts and received feedback from the 72 attendees. Overall, the industry responded positively to the draft program concepts.

Based on feedback collected, Staff developed a program design that includes a one-time, upfront incentive, to help overcome the initial cost of the system, and an annual performance incentive, to encourage daily dispatch of the participating storage system when it is most beneficial to the grid. A summary of the key program parameters is shown below.

	Market Rate	Non-Market Rate (CARE/FERA & Communities of Concern)
Solar Upfront Incentive	N/A	Up to $450/kW-AC[1]
Storage Upfront Incentive	$350/kWh (nameplate useable capacity)	Up to $500/kWh[2] (nameplate useable capacity)
Storage Performance Incentive	$0.10/kWh (based on actual performance over the dispatch period during on-peak periods)	
# of Events	Daily (weekday only or weekday+weekend)	
Battery Enrollment	Participants can select the percentage of their battery's useable capacity to enroll in the program, with a minimum requirement of 50%	
Opt-Out	Battery can underperform by up to 10% of the total enrolled capacity per month	
Unenrollment	There will be a prorated claw back associated with the upfront incentive if the participant chooses to unenroll within the first five years	

[1] California Alternate Rates for Energy ("CARE") and Family Electric Rate Assistance Program ("FERA")

[2] Up to amount based on if customer is eligible for other solar incentives, e.g., Disadvantaged Communities–Single-Family Affordable Solar Homes and City of San Diego Equity Program

[3] Up to amount based on if customer is eligible for other upfront storage incentives, e.g., Self-Generation Incentive Program

Program Preparation and Training

In advance of the program launch, staff developed a dedicated program portal for contractors and battery manufacturers. The program portal is used for application submittals by contractors and displays an available program budget that is updated daily. The portal also serves as the primary communication method for Community Power staff with approved contractors and battery manufacturers.

Industry Training

Industry is a central stakeholder in the success of the Solar Battery Savings program. As the primary contact to the customer for the program, approved contractors are required to be well versed in program guidelines and have regular access to Community Power

staff as questions arise. As such, staff mandated the completion of a program training for all participating contractors. The training outlines who Community Power is, customer eligibility, program design and structure, mechanics of how to submit applications, technical specifications of allowable projects and expected system performance, and overarching contractor expectations (e.g., allowable communication and marketing practices). In additional to completing the mandatory training, interested contractors are required to submit an application to participate and agree to uphold all program requirements.

Staff began offering in-person program trainings to contractors in mid-June, leveraging industry partnerships to maximize participation. In June and July, staff held four in-person contractor trainings at a local distributor's training room and International Brotherhood of Electrical Workers (IBEW) 569's training facility, training 44 contractors in total during this time. A recording of the training is available to interested contractors to participate at their convenience.

Battery manufacturers had similar required trainings to participate in the program. Staff held a specific program training for battery manufacturers interested in participating in the program at the end of June. A recording of the battery manufacturer training is available for interested stakeholders. Additionally, as battery manufacturers are approved, Staff meets with them individually to understand how they plan to operationalize and ensure a successful path forward for data sharing.

Program Launch and Participation

Solar Battery Savings officially launched on July 28, 2024. As of mid-September, over 1,300 applications for projects have been submitted. The launch of the program garnered significant interest with over 500 applications submitted within the first 24 hours. After application submittals leveled out after the first week, an average of 15 applications per day have been submitted over the last seven weeks. Staff are actively processing applications with over 750 applications approved to date. Most reviewed applications have been approved, with the primary application rejection reasons being inadequate system size, not enrolled in Community Power's service, not within our service territory, or incorrect information submitted (e.g., project address, customer account number). Staff regularly work with contractors to resolve issues with rejected applications that can be corrected (e.g., inadequate system size, missing contract signatures).

Of the approved applications to date, 59% of program funding is supporting market rate projects with the remaining 41% going to non-market rate projects (CARE, FERA and/or Communities of Concern). The average incentive is $6,784, with the average market rate upfront incentive being $6,098 and the average non-market rate upfront incentive being $8,332.

Of the approved applications to date, 38% of the projects are new solar and battery systems (i.e., customers on the NBT rate), with the remaining 62% going to existing solar customers that are adding a battery (and in some cases a small amount of new solar).

Since the launch of the program, staff has seen a steady increase of new solar and battery system projects relative to existing solar customers adding batteries to their systems.

Applications have been received from customers in all seven of Community Power member agencies. Efforts are underway to increase participation in member agencies that are underrepresented in the program relative to their portion of single-family homes in Community Power territory. To date, the is participation across each of the member agencies is as follows:

Member Agency	# of Applications	% of Applications	% of SF Homes
City of San Diego	670	51.7%	50%
Unincorporated	385	30%	31.8%
Chula Vista	83	6.4%	10%
Encinitas	102	7.9%	3.6%
La Mesa	51	3.9%	2.7%
National City	3	0.2%	1.3%
Imperial Beach	1	0.1%	0.7%

This program has resulted in customers who initially opted out of Community Power service re-enrolling in Community Power service. Of the 79 customers that re-enrolled in Community Power service between 7/3 and 9/6, 40 of these customers also enrolled in Solar Battery Savings.

