



MARIN COUNTY | NAPA COUNTY | UNINCORPORATED CONTRA COSTA COUNTY
BENICIA | CONCORD | DANVILLE | EL CERRITO | LAFAYETTE | MARTINEZ | MORAGA
OAKLEY | PINOLE | PITTSBURG | RICHMOND | SAN PABLO | SAN RAMON | WALNUT CREEK

Agenda Page 1 of 1

Technical Committee Meeting Thursday, December 7, 2017 9:00 A.M.

**The Barbara George Conference Room
1125 Tamalpais Avenue
San Rafael, CA 94901**

Remote locations:

The City of Concord, Permit Center Conference Room, 1950 Parkside Drive, Concord, CA 94519
Marten Law, PLLC, 555 Montgomery Street, Suite 820, San Francisco, CA 94111-2560
The City of San Ramon, 7000 Bollinger Canyon Rd, Room 256, San Ramon, CA, 94583

1. Board Announcements (Discussion)
2. Public Open Time (Discussion)
3. Report from Chief Executive Officer (Discussion)
4. 11.2.17 Meeting Minutes (Discussion/Action)
5. MCE Revised Feed-in-Tariff Schedule for Distributed Renewable Generation (Discussion/Action)
6. MCE Feed-in-Tariff Plus Schedule for Distributed Renewable Generation (Discussion/Action)
7. Resolution T2017-01 Approving Power Purchase Agreement with Sand Hill C, LLC (Discussion/Action)
8. MCE Revised Net Energy Metering Tariff (Discussion/Action)
9. Committee Member & Staff Matters (Discussion)
10. Adjourn



Agenda material can be inspected at 1125 Tamalpais Avenue, San Rafael, CA 94901 on the Mission Avenue side of the building. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MCE program, service or activity, you may request an accommodation by calling (415) 464-6032 (voice) or 711 for the California Relay Service or by e-mail at djackson@mceCleanEnergy.org not less than **four work days** in advance of the event.

DRAFT

**MCE
TECHNICAL COMMITTEE MEETING
November 2, 2017
9:00 A.M.**

**City of Concord, Permit Center Conference Room
1950 Parkside Drive
Concord, CA 94519**

**MCE, Barbara George Conference Room
1125 Tamalpais Avenue
San Rafael, CA 94901**

**Marten Law, PLLC
555 Montgomery Street, Suite 820
San Francisco, CA 94111-2560**

Roll Call

Present:

Kevin Haroff, City of Larkspur, Acting Chair (**Concord**)
Greg Lyman, City of El Cerrito (**San Francisco**)
Emmett O'Donnell, Town of Tiburon (**Concord**)
Don Tatzin, City of Lafayette (**Concord**)
Ray Withy, City of Sausalito (**San Rafael**)

Absent:

Ford Greene, Town of San Anselmo
Scott Perkins, City of San Ramon
Rob Schroder, City of Martinez
Kate Sears, County of Marin

Staff:

John Dalessi, Operations and Development (**Concord**)
Kirby Dusel, Resource Planning and Renewable Energy Programs (**Concord**)
Jenna Famular, Community Development Manager (**Concord**)
Jessica Flores-Brooks, Power Resources Assistant (**San Rafael**)
Darlene Jackson, Board Clerk (**Concord**)
Gabrielle Lichtenstein, Community Affairs Representative (**Concord**)
Justine Parmelee, Internal Operations Manager (**Concord**)
David Potovsky, Power Supply Contracts Manager (**Concord**)
Lindsay Saxby, Power Supply Contracts Manager (**Concord**)
Byron Vosburg, Power Supply Contracts Manager (**Concord**)
Dawn Weisz, Chief Executive Officer (**Concord**)

Action Taken:

DRAFT

Agenda Item #3 – CEO Report (Discussion)

CEO Dawn Weisz reported on the following:

- AB 726
- AB 813
- SB 100

Agenda Item #4 – Approval of Minutes from 9.7.17 Meeting (Discussion/Action)

ACTION: It was M/S/C (O'Donnell/Tatzin) to **approve 9.7.17 meeting minutes**. Motion carried by unanimous 5-0 vote. (Absent: Directors Greene, Perkins, Schroder and Sears).

Agenda Item #5 – MCE 2018 Integrated Resource Plan (Discussion/Action)

Byron Vosburg, Power Supply Contracts Manager, presented this item and addressed questions from the Committee.

ACTION: It was M/S/C (Tatzin/O'Donnell) to **approve MCE's 2018 Integrated Resource Plan Update**. (Absent: Directors Greene, Perkins, Schroder and Sears).

Agenda Item #6 – Power Resources Expansion Update (Discussion)

David Potovsky, Power Supply Contracts Manager, presented this item and addressed questions from the Committee.

ACTION: No action required.

Agenda Item #7 – Feed-in Tariff and Expanded Feed-in Tariff (Discussion)

Lindsay Saxby, Power Supply Contracts Manager, presented this item and addressed questions from the Committee.

ACTION: No action required.

The meeting was adjourned to the next scheduled meeting on October 5, 2017.

Kevin Haroff, Acting Chair

ATTEST:

Dawn Weisz, Chief Executive Officer



December 7, 2017

TO: MCE Technical Committee

FROM: Lindsay Saxby, Power Supply Contracts Manager

RE: MCE Revised Feed-in Tariff Schedule for Distributed Renewable Generation (Agenda Item #05)

ATTACHMENT: MCE Feed-In Tariff for Distributed Renewable Generation

Dear Technical Committee Members:

Purpose:

As a result of MCE’s ongoing interest in local development of renewable resources and growing service area, the Power Resources staff was tasked with developing proposals for expanding MCE’s existing Feed-in Tariff (FIT). Power Resources proposed two related but distinct activities: 1) Increasing the cap and making revisions to the current FIT program and 2) Creating a “FIT Plus” to accommodate larger projects.

The components of both Schedules (also known as “tariffs”) were presented to Technical Committee on November 2, 2017 and there was Committee support for the direction and structure presented by staff. In order to implement the proposals, staff is requesting Technical Committee approval of the Schedules associated with the revised FIT and FIT Plus. This Staff Report provides context for the approval request for the revised FIT Schedule (there is a separate Staff Report for the FIT Plus Schedule).

Background:

A Feed-in Tariff is a standard offer program to incentivize local renewable energy development of small-scale distributed energy generation projects. A utility or Load Serving Entity (LSE) provides up-front, fixed pricing and megawatt (MW) capacity conditions with a standardized contract for a set 20-year term, which in turn provides certainty to renewable energy developers. FIT programs create demand for new development, create local jobs, and can help drive down energy costs over time.

MCE FIT Overview:

In December of 2010, MCE’s Board approved its first FIT program, which is currently operating and has been updated and expanded since that time. The program currently offers 15 MW of capacity for renewable energy projects sized 0-1 MW on a first-come, first-served basis. The price offered was

reduced after each 2 MW of capacity became reserved (known as a Pricing Condition), starting at \$137.66/MWh and stepping down to \$90.00/MWh when the last 3 MWs become available. A standardized application, a Tariff with program criteria and requirements, and form Power Purchase Agreement (PPA) are posted publicly on MCE's website. All projects must be built within MCE's service area and qualify as eligible renewable resources (though no preference is given to technology).

MCE executed its first PPA as part of its FIT program in 2012. Currently, there are four projects (3.2 MW) online and nine projects (7.77 MW) with reserved capacity in MCE's FIT queue. As of the date of this report, only 4 MW remain available in the current FIT program. With approval by MCE's Board to expand its service area into Contra Costa County and the ongoing desire to drive local development, MCE's Board expressed interest in ensuring that the program continue and be available in all jurisdictions.

In soliciting feedback on the possibility of extending MCE's FIT program, Power Resources staff received input from MCE's Board on driving principals of the program including local job creation, Prevailing Wage, and support for union labor, while ensuring the program has a minimal impact to rates. The following overview of the Expanded FIT program discussed by the Technical Committee, demonstrates how the driving principals have been integrated into the program.