Industry Participation

A large, diverse group of contractors have been approved to participate in the program. To date, we have 47 approved contractors with 14 more applications under review. Approximately one-third are certified diverse business enterprises. Additionally, participating contractors vary greatly in company size:

- 42% have 10 employees or less
- 42% have 10-50 employees
- 16% have more than 50 employees

To date, the program has fourteen battery manufacturers approved with a variety of battery products and sizes (from 3 kWh to 23.5 kWh). Many of the manufacturers are headquartered in California, with one in San Diego County. Additional manufacturers have expressed interest in participating in the program. There is no financial incentive for the battery manufacturers to participate, except to increase market share.

NEXT STEPS

Based on the average number of daily submitted applications and the average approved incentive amount, staff expect current program funding to be fully reserved in mid to late October or early November. Staff anticipate program applications will no longer be accepted once program funding has been fully depleted.

Complete details on the planned next steps of the program are anticipated to be released in early October. Staff anticipate communicating to participating contractors planned next steps for the program ideally 30 days in advance of the funding being fully reserved.

Staff anticipates continuing to iterate and improve the program portal and associated communication strategies with contractors. Additionally, staff may consider program modifications including changes to the incentive, eligibility criteria and other enhancements to best serve our customers and meet program goals.

Staff is exploring several traditional and non-traditional opportunities for potential near-term and long-term funding streams for the program. Typically, external funding can take 9-12 months to materialize after a grant submission or application.

ATTACHMENTS

N/A

SAN DIEGO COMMUNITY POWER
Staff Report – Item 18

To: San Diego Community Power Board of Directors

From: Lee Friedman, Senior Manager – Strategic Partnerships

Via: Karin Burns, Chief Executive Officer

Subject: Presentation on Partnership Agreement with the Children's Museum

Date: September 26, 2024

RECOMMENDATION

Receive and file information regarding the multi-year gift agreement between the New Children's Museum and San Diego Community Power ("Community Power") for a total of $150,000 to support the development of the Creative Youth Development classroom.

BACKGROUND

The New Children's Museum located in Downtown San Diego boasts 50,000 square feet of interactive and offers hands-on exhibitions, art programing sparking creativity, exploration, and a sense of belonging through interactive art experiences. The New Children's Museum welcomes roughly 300,000 visitors a year and was awarded with the National Medal for Museum of Library Service in 2019 – the nation's highest honor for museums.

In April 2024, the New Children's Museum started construction to expand by 8,600 square feet to build an artist-grade art-making studio space, expanded gallery space, and multiple arts education spaces to offer more for multigenerational visitors to enjoy. Community Power and the New Children's Museum entered into discussions during this time to find opportunities for collaboration partnership.

ANALYSIS AND DISCUSSION

Community Power understands that fostering an early interest in sustainability is essential to cultivating a generation of environmentally conscious citizens. By investing in this studio expansion, Community Power aims to support the New Children's Museum in the development of immersive, hands-on experiences that inspire children and families and explore the importance of renewable power, environmental stewardship, and sustainable living.

Youth outreach and engagement has been a new focus of Community Power's mission to build a greener future. Collaborating with the New Children's Museum, a trusted and respected institution in San Diego, allows Community Power to reach a broad and diverse audience in a welcoming and educational setting. The museum's reputation for innovative, interactive learning makes it an ideal partner for conveying complex ideas like renewable energy in ways that resonate with children. By aligning with an organization that shares its values of community and education, Community Power reinforces its brand as a leader in sustainability and a champion of future generations. The New Children's Museum is also a leader in sustainability efforts and is in the process of becoming a Power100 Champion.

Beyond the physical and verbal recognition which includes naming rights of the classroom space, this partnership opens the door for Community Power to participate in and support museum-led youth programming in collaboration with the Museum's Art and Engagement Team. The studio expansion could serve as a hub for these museum-curated workshops, demonstrations, and art installations that teach children about renewable energy sources, conservation practices, and the science behind clean power. These experiences could provide kids and families with ongoing resources to educate young people on critical environmental issues. Ultimately, this collaboration supports Community Power's vision of a community that understands, values, and actively participates in the transition to a more sustainable future.

This strategic partnership underscores Community Power's dedication to creating a positive impact through community engagement and ensures that young people have the creative space they need to fulfill their curiosity and expand their minds as they grow and age.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

$150,000, paid over three years ($75k FY2024-2025, $50k FY 2025-2026, $25k FY2026-2027)

ATTACHMENTS

Attachment A: Multi-Year Gift Agreement
Attachment B: Studio Renderings
Attachment C: Studio Program Outline

ITEM 18
ATTACHMENT A

the new children's museum™

Multi-year Gift Agreement between
The New Children's Museum and San Diego Community Power

This Gift Agreement ("Agreement") is made this _____, 2024 between San Diego Community Power (hereinafter referred to as "the Donor"), and The New Children's Museum (NCM) a 501(C)(3) organization. The Donor and NCM agree as follows:

1. **Donor Commitment**. The Donor hereby pledges to NCM the sum of $150,000, which is designated for the benefit of the Studio Expansion Campaign, supporting the establishment of a new Creative Youth Development classroom.
2. **Donor Purpose**. It is understood and agreed that the gift will be used for the following purpose or purposes:
    a. To fund the opening of a new arts Creative Youth Development classroom within the newly constructed Education Commons in its inaugural year.
    b. To fund the upkeep, maintenance, related staffing, programs and supplies of the arts education classroom for a two-year period.
3. **Payment**. It is further understood and agreed that the gift will be paid through installments over a three-year period. Pledge payments will be made as follows:

Installment 1:	October 2024	$75,000
Installment 2:	July 2025	$50,000
Installment 3:	July 2026	$25,000

4. **Recognition by NCM.** To honor the Donor, and to express the appreciation of NCM, the following recognition will be provided:
    a. Physical and Verbal recognition including
        i. San Diego Community Power signage within the classroom, the design of which will be mutually approved by both entities
        ii. A role during the grand opening of the classroom and studio space
        iii. Written recognition in digital and print communications referencing the space to our audience of more than 80k.

b. NCM will recognize the Donor as the Museum's Primary Sustainability Partner when applicable.
c. NCM will provide opportunities for museum audiences to connect with the Donor through marketing and promotional materials provided by the donor as well as in-person at the grand opening and related events.
d. Recognition of the Donor by NCM has no cash value.

5. **Tax-Deductibility.** NCM is a registered 501(C)(3) organization. Contributions to NCM are fully tax-deductible to the extent allowed by law. NCM will provide the donor with tax receipts at the time pledge payments are received. NCM's tax ID number is 95-3619583.
6. **Updates and Engagement**. NCM will provide updates to the donor annually, regarding the use and performance of the space. The donor will be provided with opportunities to participate in the program offerings within the classroom over the three-year grant period. Participation in program offerings will be subject to the oversight of NCM's Art and Engagement Team and will be agreed upon annually by NCM and the Donor within a reasonable timeframe for both parties.
7. **Future Changed Circumstances**. If, in the opinion of the leadership of NCM, all or part of this gift cannot at some time in the future be usefully or practically applied to the above purposes or if the purpose cannot be achieved because of unforeseeable circumstances, unused funds shall be returned to the funder in accordance with the Donor's wishes.
8. **Amendment**. By mutual consent of NCM and the Donor any provision of this Agreement may be amended, modified, or deleted. Any such changes, deletions or additions shall be recorded in written signed addenda, which shall form part of this Agreement.
9. **Dispute resolution.** The parties agree that in the event of a dispute between them, they will use their best efforts to resolve the dispute informally through enhanced communication or a form of non-binding alternative dispute resolution acceptable to both parties.
10. **Indemnification and Liability.**
    a. NCM agrees to indemnify, defend, and hold harmless the Donor and its agents from and against any liability or loss arising from this agreement, unless such liability or loss is the result of the Donor's sole negligence or willful misconduct.
    b. As a condition of the donation, NCM agrees to provide the Donor with a Certificate of Insurance, naming the Donor as an additionally insured party and will hold the Donor harmless from any liabilities that may arise from acts by NCM as a result from funds granted by the Donor.
11. **Entire Agreement**. This Agreement contains the entire understanding of the parties with respect to the subject matter of the Agreement and is subject to the laws of the State of California. This Agreement also supersedes all other agreements and understandings, both oral and written, between the parties relating to the subject matter of the Agreement.

In witness whereof, the parties to this Agreement have affixed their signatures:

Party 1: The Donor

_____ _____

(Signature) (Date)

_____

Name

_____

Title

_____

Organization

Party 2: The Recipient

_____ _____

(Signature) (Date)

_____

Name

_____

Title

_____

Organization

ITEM 18
ATTACHMENT B

THE NEW CHILDREN'S MUSEUM IS EXPANDING!

let's grow together



the new children's museum™

more space to think, play and **create**

For more than 40 years, The New Children's Museum has welcomed kids and families to explore their imaginations and creativity through dynamic exhibitions and art-making opportunities.

This year, NCM is transforming. Through an ambitious 8,600 square-foot internal expansion, the Museum will provide visitors of all ages more gallery space, more classroom accommodation, and expand the wildly popular art-making space into a full-scale, all ages art-studio.