Revised FIT Program Overview:

The revised FIT program maintains many of the elements of the existing FIT program, but expands it to include some additional components. It maintains that projects be no larger than 1 MW and located in MCE's service area, and it maintains the step-down pricing structure (new PPA prices offered are described below).

The expanded components are as follows:

Program Size: 25 MW (15 existing + 10 additional)

Local Hire: During the construction phase of the project, the developer is required to demonstrate that 50% of its workforce (including any contractors) are hired from permanent residents who live within the same county where the project is located. The developer is also subject to any local hire requirements specific to the city or county where the project is located. If the developer cannot certify that the requirement was met (auditable by MCE), the PPA may be subject to termination.

Prevailing Wage: During the construction phase of the project, the developer is required to demonstrate that its workforce (including any contractors) are paid, at minimum, the current Prevailing Wage, as defined by the state of California Department of Industrial Relations. If the developer cannot certify that the requirement was met (auditable by MCE), the PPA may be subject to termination.

Rooftop/Car Port Price Bonus: A project that is located on a rooftop or car port, sized 250 kW or less, is eligible for a \$5/MWh price bonus in addition to the then-applicable price. The bonus price will be applicable for a period of no longer than five years, starting when the project comes online.

Pricing and Capacity: The contract price offered in the first Pricing Condition is \$85/MWh with 2 MW available per Pricing Condition. Each 2 MW Pricing Condition steps down by \$5/MWh resulting in \$65/MWh in the final Pricing Condition. The same price will be offered for all technology types.

Storage: Projects may include storage in compliance with the California Energy Commission’s Renewable Portfolio Standard Eligibility guidebook when the storage device is integrated into the project such that the energy storage device is capable of storing only energy produced by the project. A project that includes a storage device will receive the same contract price as a project without storage.

Multiple Projects at the Same Site: There may be only one project being developed at or adjacent to the site of the FIT project.

Procedures for Queue Assignment, Application Review, and Cure Period: The Expanded FIT Schedule includes new procedures detailing how MCE assigns queue positions and reviews FIT applications. If deficiencies are identified in a FIT application, the developer has a 10-day period in which to cure the deficiency. The FIT Schedule also details when an application will be deemed incomplete, in addition to how megawatts are re-allocated into the program from projects that drop out of the queue or from PPAs that are terminated.

Fiscal Impact:

There will be no impact on the FY 2017/18 Operating Fund Budget. Costs in future years will be accounted for in planning and budget setting for power supply costs within the Operating Fund Budget.

In a previous Technical Committee meeting, the Committee conveyed that any expansion of or adjustments to the existing FIT program should not have more than a 1% impact on MCE’s annual revenues after full roll out. For the purposes of this discussion, the Expanded FIT and FIT Plus programs were considered jointly. At the November 2, 2017 Technical Committee meeting, Power Resources staff presented three options with different program sizes/pricing and the associated financial impact and provided feedback to staff. Based on Committee feedback to-date and strong interest in other programs such as electric vehicles, the option recommended, after full roll out, would have a budget impact of .6% or \$2.3M of annual MCE revenue.

	Average Price	MW	\$MM/yr	% of Rev
FIT	\$ 75.00	10	\$0.80	0.20%
FIT Plus	\$ 72.50	20	\$1.50	0.38%
Total MW		30		
Weighted Avg Price		\$73.33		
Annual Cost Impact (\$MM/Yr)		\$2.3		
Percent of Annual Revenue		0.6%		
Annual deliveries (GWh)		60		
Percent of expanded load		1.0%		
# of Homes		10,000		

Summary:

Staff recommends approval of the attached revised Schedule FIT, for the following reasons:

- It stays significantly under the target 1% financial impact to MCE’s annual revenues;

- It allows room for growth of FIT programs in the future, while also allowing for potential growth of other MCE programs such as electric vehicle programs;
- It meets the driving principals of a revised FIT program conveyed by MCE's Board and Technical Committee;
- It creates more opportunity for increased local renewable energy development within MCE's growing service area;
- It includes impactful requirements including local hiring and Prevailing Wage provisions; and
- Full implementation of both programs will equal 1% of expanded load, or the load equivalent of 10,000 homes.

Recommendation: Approve revised MCE Feed-In Tariff Schedule for Distributed Renewable Generation.

MCE

Feed-In Tariff for Distributed Renewable Generation

Revised and Effective as of December 7, 2017

I. Applicability

This Feed-in Tariff (“FIT”) Schedule (“Schedule FIT”) is available to qualifying Applicants who wish to sell to Marin Clean Energy (“MCE”) the electric output from an Eligible Small-Scale Distributed Renewable Generation Resource (“Eligible Resource”), with capacity of not more than one (1) megawatt (“MW”), as defined in the General Conditions section of this Schedule FIT.

Service under this Schedule FIT is available to qualifying Applicants on a first-come, first-served basis until (a) the combined rated generating capacity of all Eligible Resources under contract and in the FIT queue with MCE reaches twenty-five (25) MW, or (b) the aggregated annual expected energy output from all Eligible Resources under contract with MCE is projected to equal or exceed seventy thousand (50,000) megawatt hours (“MWh”) during the upcoming twelve-month period.

MCE reserves the right to revise this Schedule FIT, the related FIT Application and the terms of its pro forma FIT Power Purchase Agreement (“FIT PPA” or “Agreement”) from time to time. MCE is not obligated to enter into a FIT PPA with any Applicant, and MCE has no binding obligation under or in connection with this Schedule FIT until a related FIT PPA is duly executed by and between an Applicant and MCE for an Eligible Resource.

II. Territory

This Schedule FIT is applicable to any Eligible Resource physically located and interconnected within any member jurisdiction of MCE’s service territory (the “Eligible Territory”).

III. General Conditions

1. REQUIRED APPLICATION AND CONTRACT

Service under this Schedule FIT is subject to MCE’s approval of the Applicant’s FIT Application and execution of a FIT PPA with MCE.

2. CONTRACT DELIVERY TERM

Each FIT PPA shall be for a Delivery Term of twenty (20) years.

3. PARTICIPATION IN OTHER MCE PROGRAMS

Eligible Resources taking service under this Schedule FIT may not also obtain benefits from any of the following:

- a. A power purchase agreement with MCE for deliveries from the same Eligible Resource; or
- b. Any Net Energy Metering (“NEM”) option for energy deliveries from the same Eligible Resource.

4. ENVIRONMENTAL ATTRIBUTES

An Eligible Resource accepting service under this Schedule FIT will deliver to MCE both the electric energy generated and any environmental attributes (associated with such electric energy) produced by the Eligible Resource.

5. DEFINITION OF ELIGIBLE RESOURCES

For purposes of this Schedule FIT, an Eligible Resource must meet the California Renewables Portfolio Standard Eligibility requirements described in the most current edition of California Energy Commission's ("CEC") guidebook of Renewables Portfolio Standard ("RPS") Eligibility, as the document may be amended or supplemented from time to time. An Eligible Resource must also meet the capacity requirements and requirements described herein.

6. ELECTRICAL INTERCONNECTION

An Eligible Resource receiving service under this Schedule FIT shall be interconnected within the Eligible Territory and shall be required to: 1) comply with applicable wholesale generation interconnection procedures established by Pacific Gas and Electric Company's ("PG&E") Electric Generation Interconnection ("EGI") group and/or the California Independent System Operator ("CAISO"), as appropriate; and 2) shall execute applicable agreements with PG&E and/or the CAISO, as appropriate, to establish and maintain interconnection with such transmission or distribution system. Any resources not meeting the requirements specified in the applicable interconnection procedures of PG&E and/or the CAISO will *not* be eligible for service under this Schedule FIT. Electric interconnection of the Eligible Resource, including execution of all applicable agreements, shall be the sole responsibility of the Applicant inclusive of all related costs.

7. METERING REQUIREMENTS

An Eligible Resource receiving service under this Schedule FIT shall comply with all applicable rules when installing a meter appropriate for full buy/sell or excess sale agreements, and which can be read daily by means acceptable to PG&E and MCE. All costs associated with such installation will be the responsibility of the Applicant. The Applicant shall be responsible for procuring and maintaining any communication systems required by PG&E and MCE for retrieving meter data.

8. PERMITTING

A Schedule FIT Applicant must obtain all necessary permits from the appropriate jurisdictional agency having authority and shall maintain such permits, as may be required, for the duration of the Agreement.

9. WORKFORCE

MCE's workforce requirements are included in this Schedule FIT voluntarily and are not Public Works requirements.

- a) Local Hire: Applicant will ensure that fifty percent (50%) of the construction workhours from its workforce (including contractors and subcontractors) providing work and services at the project site during the Construction Phase (e.g., the period from Full

Notice to Proceed (NTP) through receipt of a Permission To Operate (PTO) letter from the interconnecting utility) are obtained from permanent residents who live within the same county in which the Eligible Resource will be located (the “Local Hire Requirement”). Applicant’s construction of the Eligible Resource is also subject to any local hire requirements specific to the city or town where the resource is located. As a condition precedent to commencement of the delivery term under the FIT PPA, Applicant must certify that it met the Local Hire Requirement and be able to demonstrate, upon request, compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit. Failure to comply with this requirement may, in MCE’s sole discretion, result in termination of the FIT PPA.

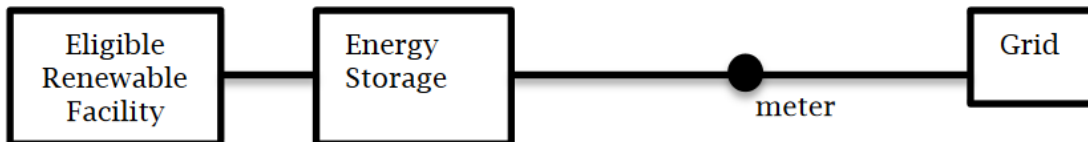
- b) **Prevailing Wage:** Applicant will ensure that all employees hired by Applicant, and its contractors and subcontractors, that are performing work or providing services at the project site during the Construction Phase are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by Division 2, Part 7, Chapter 1 of the California Labor Code (“Prevailing Wage Requirement”). Nothing herein shall require Applicant, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the California Labor Code. As a condition precedent to commencement of the delivery term under the FIT PPA, Applicant must certify that it met the Prevailing Wage Requirement, and be able to demonstrate, upon request, compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit. Failure to comply with this requirement may, in MCE’s sole discretion, result in termination of the FIT PPA.

10. ROOFTOP/CAR PORT PRICE BONUS

An Eligible Resource that is located on a rooftop or car port and has a nameplate capacity of 250 kW or less is eligible for a \$5/MWh price bonus in addition to the then applicable Pricing Condition (the “Rooftop Price Bonus”). The Rooftop Price Bonus will be applicable for a period of no longer than 5 (five) Contract Years, commencing on the Commercial Operation Date.

11. STORAGE

An Eligible Resource may include storage in compliance with the current version of the CEC RPS Eligibility guidebook where the storage device is integrated into the Eligible Resource such that the energy storage device is capable of storing only energy produced by the Eligible Resource, either as an intermediary form of energy during the generation cycle or after electricity has been generated. An Eligible Resource that includes a storage device will receive the same contract price under this Schedule FIT as an Eligible Resource without storage.



12. ELIGIBLE RESOURCE AT ONE SITE

There may not be more than one exporting renewable energy facility, including the Eligible Resource, being developed or operating on or adjacent to an Assessor Parcel Number (“APN”) occupied, in part of fully, by the Eligible Resource.

IV. Eligibility Criteria

1. Capacity: The nameplate capacity of the Eligible Resource cannot exceed 1 MW (Alternating Current).
2. Location: The Eligible Resource must be physically located and interconnected within the Eligible Territory, as defined herein.
3. Eligible Renewable Resource: The Eligible Resource must utilize a fuel source meeting the eligibility criteria expressed in the CEC’s most current edition of the RPS Eligibility guidebook.
4. Interconnection: At the time of application, the Applicant must provide documentation substantiating that the Eligible Resource has (a) passed all Fast Track screens, (b) passed Supplemental Review, (c) completed a System Impact Study in the Independent Study process, or (d) completed a Phase 1 Study in the Cluster Study Process with the interconnecting utility.
5. Site Control: At the time of application submittal, the applicant must provide documentation demonstrating full site control via ownership, lease or an option to lease upon FIT PPA execution. Any site lease shall reflect a term length no less than the Delivery Term of the FIT PPA.
6. Prior Experience: At the time of application submittal, the Applicant must include three (3) recent renewable generating project references, all of which must have been successfully completed by the Applicant’s development team.
7. Description of Eligible Resource: At the time of application, the applicant must provide,
 - a) a to-scale Site Map of the Eligible Resource showing the arrangement of all major components of the facility with the name of the facility, nameplate capacity, longitude and latitude of the centroid of Eligible Resource clearly labeled, in addition to labeling major cross streets and clearly marking the outer boundary of the facility and all Assessor Parcel Numbers included in and adjacent to the facility; and
 - b) a Single Line Diagram which includes to the Eligible Resource’s point of interconnection on the electric distribution system.

V. FIT Queue and Capacity

1. QUEUE ASSIGNMENT

MCE will maintain the FIT queue on a first-come, first-served basis. Queue position shall be based on the submittal date and time of a complete and conforming FIT Application, as determined by MCE in its reasonable discretion, delivered to the email address identified in the FIT Application.

2. REVIEW AND CURE PERIOD

Upon receipt, MCE will review the FIT Application for completeness.

If any minor deficiencies in the Application are identified by MCE staff, the Applicant will have ten (10) business days, from the date of MCE's notification, to cure the deficiency(ies) (also known as the "Cure Period"). During the Cure Period, Applicant will retain its queue position. If the Applicant fails to cure the deficiency(ies) within the allotted ten (10) business days, the Applicant's position in MCE's FIT Queue will be forfeited and reallocated.

If major deficiencies are identified during MCE's review, MCE will notify the Applicant of the incomplete Application. Further review of the Application will be discontinued and no queue position will be assigned. The Applicant may re-apply for participation in MCE's FIT program after all issue(s) have been resolved. A queue position will be assigned to the Applicant at the time the Application is deemed complete, subject to MCE's then-current available FIT capacity and the prevailing FIT price at that time.

All determinations by MCE regarding the completeness of an Application are final.

Once an Application is deemed complete, MCE will provide notice to the Applicant indicating the assigned MCE FIT queue position and applicable price.

3. CAPACITY PER PRICING CONDITION

The megawatt capacity allocated to each Pricing Condition is outlined in Section VIII, below. A Pricing Condition will be deemed complete when MCE has determined that (a) the megawatts associated with approved Applications in a given Pricing Condition reasonably fill the megawatts allocated to that Condition, or, (b) the expected aggregate energy output from all FIT projects under contract and in the FIT Queue with MCE exceeds a specific condition's annual MWh generation limit. Once deemed complete, the next eligible Application, on a first-come, first-served basis, will be assigned to the subsequent Pricing Condition until the megawatts allocated for the program have been filled, as determined by MCE. MCE reserves the right to review and adjust Pricing Conditions anytime during the duration of the program for non-executed PPAs and non-queue holders in its sole discretion.

4. REALLOCATION OF TERMINATED MEGAWATTS

For any megawatts associated with queue reservations that fail to execute a PPA, or any megawatts associated with executed PPAs that terminate before or after the Guaranteed Commercial Operation Date. MCE may, in its discretion, reallocate those megawatts into the then current Pricing Condition, unless the final Pricing Condition (Condition 12) has already been deemed complete.

VI. Payments for Electric Generation Produced by Eligible Resources

Under this Schedule FIT, MCE will pay for the Products delivered by the Eligible Resource according to the applicable price for metered energy specified at a fixed rate for the Delivery Term of the PPA.

Applicable prices are presented below in Section VII, "Prices for Energy Produced by Eligible Resources", and will also be reflected in the FIT PPA.

VII. Prices for Energy Produced by Eligible Resources

MCE has established the following price schedule which will be used to determine prices paid to an Eligible Resource meeting the requirements of this Schedule FIT. MCE's Board of Directors may periodically review and revise this price schedule¹.