Visitors of all ages explore multi-media studio workshops and classes in painting, sculpture, and beyond





A fully equipped ceramics studio with pottery wheels and an onsite kiln to explore the medium from beginning to end

a future for creativity and exploration you can support

Communities thrive when we all have spaces to dream, create and play. Our newly expanded art studio will accommodate more than 60,000 visitors a year with opportunities to explore their creative process. Everyone, from toddlers to teens and beyond, will have access to ceramics, painting, sculpture and more through tailored classes and workshops.



Adaptive art making spaces accommodate multi-generational creators and students

experience more at The New Children's Museum

From a workshop with a world-renowned artist to an immersive art installation, this expansion makes it possible for more families, and now, visitors of all ages, to experience something new on every visit to The New Children's Museum.



Expanded Education Commons features modular classrooms for toddler through teen programs

your contribution unlocks creativity

Every gift brings us closer to fulfilling our goal to provide the creative spaces our community needs to explore their curiosity and expand their minds as they grow and age.

Features of the expansion

- 8,600 square-feet of new visitor-facing spaces
- New 200-person capacity art studio
- New exhibition gallery space
- Expanded Education Commons classroom space
- New afterschool art programming
- New teen studio-time
- Free and reduced entry for qualifying families through various access programs



Flexible classroom and meeting spaces offer more functionality and add capacity for multi-generational classes and workshops



growing together

Join us on our expansion journey. Request a tour, make a gift, or pledge your support at thinkplaycreate.org/expansion

THINK.
PLAY.
CREATE.

The New Children's Museum

Stephanie Malyn (she/her)
smalyn@thinkplaycreate.org
619.233.8792

200 W. Island Ave.
San Diego, CA, 92101

thinkplaycreate.org
@thenewchildrensmuseum

ITEM 18
ATTACHMENT C

Studio and Education Commons – Program Plan Draft*
New Children's Museum

What we do

The New Children's Museum provides unique opportunities for immersive art experiences and engagement for young people with artists. We use the arts to equip young people with skills for developing creativity, empathy, critical thinking, and a sense of belonging.

We are the only children's museum that works exclusively with artists to develop the experiences we offer. Each experience at NCM is distinctive and developed in partnership with a spectrum of diverse artists from around the world who work in different mediums and are exploring varying ideas.

Our team represents a unique nexus of expertise: art and play. We implement a collaborative process so that contemporary artists work closely with our staff to consider the needs of young people as they design new artwork, programs, and experiences for the Museum.

Why art?

Youth engagement with art results in lifelong involvement with and appreciation for the arts. Research has shown numerous benefits of arts education, including effects on students' school attitudes, motivation, and attendance.

A few points of research:

- Youth who are involved in the arts are four times more likely to participate in a math and science fair, three times more likely to win an award for school attendance, four times more likely to be recognized for academic achievement, and three times more likely to be elected to class office. Additionally, students from low socioeconomic backgrounds who participate in the arts are five times more likely to graduate high school than those without arts participation (Americans for the Arts, 2013).
- Low-income students who are highly engaged in the arts are twice as likely to graduate college as their peers with no arts education (National Endowment for the Arts, 2012)
- Students who participate in quality Social and Emotional Learning programs (a key component of creative youth development/arts education programs) show improved classroom behavior, an increased ability to manage stress and depression, and better attitudes about their schools, themselves, and others (Collaborative for Academic, Social, and Emotional Learning, 2018).
- Critical thinking skills developed through arts education programs are correlated with greater academic achievement, career readiness, and improved quality of life (Partnership for 21st Century Learning, 2015).

What we believe

The New Children's Museum believes in the power of Creative Youth Development (CYD). Creative Youth Development is a commitment to supporting young people's stories, ideas, and dreams through the arts and creative expression and by honoring their lived experience. As outlined by the Creative Youth Development National Partnership, we believe that all young people deserve access to opportunities to develop their creative potential, to live richer, fuller lives and develop the critical learning and life skills they need to become active contributors to their communities. Too many young people are disconnected from their communities and lack the means to make successful transitions to adulthood. They face rapidly changing economic, social, technological, and environmental challenges that call for innovative solutions. The arts and creativity are valuable assets for addressing these societal challenges and for thriving in the global economy. (CYD National Partnership, 2021)

Multigenerational Creativity Studio & Creative Youth Commons – Program Overview*

To accomplish our central goal of increasing access to the arts and Creative Youth Development for all young people in our city and region, NCM is expanding. Throughout the summer of 2024, the Museum will add more than 8,600 square feet of space to better serve the needs and interests of youth and multigenerational audiences. This expansion includes a new artist-grade art-making studio that will accommodate the artistic and creative expression of hundreds of young people weekly, the opening of a new gallery space, and an expanded education commons.

With an expanded artist-run studio space and increased capacity within our adaptive education classrooms, NCM is planning to exponentially increase our programmatic offerings. These will include, but are not limited to:

Make Something Sessions

(Ages 6+)
Offered **multiple times a day**, *MSS* will be one-hour workshops that offer art and design projects to nurture creativity, problem solving, skill building and learning. Our creative team works alongside artists, architects, and other creative professionals to develop open-ended, skill-building projects.