The addition of any Eligible Resource must reasonably fit but not exceed the allotted capacity reservation, determined at MCE's sole discretion, for any Pricing Condition's combined rated generation megawatt or megawatt hour capacity under contract with MCE or reserved in MCE's FIT queue.

FIT Pricing Conditions	Eligible Resource Price (20-year Term, \$/MWh)	Cumulative MW Allocation	MWh/year
Condition 1	\$ 137.66	2	N/A
Condition 2	\$ 120.00	4	N/A
Condition 3	\$ 115.00	6	N/A
Condition 4	\$ 110.00	8	N/A
Condition 5	\$ 105.00	10	N/A
Condition 6	\$ 95.00	12	24,000
Condition 7	\$ 90.00	15	30,000
Condition 8	\$ 85.00	17	34,000
Condition 9	\$ 80.00	19	38,000
Condition 10	\$ 75.00	21	42,000
Condition 11	\$ 70.00	23	46,000
Condition 12	\$ 65.00	25	50,000

VIII. Extension of Guaranteed Commercial Operation Date

MCE reserves the right to terminate an Applicant's FIT PPA if an Applicant is unable to achieve the Commercial Operation Date ("COD") for the Eligible Resource before the applicable deadline under the FIT PPA (the "Guaranteed Commercial Operation Date"). So long as an Applicant is not otherwise in breach of its FIT PPA, however, an Applicant may be eligible for a one-time extension of the Guaranteed Commercial Operation Date of up to twelve (12) months. An extension request must be submitted in writing at least 30 days prior to the original deadline for COD, and Applicant must demonstrate to the reasonable satisfaction of MCE Staff that (a) Applicant has pursued development of the Eligible Resource in a commercially reasonable, diligent and continuous manner and (b) the pre-parallel date recorded in its executed Small Generator Interconnection Agreement with PG&E is reasonably expected to occur within the requested extension period.

¹ MCE Staff reserves the right to divert select FIT projects to the MCE "Local Sol" cooperative solar development program under the terms of any condition without regard to active FIT condition, at the sole discretion of MCE staff and subject to approval of the MCE Board of Directors. Capacity assigned to the Local Sol program will not affect the price schedule or the active condition (rate) for FIT projects.



December 7, 2017

TO: MCE Technical Committee

FROM: Lindsay Saxby, Power Supply Contracts Manager

RE: MCE Feed-in Tariff Plus Schedule for Distributed Renewable Generation (Agenda Item #06)

ATTACHMENTS: A. MCE Feed-In Tariff Plus for Distributed Renewable Generation
B. MCE Standard Multi-Trade Project Labor Agreement for Feed-In Tariff Plus
C. MCE Letter Agreement with IBEW 302 with Draft PLA

Dear Technical Committee Members:

Purpose:

As a result of MCE's ongoing interest in local development of renewable resources and growing service area, the Power Resources staff was tasked with developing proposals for expanding MCE's existing Feed-in Tariff (FIT). Power Resources proposed two related but distinct activities: 1) Increasing the cap and making revisions to the current FIT program and 2) Creating a "FIT Plus" to accommodate larger projects.

The components of both Schedules (also known as "tariffs") were presented to Technical Committee on November 2, 2017 and there was Committee support for the direction and structure presented by staff. In order to implement the proposals, staff is requesting Technical Committee approval of the Schedules associated with the revised FIT and FIT Plus. This Staff Report provides context for the approval request for the **FIT Plus Schedule** (there is a separate Staff Report for the revised FIT Schedule).

Background:

A Feed-in Tariff is a standard offer program to incentivize local renewable energy development of small-scale projects. A utility or Load Serving Entity (LSE) provides up-front, fixed pricing and megawatt (MW) capacity conditions with a standardized contract for a set 20-year term, which in turn provides certainty to renewable energy developers. FIT programs create demand for new development, create local jobs, and can help drive down energy costs over time.

MCE FIT Overview:

In December of 2010, MCE's Board approved its first FIT program, which is currently operating, and has been updated and expanded since that time. The program currently offers 15 MW of capacity for renewable energy projects sized 0-1 MW on a first-come, first-served basis. The price offered was reduced after each 2 MW of capacity became reserved (known as a Pricing Condition), starting at \$137.66/MWh and stepping down to \$90.00/MWh when the last 3 MWs become available. A standardized application, a Tariff with program criteria and requirements and form Power Purchase Agreement (PPA) are posted publicly on MCE's website. All projects must be built within MCE's service area and qualify as eligible renewable resources (though no preference is given to technology).

MCE executed its first PPA as part of its FIT program in 2012. Currently, there are four projects (3.2 MW) online and nine projects (7.77 MW) with reserved capacity in MCE's FIT queue. As of the date of this report, only 4 MW remain available in the current FIT program. With approval by MCE's Board to expand its service area into Contra Costa County and the ongoing desire to drive local development, MCE's Board expressed interest in ensuring that the program continue and be available in all jurisdictions.

In soliciting feedback on the possibility of extending MCE's FIT program, Power Resources staff received input from MCE's Board on driving principals of the program including local job creation, Prevailing Wage, and support for union labor, while ensuring the program has a minimal impact to rates. The following overview of the proposed FIT Plus program discussed by Technical Committee, demonstrates how the driving principals have been integrated into the program.

FIT Plus Program Overview:

The FIT Plus program maintains many of the elements of the existing FIT program, but expands it to include mid-sized projects, >1 MW up to 5 MW, and some additional criteria described below. It maintains that projects be located in MCE's service area, as well as the step-down pricing structure (new PPA prices offered are described below).

The additional criteria are as follows:

Program Size: 20 MW

Local Hire: During the construction phase of the project, the developer is required to demonstrate that 50% of its workforce (including any contractors) are hired from permanent residents who live within the same county where the project is located. The developer is also subject to any local hire requirements specific to the city or county where the project is located. If the developer cannot certify that the requirement was met (auditable by MCE), the PPA may be subject to termination.

Prevailing Wage: During the construction phase of the project, the developer is required to demonstrate that its workforce (including any contractors) are paid, at minimum, the current Prevailing Wage, as defined by the state of California Department of Industrial Relations. If the developer cannot certify that the requirement was met (auditable by MCE), the PPA may be

subject to termination.

Union Labor: A developer with a project sited in Contra Costa County is required to demonstrate that any workforce hired for the purposes of Covered Work as defined in MCE's Project Labor Agreement (PLA) complies with the terms of the Letter Agreement between MCE and IBEW Local 302. For projects located outside of Contra Costa County, the developer is required to enter into PLAs of similar scope and requirements with participating unions for workforce hired. If the developer cannot certify that the requirement was met (auditable by MCE), the PPA may be subject to termination.

Pricing and Capacity: The contract price offered in the first Pricing Condition is \$80/MWh with 5 MW available per Pricing Condition. Each 5 MW Pricing Condition steps down by \$5/MWh resulting in \$65/MWh in the final Pricing Condition. The same price will be offered for all technology types.

Storage: Projects may include storage in compliance with the California Energy Commission's Renewable Portfolio Standard Eligibility guidebook when the storage device is integrated into the project such that the energy storage device is capable of storing only energy produced by the project. A project that includes a storage device will receive the same contract price as a project without storage.

Multiple Projects at the Same Site: There may be only one project being developed at or adjacent to the site of the FIT Plus project.

Procedures for Queue Assignment, Application Review and Cure Period: The FIT Plus Schedule includes new procedures detailing how MCE assigns queue positions and reviews FIT Plus applications. If deficiencies are identified in a FIT Plus application, the developer has a 10-day period in which to cure the deficiency. The FIT Plus Schedule also details when an application will be deemed incomplete, in addition to how megawatts are re-allocated into the program from projects that drop out of the queue or from PPAs that are terminated.

Fiscal Impact:

There will be no impact on the FY 2017/18 Operating Fund Budget. Costs in future years will be accounted for in planning and budget setting for power supply costs within the Operating Fund Budget.

In a previous Technical Committee meeting, the Committee conveyed that any expansion of or adjustments to the existing FIT program should not have more than a 1% impact on MCE's annual revenues. For the purposes of this discussion, the Expanded FIT and FIT Plus programs are considered jointly. At the November 2, 2017 Technical Committee meeting, Power Resources staff presented three options with different program sizes/pricing and the associated financial impact and provided feedback to staff. Based on Committee feedback to-date and strong interest in other programs such as electric vehicles, the option recommended, after full roll out, would have a budget impact of .6% or \$2.3.7MM of MCE annual revenue.

	Average Price	MW	\$MM/yr	% of Rev
FIT	\$ 75.00	10	\$0.80	0.20%
FIT Plus	\$ 72.50	20	\$1.50	0.38%
Total MW		30		
Weighted Avg Price		\$73.33		
Annual Cost Impact (\$MM/Yr)		\$2.3		
Percent of Annual Revenue		0.6%		
Annual deliveries (GWh)		60		
Percent of expanded load		1.0%		
# of Homes		10,000		

Summary:

Staff recommends approval of the attached Schedule FIT Plus, for the following reasons:

- It stays under the target 1% financial impact to MCE's annual revenues;
- It allows room for growth of FIT programs in the future, while also allowing for potential growth of other MCE programs such as electric vehicle programs;
- It meets the driving principals of an expanded FIT program conveyed by MCE's Board and Technical Committee;
- It creates more opportunity for increased local renewable energy development within MCE's growing service area;
- It includes impactful requirements including local hiring, union labor, and Prevailing Wage provisions; and
- Full implementation of both programs will equal 1% of expanded load or approximately 10,000 homes.

Recommendation: Approve MCE Feed-In Tariff Plus Schedule for Distributed Renewable Generation.

MCE

Feed-In Tariff Plus for Distributed Renewable Generation

Revised and Effective as of December 2017

I. Applicability

This Feed-in Tariff Plus (“FIT Plus”) Schedule (“Schedule FIT Plus”) is available to qualifying Applicants who wish to sell to Marin Clean Energy (“MCE”) the electric output from an Eligible Small-Scale Distributed Renewable Generation Resource (“Eligible Resource”), with capacity of greater than one (1) megawatt (“MW”) and not greater than five (5) megawatts, as defined in the General Conditions section of this Schedule FIT Plus.

Service under this Schedule FIT Plus is available to qualifying Applicants on a first-come, first-served basis until (a) the combined rated generating capacity of all Eligible Resources under contract and in the FIT queue with MCE reaches thirty (20) MW, or (b) the aggregated annual expected energy output from all Eligible Resources under contract with MCE is projected to equal or exceed twelve thousand (40,000) megawatt hours (“MWh”) during the upcoming twelve-month period.

MCE reserves the right to revise this Schedule FIT Plus, the related FIT Plus Application and the terms of its pro forma FIT Plus Power Purchase Agreement (“FIT Plus PPA” or “Agreement”) from time to time. MCE is not obligated to enter into a FIT Plus PPA with any Applicant, and MCE has no binding obligation under or in connection with this Schedule FIT Plus until a related FIT Plus PPA is duly executed by and between an Applicant and MCE for an Eligible Resource.

II. Territory

This Schedule FIT Plus is applicable to any Eligible Resource physically located and interconnected within any member jurisdiction of MCE’s service territory (the “Eligible Territory”).

III. General Conditions

1. REQUIRED APPLICATION AND CONTRACT

Service under this Schedule FIT Plus is subject to MCE’s approval of the Applicant’s FIT Plus Application and execution of a FIT Plus PPA with MCE.

2. CONTRACT DELIVERY TERM

Each FIT Plus PPA shall be for a Delivery Term of twenty (20) years.

3. PARTICIPATION IN OTHER MCE PROGRAMS

Eligible Resources taking service under this Schedule FIT Plus may not also obtain benefits from any of the following:

- a. A power purchase agreement with MCE for deliveries from the same Eligible Resource; or
- b. Any Net Energy Metering (“NEM”) option for energy deliveries from the same Eligible Resource.

4. ENVIRONMENTAL ATTRIBUTES

An Eligible Resource accepting service under this Schedule FIT Plus will deliver to MCE both the electric energy generated and any environmental attributes (associated with such electric energy) produced by the Eligible Resource.

5. DEFINITION OF ELIGIBLE RESOURCES

For purposes of this Schedule FIT Plus, an Eligible Resource must meet the California Renewables Portfolio Standard Eligibility requirements described in the most current edition of California Energy Commission's ("CEC") guidebook of Renewables Portfolio Standard ("RPS") Eligibility, as the document may be amended or supplemented from time to time. An Eligible Resource must also meet the capacity requirements and requirements described herein.

6. ELECTRICAL INTERCONNECTION

An Eligible Resource receiving service under this Schedule FIT Plus shall be interconnected within the Eligible Territory and shall be required to: 1) comply with applicable wholesale generation interconnection procedures established by Pacific Gas and Electric Company's ("PG&E") Electric Generation Interconnection ("EGI") group and/or the California Independent System Operator ("CAISO"), as appropriate; and 2) shall execute applicable agreements with PG&E and/or the CAISO, as appropriate, to establish and maintain interconnection with such transmission or distribution system. Any resources not meeting the requirements specified in the applicable interconnection procedures of PG&E and/or the CAISO will *not* be eligible for service under this Schedule FIT Plus. Electric interconnection of the Eligible Resource, including execution of all applicable agreements, shall be the sole responsibility of the Applicant inclusive of all related costs.

7. CAISO COMPLIANCE

An Eligible Resource shall be required to comply with the CAISO Tariff, as amended from time to time, including but not limited to independently metering the Eligible Resource using a CAISO revenue meter, executing a Participating Generator Agreement, a Meter Service Agreement and all other applicable requirements.

8. METERING REQUIREMENTS

An Eligible Resource receiving service under this Schedule FIT Plus shall comply with all applicable rules when installing a meter appropriate for full buy/sell or excess sale agreements, and which can be read daily by means acceptable to PG&E and MCE. All costs associated with such installation will be the responsibility of the Applicant. The Applicant shall be responsible for procuring and maintaining any communication systems required by PG&E and MCE for retrieving meter data.

9. PERMITTING

A Schedule FIT Plus Applicant must obtain all necessary permits from the appropriate jurisdictional agency having authority and shall maintain such permits, as may be required, for the duration of the Agreement.

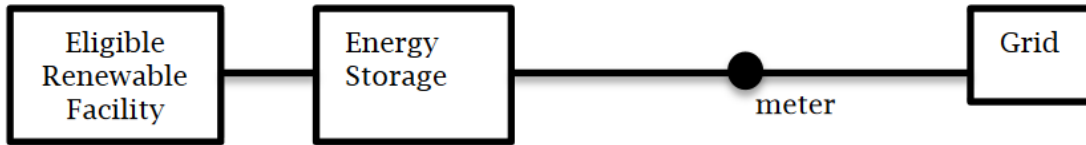
10. WORKFORCE

MCE's workforce requirements are included in this Schedule FIT Plus voluntarily and are not Public Works requirements.