Creative Assembly Classes and Workshops

(Ages 6– 13)
Offered **several times a month,** *CAW* will provide young people a day-long opportunity to delve deeper into creative projects under the skilled guidance of professional artists. Focusing on projects ranging from screen-printing, to ceramics, to mixed media, to fiber arts, these sessions

provide space for young people to learn about different art mediums, express their ideas and grow their creative skills in a welcoming and inclusive environment.

New Lights On Teen Studio

(Ages 14-18)
Inspired by Toni Cade Bambara's renowned quote: "The artist's role is not to decorate our work, but to illuminate our world. It is not to entertain us, or reassure us, but to remind us of what is important". This will be a **quarterly** intensive art program for teens to work in collaboration with an artist to create art over a week-long period. The aim is to provide youth with opportunities to learn and apply new contemporary art/design/performance skills, and to utilize these skills to tell artful stories connected to their world. The program will culminate in a public sharing. The format of the sharing will be dependent upon the art being created.

Extended Age Summer Camps and *Summer Studios*

(Ages 5-10, 10-12)
Each summer, The New Children's Museum offers Summer Camps (ages 5–10) and now can offer Summer Studios (ages 10–12) project–based and taught by professional artist–educators. The programs encourage young artists to work individually and in small groups, and offers activities where they can think, play, and create.

Extended Age Vacation Week Camps

(Ages 5-10, 10-12)
To be offered in the winter and spring each year, *Vacation Week Camps* provide in-depth opportunities for young people to delve into their full creative selves while on break from school. Like our Summer Camps, Vacation Week Camps are project-based and taught by professional artist-educators.

New Art Afterschool Program

(Ages 7-10, 10-13, 14-18) (one day each week)
Art Afterschool is designed to be a weekly artmaking haven for older students (upper elementary, middle and high school) will exist in the Creativity Studio. The aim is to allow registered students to access safety and refuge through creating and experiencing art within a designated space at the museum, with supervision and support from artist-educators and NCM staff. Separate days will be offered each week for upper elementary, middle and high school students.

Creative Collaboration Artist in Residence Program

(Ages varied depending on artist project)
Each year, NCM will bring together a contemporary artist in partnership with a community-based organization to develop an installation and roster of programs for young people in the Creativity Studio. The overall goals of the residency will be to create experiences that meet the needs of current as well as under resourced visitors, to practice authentic collaboration with community partners, to devise new ways to reach all San Diego families, and to share our unique model with artists and the museum field.

SAN DIEGO COMMUNITY POWER
Staff Report – Item 19

To: San Diego Community Power Board of Directors

From: Lee Friedman, Senior Manager – Strategic Partnerships

Via: Karin Burns, Chief Executive Officer

Subject: Presentation on Regional Energy Academy Funding

Date: September 26, 2024

RECOMMENDATION

Receive and file information regarding the Regional Energy Academy Sponsorship Request for $50,000 to fund two (2) cohorts beginning Fall 2024.

BACKGROUND

The goal of the Regional Energy Academy is to raise the energy IQ of our region's diverse community leaders and help participants understand the complexities of the electricity system and challenges facing our region.

ANALYSIS AND DISCUSSION

San Diego Community Power (Community Power), in partnership with the Non-Profit Institute (NPI) at the University of San Diego (USD), the Energy Policy Initiatives Center (EPIC) and San Diego Gas & Electric (SDG&E), began meeting in the summer of 2024 with the expressed purpose to develop and design a Regional Energy Academy modeled, in part, off of the successful San Diego County Water Authority's Citizen's Water Academy.

Both SDG&E and Community Power contributed an initial $30,000 to begin the development of a Regional Energy Academy through the establishment of an advisory board which informed the development of content and a curriculum.

Now that the curriculum and content has been developed, EPIC and NPI are requesting an additional round of support to fund two inaugural cohorts of 25-30 participants each beginning Fall 2024. SDG&E and Community Power have both been asked to contribute $50,000.

Curriculum

The Regional Energy Academy is currently envisioned to run over the course of three days and cover six modules (two modules per day):

- Module 1: Energy Basics
- Module 2: Understanding the Regional Landscape
- Module 3: Policy Goals, Progress and Challenges
- Module 4: Energy Justice
- Module 5: Decarbonization & Resilience in Action
- Module 6: Pathways to Resilience & Reliability

Participants will learn about core energy principles and their application and role within the California and energy landscape, learn about the nexus between energy, climate and equity, gain insights on how energy solutions can mitigate climate change and build community resilience, and be exposed to local and regional energy initiatives. Participants will hear from a diverse range of stakeholders, energy experts, USD staff and other expert guest speakers over the course of the program and take several educational field trips.