- a) Local Hire: Applicant will ensure that fifty percent (50%) of the construction workhours from its workforce (including contractors and subcontractors) providing work and services at the project site during the Construction Phase (e.g., the period from Full Notice to Proceed (NTP) through receipt of a Permission To Operate (PTO) letter from the interconnecting utility) are obtained from permanent residents who live within the same county in which the Eligible Resource will be located (the "Local Hire Requirement"). Applicant's construction of the Eligible Resource is also subject to any local hire requirements specific to the city or town where the resource is located. As a condition precedent to commencement of the delivery term under the FIT Plus PPA, Applicant must certify that it met the Local Hire Requirement and be able to demonstrate, upon request, compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit. Failure to comply with this requirement may, in MCE's sole discretion, result in termination of the FIT Plus PPA.
- b) Prevailing Wage: To the extent no inconsistent with the requirements of subsection (c) below, Applicant will ensure that all employees hired by Applicant, and its contractors and subcontractors, that are performing work or providing services at the project site during the Construction Phase are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by Division 2, Part 7, Chapter 1 of the California Labor Code ("Prevailing Wage Requirement"). Nothing herein shall require Applicant, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the California Labor Code. As a condition precedent to commencement of the delivery term under the FIT PPA, Applicant must certify that it met the Prevailing Wage Requirement, and be able to demonstrate, upon request, compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit. Failure to comply with this requirement may, in MCE's sole discretion, result in termination of the FIT PPA.
- c) Union Labor: Applicant with a proposed Eligible Resource to be located in Contra Costa County must agree to comply with the terms of that certain Letter Agreement between MCE and IBEW Local 302, dated June 20, 2017, and attached project labor agreement (collectively, the "PLA"). The PLA applies to "Covered Work" (as defined therein) for solar photovoltaic and associated energy storage projects for which MCE is the power supply off-taker. Applicants with proposed Eligible Resources located outside Contra Costa County are required to enter into project labor agreements of similar scope and requirements with participating unions for workforce hired. As a condition precedent to commencement of the delivery term under the FIT Plus PPA, Applicant must certify that it complied with the foregoing union labor requirements, and be able to demonstrate, upon request, compliance with this requirement via copies of executed PLAs or similar agreements, a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit. Failure to comply with this requirement may, in MCE's sole discretion, result in termination of the FIT Plus PPA.

11. STORAGE

An Eligible Resource may include storage in compliance with the current version of the CEC RPS Eligibility guidebook where the storage device is integrated into the Eligible Resource such that the energy storage device is capable of storing only energy produced by the Eligible Resource, either as an intermediary form of energy during the generation cycle or after electricity has been generated. An Eligible Resource that includes a storage device will receive the same contract price under this Schedule FIT as an Eligible Resource without storage.



12. ELIGIBLE RESOURCE AT ONE SITE

There may not be more than one exporting renewable energy facility, including the Eligible Resource, being developed or operating on or adjacent to an Assessor Parcel Number (“APN”) occupied, in part or fully, by the Eligible Resource.

IV. Eligibility Criteria

1. Capacity: The nameplate capacity of the Eligible Resource must be greater than 1 MW and cannot exceed 5 MW (Alternating Current).
2. Location: The Eligible Resource must be physically located and interconnected within the Eligible Territory, as defined herein.
3. Eligible Renewable Resource: The Eligible Resource must utilize a fuel source meeting the eligibility criteria expressed in the CEC’s most current edition of the RPS Eligibility guidebook.
4. Interconnection: At the time of application, the Applicant must provide documentation substantiating that the Eligible Resource has (a) passed all Fast Track screens, (b) passed Supplemental Review, (c) completed a System Impact Study in the Independent Study process, or (d) completed a Phase 1 Study in the Cluster Study Process with the interconnecting utility.
5. Site Control: At the time of application submittal, the applicant must provide documentation demonstrating full site control via ownership, lease or an option to lease upon FIT Plus PPA execution. Any site lease shall reflect a term length no less than the Delivery Term of the FIT Plus PPA.
6. Prior Experience: At the time of application submittal, the Applicant must include three (3) recent renewable generating project references, all of which must have been successfully completed by the Applicant’s development team.
7. Description of Eligible Resource: At the time of application, the applicant must provide,
 - a) a to-scale Site Map of the Eligible Resource showing the arrangement of all major components of the facility with the name of the facility, nameplate capacity, longitude

and latitude of the centroid of Eligible Resource clearly labeled, in addition to labeling major cross streets and clearly marking the outer boundary of the facility and all Assessor Parcel Numbers included in and adjacent to the facility; and

b) a Single Line Diagram which includes to the Eligible Resource's point of interconnection on the electric distribution system.

V. FIT Plus Queue and Capacity

1. QUEUE ASSIGNMENT

MCE will maintain the FIT Plus queue on a first-come, first-served basis. Queue position shall be based on the submittal date and time of a complete and conforming FIT Plus Application, as determined by MCE in its reasonable discretion, delivered to the email address identified in the FIT Plus Application.

2. REVIEW AND CURE PERIOD

Upon receipt, MCE will review the FIT Plus Application for completeness.

If any minor deficiencies in the Application are identified by MCE staff, the Applicant will have ten (10) business days, from the date of MCE's notification, to cure the deficiency(ies) (also known as the "Cure Period"). During the Cure Period, Applicant will retain its queue position. If the Applicant fails to cure the deficiency(ies) within the allotted ten (10) business days, the Applicant's position in MCE's FIT Queue will be forfeited and reallocated.

If major deficiencies are identified during MCE's review, MCE will notify the Applicant of the incomplete FIT Plus Application. Further review of the Application will be discontinued and no queue position will be assigned. The Applicant may re-apply for participation in MCE's FIT Plus program after all issue(s) have been resolved. A queue position will be assigned to the Applicant at the time the Application is deemed complete, subject to MCE's then-current available FIT Plus capacity and the prevailing FIT Plus price at that time.

All determinations by MCE regarding the completeness of an Application are final.

Once an Application is deemed complete, MCE will provide notice to the Applicant indicating the assigned MCE FIT Plus queue position and applicable price.

3. CAPACITY PER PRICING CONDITION

The megawatt capacity allocated to each Pricing Condition is outlined in Section VIII, below. A Pricing Condition will be deemed complete when MCE has determined that (a) the megawatts associated with approved FIT Plus Applications in a given Pricing Condition reasonably fill the megawatts allocated to that Condition, or, (b) the expected aggregate energy output from all FIT Plus projects under contract and in the FIT Queue with MCE exceeds a specific condition's annual MWh generation limit. Once deemed complete, the next eligible FIT Plus Application, on a first-come, first-served basis, will be assigned to the subsequent Pricing Condition until the megawatts allocated for the program have been filled, as determined by MCE. MCE reserves the right to review and adjust Pricing Conditions anytime during the duration of the program for non-executed PPAs and non-queue holders in its sole discretion.

4. REALLOCATION OF TERMINATED MEGAWATTS

For any megawatts associated with FIT Plus queue reservations that fail to execute a FIT Plus PPA, or any megawatts associated with executed FIT Plus PPAs that terminate before or after the Guaranteed Commercial Operation Date. MCE may, in its discretion, reallocate those megawatts into the then current Pricing Condition, unless the final Pricing Condition (Condition 4) has already been deemed complete.

VI. Payments for Electric Generation Produced by Eligible Resources

Under this Schedule FIT Plus, MCE will pay for the Products delivered by the Eligible Resource according to the applicable price for metered energy specified at a fixed rate for the Delivery Term of the FIT Plus PPA.

Applicable prices are presented below in Section VII, "Prices for Energy Produced by Eligible Resources", and will also be reflected in the FIT PPA.

VII. Prices for Energy Produced by Eligible Resources

MCE has established the following price schedule which will be used to determine prices paid to an Eligible Resource meeting the requirements of this Schedule FIT Plus. MCE's Board of Directors may periodically review and revise this price schedule¹.

The addition of any Eligible Resource must reasonably fit but not exceed the allotted capacity reservation, determined at MCE's sole discretion, for any Pricing Condition's combined rated generation megawatt or megawatt hour capacity under contract (FIT Plus PPA) with MCE or reserved in MCE's FIT Plus queue.

FIT Plus Pricing Conditions	Eligible Resource Price (20-year Term, \$/MWh)	Cumulative MW Allocation	MWh/year
Condition 1	\$ 80.00	5	10,000
Condition 2	\$75.00	10	20,000
Condition 3	\$ 70.00	15	30,000
Condition 4	\$65.00	20	40,000

¹ MCE Staff reserves the right to divert select FIT Plus projects to the MCE "Local Sol" cooperative solar development program under the terms of any condition without regard to active FIT Plus condition, at the sole discretion of MCE staff and subject to approval of the MCE Board of Directors. Capacity assigned to the Local Sol program will not affect the price schedule or the active condition (rate) for FIT projects.

VIII. Extension of Guaranteed Commercial Operation Date

MCE reserves the right to terminate an Applicant's FIT Plus PPA if an Applicant is unable to achieve the Commercial Operation Date ("COD") for the Eligible Resource before the applicable deadline under the FIT Plus PPA (the "Guaranteed Commercial Operation Date"). So long as an Applicant is not otherwise in breach of its FIT Plus PPA, however, an Applicant may be eligible for a one-time extension of the Guaranteed Commercial Operation Date of up to twelve (12) months. An extension request must be submitted in writing at least 30 days prior to the original deadline for COD, and Applicant must demonstrate to the reasonable satisfaction of MCE Staff that (a) Applicant has pursued development of the Eligible Resource in a commercially reasonable, diligent and continuous manner and (b) the pre-parallel date recorded in its executed Small Generator Interconnection Agreement with PG&E is reasonably expected to occur within the requested extension period.

APPENDIX A

MULTI-TRADE PROJECT LABOR AGREEMENT FOR MCE FEED-IN TARIFF PLUS RENEWABLE ENERGY PROJECTS

ARTICLE 1

INITIAL PROVISIONS

1.1 This Project Labor Agreement (“Agreement”) is entered into by _____ (“Primary Employer”), [Operating Engineers Local 3, Northern California Carpenters Regional Council, Northern California District Council of Laborers and its affiliated local unions, IBEW Local 302, and Ironworkers Local 378] who have executed this Agreement (the “Unions”).

1.2 The _____ Project (the “Project”) is an approximately ___ MW renewable projects to be developed in the future in _____ County, California. The Project is either owned by MCE (“Owner”) or MCE is the Power Supply Offtaker (“Offtaker”). It is understood and agreed by and between the Parties to this Agreement that the final plans for the Project may be subject to modifications and approval by those public agencies possessing lawful approval authority over the Project and that this Agreement applies to the Project as it is finally approved by such entities and agencies and only to the Project.

1.3 Primary Employer is an employer primarily engaged in the construction industry and has the authority to enter into this agreement.

1.4 As provided below, all construction managers, contractors, subcontractors or other persons or entities assigning, awarding or subcontracting Covered Work (as defined in Article 2), or performing Covered Work, will be subject to this Agreement by executing Attachment A, the Agreement to be Bound (all of whom, including the Primary Employer, are individually and collectively referred to as “Employer” or “Employers”).

1.5 The Unions are labor organizations whose members are construction industry employees. The Unions are party to multi-employer collective bargaining agreements (“Master Agreement”) applicable to employers working within the geographic jurisdiction.

1.6 A large labor pool represented by the Unions will be required to execute the Covered Work involved in the Project. Employers wish and it is the purpose of this Agreement to ensure that a sufficient supply of skilled craft workers are available at the Project, that all construction work performed by the members of the Unions on this Project shall proceed continuously, without interruption, in a safe and efficient manner, economically with due consideration for the protection of labor standards, wages and working conditions. In furtherance of these purposes and to secure optimum productivity, harmonious relations between the parties and the orderly performance of the work, the parties to this Agreement agree to establish adequate and fair wage levels and working conditions.

1.7 In the interest of the future of the construction industry in the local area, of which the Unions are a vital part, and to maintain the most efficient and

competitive posture possible, the Unions pledge to work and cooperate with the Primary Employer, Employers and with other construction employers engaged on the Project to produce the most efficient utilization of labor and equipment in accordance with this Agreement. In particular, the Unions shall make all efforts to first source local labor to the Project and shall cooperate with each Employer's efforts to comply with all applicable laws and regulations related to such local hiring requirements.

1.8 The parties recognize the importance of renewable power in assuring that California is provided with adequate supplies of renewable energy for economic growth, the creation of job opportunities and for a greater degree of energy independence. By entering into this Agreement, the parties recognize the unique nature of a renewable power plant and that the terms and conditions covered by this Agreement are therefore unique. Accordingly, the parties have in good faith arrived at the special conditions contained in this Agreement, and the parties agree to work together jointly to support the Project and make it successful.

ARTICLE 2

SCOPE OF AGREEMENT

2.1 This Agreement covers all on-site construction, alteration, demolition or repair of buildings, structures, and other works which are part of the Project. All work covered by this Agreement is referred to as "Covered Work." This Agreement also covers work done in temporary yards or facilities adjacent to or near the Project that is otherwise Covered Work.

2.2 The following are specifically excluded from the definition of Covered Work:

2.2.1 Any work performed on or near the Project site by federal, state, county, city or other governmental bodies and/or agencies or their contractors or work performed by utilities or their contractors.

2.2.2 Work performed by supervisors not covered by a collective bargaining agreement, technical or non-manual employees including but not limited to executives, office and clerical personnel, drafters, staff engineers, technical advisors, vendor quality control representatives, logistic and materials support, timekeepers, messengers, or any other employees above the classification of general foreman who perform administrative/clerical functions.

2.2.3 Operations and maintenance work.

2.3 Purchase of any manufactured item produced in a genuine manufacturing facility for the supply of products is not Covered Work and shall not be considered subcontracting under Article 3 below. Any offsite fabrication, kitting, preparation or other assembly of components for the Project is Covered Work and shall be performed on site. For the convenience of the Employer, such work may be

performed offsite if performed in accordance with the union standards for the applicable Union established by this Agreement. Covered Work does not include creating inverter skids, if they are created, built, or assembled in a genuine manufacturing facility. Any manufacturer owned in whole or in part, or with any ownership or control relationship with a general contractor or electrical contractor shall not be recognized as a genuine manufacturer.

ARTICLE 3

SUBCONTRACTING

3.1 Primary Employer and each other Employer agree that they will contract for the assignment, awarding or subcontracting of Covered Work, or authorize another party to assign, award or subcontract Covered Work, only to a person, firm, corporation or other entity that, at the time the contract is executed, has become a party to this Agreement by executing Attachment A, the Agreement to be Bound.

3.2 Primary Employer and each other Employer agree that they will subcontract Covered Work only to a person, firm, corporation or other entity who is or becomes a party to this Agreement, who is primarily a C-10 electrical contractor (for IBEW Covered Work), and who is or becomes signatory to the Master Agreement or, in the case of a national contractor, a national agreement with the applicable Union. Before being authorized to perform any Covered Work, Employers (other than Primary Employer) shall become a party to this Agreement by signing Attachment A, the Agreement to be Bound and the applicable Master Agreement. Every Employer shall notify the Union in writing within five business days after it has subcontracted work, and shall at the same time provide to the Union a copy of the executed Agreement to be Bound. Any Employer not already bound to the Master Agreement, who signs and becomes bound to such agreement to participate on this Project, shall not be required to apply the terms of that Master Agreement to any other construction project for which such Employer is already engaged contractually, but shall only be required to apply such agreement to this Project and future projects which it undertakes and which are in the scope of work covered by that Master Agreement.

3.3 Nothing in this Agreement shall in any manner whatsoever limit the rights of the Primary Employer and every other Employer, to subcontract Covered Work or to select its contractors or subcontractors; provided, however, that all Employers, at all tiers, assigning, awarding, contracting or performing, or authorizing another to assign, award, contract or perform Covered Work shall be required to comply with the provisions of this Agreement. Primary Employer and every other Employer shall notify each of its contractors and subcontractors of the provisions of this Agreement and require as a condition precedent to the assigning, awarding or subcontracting of any Covered Work or allowing any subcontracted Covered Work to be performed, that all such contractors and subcontractors at all tiers become signatory to this Agreement, and the applicable Master Agreement or

national agreement as provided in Section 3.2 above. Any Employer that fails to provide the Union with a copy of the Agreement to be Bound executed by its contractor or subcontractor shall be liable for any failure of that contractor or subcontractor, or any contractor or subcontractor at a lower tier, to comply with the provisions of this Agreement, including any contributions to any trust funds that the contractor or subcontractor, or any subcontractor to that subcontractor, fails to make.

ARTICLE 4

WAGES AND BENEFITS

4.1 All employees performing Covered Work and covered by this Agreement (including foremen and general foremen if they are covered by the Master Agreement) shall be classified and paid wages and benefits, and contributions made on their behalf to multi-employer trust funds, all in accordance with the applicable Union's then current multi-employer Master Agreement.