Each day will include scheduled networking opportunities, and participants will receive a certification from the Regional Energy Academy at the conclusion of the program.

The investment in the Regional Energy Academy will empower leaders and policymakers of San Diego with the knowledge and tools needed to navigate the complex energy landscape. As the region moves toward ambitious renewable energy targets, it is crucial that decision-makers understand the intricacies of electricity systems, the policy challenge and the importance of equity in energy access. The Regional Energy Academy will help ensure that future leaders are equipped to make informed decisions that support sustainable energy solutions, promote affordability and contribute to the resilience and well-being of San Diego.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

$50,000 will be allocated from the approved FY24-25 budget for Partnerships/Sponsorships/Local Memberships.

ATTACHMENTS

Attachment A: Regional Energy Academy Draft Curriculum

ITEM 19
ATTACHMENT A

Energy Academy

*Our purpose is to **raise the energy literacy of our region's diverse community leaders** by helping participants fill knowledge gaps regarding the complexities of the energy landscape to promote our region's collaborative efforts to build resilience and tackle the unique challenges our region faces as climate impacts intensify.*

Participants will:

- Learn about core energy principles and their application and role within the California climate and energy landscape.
- Understand San Diego's power and energy system.
- Learn about the nexus between energy, climate and equity
- Gain insights on how energy solutions can be a conduit to mitigating climate change and to building community resilience
- Hear about local and regional initiatives to understand how San Diego is implementing climate mitigation efforts

DAY 1

DAY LENGTH: 8 - 9 Hours

- 6 Module Learning Hours
- 2 Networking Hours

DAY 1		
TIME	**SESSION & ACTIVITY OVERVIEW**	**INFORMATION**
8:00 AM - 9:00 AM	**BREAKFAST + NETWORKING**	**Optional**
9:00 AM - 12:00 PM	**MODULE 1 - Energy Basics** Goal: Participants will gain an understanding of core energy principles and their application and role within the California climate energy landscape. Key Learning Objectives • Understand the importance of energy in everyday life and to global economy	Location @ University of San Diego

	● Understand California's GHG targets and the role the energy sector plays in achieving these goals ● Achieve a basic understanding of energy sources, systems, players, and regulation	
9:00 AM - 9:30 AM	**Activity - Introductions & Energy Connections (30 Minutes)** - Yarn Activity to support intros and help cohort participants to visualize how their work intersects	USD Team Facilitates/Cohort Members
9:30 AM - 10:20 AM	**Lecture - Energy Basics 101 (50 Minutes)**	USD Team
10:20 AM - 10:35 AM	**BREAK**	
10:35 AM - 12:00 PM	**Option 1: Presentation & Panelist Introduction (20 minutes)** **Systems Connections - Panel Presentations (55 Minutes Total)** ● Speaker 1 (10 minutes) ● Speaker 2 (10 Minutes) ● Q&A (35 Minutes) **Option 2: Presentation & Small Group Activities** ● Presentation (20 minutes) ● Activity and Discussion (45 minutes)	USD Team (Activity) Potential Speakers Panel: - Regulatory Staff (CPUC, CEC, CARB) or CAISO - San Diego Players: SDG&E, SDCP, CEA,
12:00 PM - 12:50 PM	**LUNCH**	*Local Speakers Invited to Lunch*
12:50 PM - 1:00 PM	**BREAK & MOVE TO BUS**	
1:00 PM - 4:00 PM	**MODULE 2 - Regional Landscape [FIELD TRIP]** Goal: Participants will gain an understanding of San Diego's power and energy system. Learning Objectives: ● Strengthen energy fundamentals through direct experience of San Diego's localized system ● Understand our local power system, especially our energy production, transmission and distribution systems.	Location @ San Diego Gas & Electric Palomar Energy Center Other Potential Locations: - Indian Energy - EDF Campus - UCSD On-Site DER system

	● Learn the relationship the local power system has with the environment, economy, and communities	
1:00 PM - 1:40 PM	**On Bus: Introductory Presentation (15 Minutes)** - What to Expect & Regional Framing	Transit to Location USD Team and Field Trip Host
1:40 PM - 3:10 PM	**Palomar Power Plant Tour (1 Hour 30 Minutes)**	Onsite Tour SDG&E Speaker
3:10 PM - 4:00 PM	**On Bus: Group Questions & Reflections (50 Minutes)**	USD Team Facilitates Transit Back to University of San Diego
4:00 PM - 5:00 PM	**CLOSE & OPTIONAL NETWORKING**	

DAY 2

DAY LENGTH: 8 hours
- 6 module hours
- 2 networking hours

MODULE 3		
TIME	**SESSION**	**AGENDA**
8:00 - 9:00 AM	**BREAKFAST + NETWORKING**	Option 1: Optional @ Chicano Museum Option 2: Optional @ USD
9:00 AM - 12:00 PM	**Module 3: Policy Goals, Progress and Challenges** Goal: Participants will gain insights into the policies, progress and challenges of decarbonizing the energy sector. Key Learning Objectives	USD Team Option 1: Location of Module 4 Option 2: Hosting at USD

	• Learn about California's decarbonization policies and goals, including targets and strategies. • Understand California's progress toward achieving policy goals in the energy sector • Understand key challenges to achieving statewide energy policy goals • Understand drivers of energy costs • Basic understanding of utility rates and how the electric system is paid for • Understand basic components of a customer energy bill • Understand how cost is a key challenge for California as it seeks to decarbonize	
9:00 AM - 9:30 AM	**Reflections & Review of Day 1 (30 minutes)**	USD Facilitate / Cohort Members
9:30 AM - 10:10 AM	**Presentation 1 - Progress & Challenges (40 minutes)**	USD Team (EPIC) Other Potential Speakers: - Staff from The Utility Reform Network (TURN)
10:10 AM - 10:40 AM	**Presentation 2 - Understanding the Bill & Cost (30 minutes)**	USD Team Other Potential Speakers: - SDG&E, SDCP
10:40 AM - 10:55 AM	**BREAK**	
10:55 AM - 11:30 AM	**Dissecting The Bill & Use Cases Activity (35 minutes)**	Small Groups - USD Table Leads
11:30 AM - 12:00 PM	**Group Reflections & Discussion (30 minutes)**	USD Facilitate / Cohort Members
12:00 - 1:00 PM	**LUNCH**	*Local Speakers + Host Invited to Lunch*
12:50 PM - 1:00 PM	**BREAK & MOVE TO BUS**	Only if hosting Module 3 @ USD
1:00 PM - 4:00 PM	**Module 4: Equity and the Energy Burden**	Location @ Chinaco Museum

	Goal: Participants will gain awareness on how energy and equity intersect and learn about existing initiatives pushing for affordable and accessible energy. Key Learning Objectives ● Understand the concept of energy equity and energy burden ● Learn how climate, environmental and energy justice connect in San Diego ● Learn of different initiatives that help build resilience and address energy injustices	Other Potential Locations: - Viejas Tribe of Kumeyaay Indians
1:00 PM - 2:00 PM	**Presentation - Understanding Energy Equity, Injustices and Burdens (1 hour)**	USD Team/Guest Speaker
2:00 PM - 2:30 PM	**Questions and Discussion (30 minutes)**	USD Facilitate / Cohort Members
2:30 PM - 2:45 PM	**BREAK**	
2:45 PM - 3:15 PM	**TCC Projects - Panel Presentations (30 minutes)** ● Speaker 1 (10 minutes) ● Speaker 2 (10 Minutes) ● Speaker 3 (10 Minutes)	Moderated: USD Team Panelists - Chicano Museum - Environmental Health Coalition - San Diego Foundation Other Potential Panelists: - Viejas Tribe Innovative Energy Storage Project Team - San Diego Unified Electrification Projects - MAAC Staff

3:15 PM - 4:00 PM	**Panel Q&A (45 minutes)**	
4:00 PM - 5:00 PM	**CLOSE & OPTIONAL NETWORKING**	

DAY 3

DAY LENGTH: 10 hours
- 6 Module Hours
- 4 Networking Hours

DAY 3		
TIME	SESSION	AGENDA
8:00 AM - 9:00 AM	**BREAKFAST + NETWORKING**	Meeting @ SDG&E Emergency Operations Center
9:00 AM - 12:00 PM	**Module 5: Field Trip to See Decarbonization & Resilience in Action (Port of San Diego)** Goal: In this module participants will get to see regional resilience planning and implementation in action to understand how San Diego is moving the needle to mitigate climate impacts Learning Objectives: ● Learn about local decarbonization and resilience strategies aimed at mitigating climate impacts ● Gain insight into how key players in the region coordinate resilience planning and implementation ● Etc.	@ Port of San Diego Stops Other Potential Locations: - EDF Microgrid Campus - ZN3 Libraries - SDG&E Microgrids - San Pasqual Tribe Microgrids - CleanTech/Southern California Energy Innovation Network Member
9:00 AM - 9:15 AM	**Transition to Bus (15 minutes)**	
9:15 AM - 9:40 AM	**Transit On Bus: Introductory Presentation (15 Minutes)**	Port of San Diego - Transit to Stop 1

9:40 AM - 10:20 AM	**Stop One (40 minutes)**	Port of San Diego
10:20 AM - 10:40 AM	**Transit On Bus / Presentation to introduce Stop 2 (15 minutes)**	Port of San Diego - Transit to Stop 2
10:40 AM - 11:30 AM	**Stop Two (40 minutes)**	Port of San Diego
11:30 AM - 12:00 PM	**Transit Back to SDG&E & Group Reflections**	Transit to SDG&E
12:00 - 1:00 PM	**WORKING LUNCH**	
12:15 - 1:00 PM	**Presentation (45 minutes) - Pathways to Climate & Energy Resilience**	USD Team
1:00 - 4:00 PM	**Module 6: Pathways to Resilience & Reliability** Goal: Participants will gain insights on how energy solutions can be a conduit to mitigating climate change and help communities become more resilient to climate impacts, like extreme heat and wildfires. Learning Objectives: ● Understand the challenges posed to the power systems by climate change and their impact on grid resilience and reliability. ● Learn the implications of decarbonization and electrification on grid dynamics and climate change mitigation efforts ● Gain insight on relevant regulatory reforms, their role in addressing challenges	@ SDG&E Emergency Operations Center
1:00 PM - 2:00 PM	**SDG&E Operations Tour (1 hour)**	SDG&E
2:00 PM - 2:15 PM	**BREAK**	
2:15 - 3:15 PM	**Activity & Discussion (1 hour)** ● **Game of Scenarios Activity** ● **Visualize climate impacts & energy solutions** ● **Understand tradeoffs**	USD Facilitation - Group Activity

3:15 PM - 4:00 PM	**Wrap Up & Reflections**	USD Team Facilitates
4:00 PM - 4:15 PM	**CLOSE & TRANSITION TO VENUE**	
4:15 PM - 6:00 PM	**COHORT GRADUATION**	Venue TBD (Close to Module 6 location)

SAN DIEGO COMMUNITY POWER
Staff Report – Item 20

To: San Diego Community Power Board of Directors

From: Melissa Elder, Community Engagement Associate
Xiomalys Crespo, Sr. Community Engagement Manager

Via: Karin Burns, Chief Executive Officer

Subject: Update on San Diego Community Power Network Overview

Date: September 26, 2024

RECOMMENDATION

Receive and File the Update on the San Diego Community Power Network Overview.

BACKGROUND

As part of San Diego Community Power's (Community Power) strategic goals to: invest in our communities through programs and activities that deepen our connection to customers; foster relationships with community-based organizations; and implement Community Power Plan (CPP)-recommended programs through continuous community engagement and assessment of community benefits while considering changing community needs, Community Power is seeking to build and leverage regional partnerships with community-based organizations with aligned goals to expand overall capacity and maximize impact.

This presentation will provide an overview of the San Diego Community Power Network's (Power Network) proposed outcomes, guidelines, timelines, and benefits. Staff are requesting feedback on the program before launching a solicitation process to learn more about organizations' services, offerings, impact, interest in partnering with Community Power, overall capacity, and collect vendor qualifications later this fall.

ANALYSIS AND DISCUSSION

Purpose and Goals

The establishment of the Power Network is structured around the following outcomes:

- Understanding the needs, concerns, capacity, and level of influence of community-based organizations serving our member agencies;

- Identifying competencies and expertise currently not held by Community Power;
- Defining and engaging in mutual, standing partnerships that expand overall capacity to implement aligned goals;
- Building relationships with community leaders to inform and equip them with the tools to talk about Community Power's role in the region in a way that fosters open and frequent and culturally relevant communication and collaboration;
- Co-creating an ecosystem of Partners that further Community Power's reach, community recognition, and trust;
- Supporting the implementation of the CPP and other Community Power customer service offerings; and
- Building shared ownership around Community Power's mission and vision.

To achieve these outcomes, Community Power will launch a solicitation process open to local community-based organizations servicing the Greater San Diego County region. Community Power will then engage in partnerships with the respondents of this process to carry out work that may include, but may not be limited to: informing program development, implementation, and evaluation activities; customizing outreach materials to better reach communities within our service territory; conducting outreach and providing information about Community Power and its programming; providing culturally competent translation services; assisting with enrollment in programs; and other duties, as agreed upon.

The Power Network will become an information-sharing infrastructure to foster collaboration, communication, and programming awareness among a nonprofit ecosystem aligned with Community Power's mission, vision, and goals. This will give Power Network members an opportunity to provide input on Community Power programming by informing staff of levels of general community understanding around specific issues, coordinating cross-organizational outreach and activities, recruiting event attendees, organizing advocacy around policy-making efforts, supporting the San Diego Regional Energy Network (SDREN) goals and implementation, when appropriate, and jointly seeking out funding opportunities.

Next Steps

A solicitation process will be launched later this fall and will be closing before the end of calendar year 2024. There will be one virtual recording, three in-person workshops and individual technical assistance opportunities by appointment. Community Power expects the work to commence on or about February 2025.

Community Power staff plans to conduct targeted outreach through emails and various social media platforms, adding a page on the website, and sharing the solicitation in various community meetings and networking events.

COMMITTEE AND/OR SUBCOMMITTEE REVIEW

This item was presented to the Community Advisory Committee on September 12, 2024.

FISCAL IMPACT

N/A

ATTACHMENTS

N/A