4.2 Employees performing Covered Work in the IBEW CW classification shall receive wages and benefits as specified in Attachment C.

ARTICLE 5

UNION RECOGNITION AND REFERRAL

5.1 The Employers recognize the Unions signatory to this Agreement as the sole and exclusive collective bargaining agent for their construction craft employees performing Covered Work for the Project, and further recognize the traditional and customary craft jurisdiction of the Unions.

5.2 All employees performing Covered Work shall be or shall become and then remain members in good standing of the applicable Union as a condition of employment on or before the eighth (8th) day of employment, or the eighth (8th) day following the execution of this Agreement, whichever is later.

5.3 The Unions shall be the source of all craft employees for Covered Work for the Project. Employers agree to be bound by the hiring practices of the Unions, including hiring of apprentices, and to utilize its registration facilities and referral systems.

5.4 The Unions shall exert their utmost efforts, including requesting assistance from other local unions, to recruit a sufficient number of skilled craftsmen to fulfill the manpower requirements of the Employers. In the event the referral facilities maintained by the Union does not refer the employees as requested by the Employer within a forty-eight (48) hour period after such requisition is made by the Employer (Saturdays, Sundays and holidays excepted), the Employer may employ applicants from any source, but shall arrange for a dispatch to be issued for those applicants from the Union within forty-eight (48)

hours of the commencement of employment, and the dispatch shall upon request be issued by the Union to the employee. Employer will notify the Union of such gate-hires.

5.5 Each Union shall have the right to designate a working journey person as a working steward. The steward shall be a qualified employee performing the work of that craft and shall not exercise any supervisory functions. The steward shall be concerned with the employees of the steward's Employer and not with the employees of any other Employer. A steward shall be allowed sufficient time to perform his/her duties.

ARTICLE 6

WORK STOPPAGES AND LOCKOUTS

6.1 During the term of this Agreement, there shall be no strikes, sympathy strikes, picketing, work stoppages, slow downs, handbilling where the handbilling relates to the Project or to the Owner, Employer, or other Employer working or providing work on the Project, or interference with the work or other disruptive activity of any kind at the Project site for any reason by the Union, its agents, representatives, or by any employee, and there shall be no lockout by any Employer. Failure of either a Union or an employee to cross any picket line established at the Employer's project site is a violation of this Article.

6.2 The Unions shall not sanction, aid or abet, encourage, condone or participate in or continue any work stoppage, delay, strike, picketing or any other disruptive activity at the Project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project or which violate this Article, shall be subject to disciplinary action, including discharge, and, if justifiably discharged for the above reasons, shall not be eligible for rehire or further work on the Project.

6.3 A Union shall not be liable for acts of employees that it does not represent. With respect to employees the Union does represent, the principal officer or officers of the Union will immediately instruct, and order and use the best efforts of his office to cause such employees to cease any violations of this Article. A Union complying with this obligation shall not be liable for any unauthorized acts of the employees it represents. The failure of the Employer to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

6.4 The Unions agree that if any union or any other persons, whether parties to this Agreement or otherwise, engage in any picketing or work stoppages, the signatory Unions shall consider such work stoppage or picketing to be illegal and refuse to honor such picket line or work stoppage.

6.5 In the event of any work stoppage, strike, sympathy strike, picketing, handbilling or interference with the work or any other disruptive activity at the Project site in violation of this Article, the Primary Employer may suspend all or any portion of the Project work affected by such activity at the Primary Employer's discretion and without penalty.

6.6 In lieu of, or in addition to, any other action at law or equity, any party may institute the following procedure when a breach of this Article is alleged, after the Union has been notified of the fact, understanding that the grieving party has the discretion to opt for resolution of any dispute under this Article or through Article 8 instead.

6.6.1 The party invoking this procedure shall notify [Thomas Pagan, Norman Brand or Joe Grodin], who the parties to this agreement agree shall be the permanent Arbitrators under this procedure. In the event that any of the permanent Arbitrators is unavailable at any time, the American Arbitration Association shall select an alternative arbitrator within twenty-four (24) hours of notice. Notice to the Arbitrator shall be by the most expeditious means available, with notice by fax or electronic means or any other effective written means to the party alleged to be in violation and the Union.

6.6.2 Upon receipt of said notice, the Arbitrator selected above shall set and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists or is threatened to resume.

6.6.3 The Arbitrator shall notify the parties by fax or electronic means or any other effective written means of the place and time he has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.

6.6.4 The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The Award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The Arbitrator may order cessation of the violation of this Article by the Union, and such Award shall be served on all parties by hand or registered mail or by electronic mail upon issuance. The Union accepts service pursuant to any of the foregoing means of notice and expressly waives notice by more formal means.

6.6.5 Such Award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. The fax or electronic notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's Award as issued under Section 6.6.4 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's

right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the Arbitrator's Award shall be served on all parties by hand or by delivery to their last known address or by registered mail or by electronic mail. All parties waive the right to require the issuance of a bond or other security for issuance of an injunction or an appeal to a refusal to issue one under this Article.

6.6.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance therewith are hereby waived by the parties to whom they accrue.

6.6.7 The fees and expenses of the Arbitrator shall be borne by the party or parties found in violation, or in the event no violation is found, such fees and expenses shall be borne by the moving party.

6.6.8 If the Arbitrator determines that a violation has occurred in accordance with Section 6.6.4 above, the party or parties found to be in violation shall pay as liquidated damages the following amounts: for the first shift in which the violation occurred, \$10,000; for the second shift, \$15,000; for the third shift, \$20,000; for each shift thereafter on which the craft has not returned to work, \$20,000 per shift. The Arbitrator shall retain jurisdiction to determine compliance with this section and this Article.

6.7 The procedures contained in this Article shall be applicable to alleged violations of this Article. Disputes alleging violation of any other provision of this Agreement, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved under the grievance procedures of Article 8.

6.8 Notwithstanding the provisions of Section 6.1 above, it is agreed that with forty eight (48) hours prior written notice to the Primary Employer, the Union retains the right to withhold the services of its members from a particular contractor or subcontractor who fails with respect to work on the Project to make timely payments to the Union's benefit plans or to pay timely its weekly payroll in accordance with its agreements with the Union; provided, however, that in the event the Union or any of its members withhold their services from such contractor or subcontractor, Primary Employer shall have the right to replace such contractor or subcontractor with any other contractor or subcontractor who executes the Agreement to be Bound.

6.9 In the event that the Master Agreement of a Union expires and the parties to that agreement fail to reach agreement on a new contract by the date of expiration, the Union shall continue to provide employees to the Employers working on the Project under all the terms of the expired agreement until a new agreement is negotiated, at which time all terms and conditions of that new agreement shall be applied to Covered Work at the Project, except to the extent they conflict with any provision of this Agreement. In addition, if the new Master Agreement provides for wage or benefit increases, then any Employer shall pay to its employees who performed Covered Work at the Project during the hiatus between the effective

dates of such labor agreements, an amount equal to any such wage and benefit increases established by the new labor agreement applicable to such work performed during the hiatus.

ARTICLE 7

WORK RULES, HOLIDAYS

7.1 The standard work day shall consist of eight (8) hours of work between 6:00 a.m. and 5:30 p.m. with one-half hour designated as an unpaid period for lunch. The standard work week shall be five (5) consecutive days starting on Monday. Nothing herein shall be construed as guaranteeing any employee eight (8) hours of work per day or forty (40) hours of work per week.

7.2 Handling and installation of PV modules will be primarily performed by employees in the IBEW CW classification. There shall be at least one journeyman and one apprentice for each four CWs.

7.3 There shall be at least one journeyman for each apprentice for IBEW Covered Work other than PV module handling and installation.

7.4 Employers may utilize Ironworker apprentices for all Ironworker Covered Work, provided that there shall be at least one journeyman for each one apprentice.

7.5 It will not be considered a violation of this Agreement when the Primary Employer or any Employer considers it necessary to shut down to avoid loss of human life because of an emergency situation that could endanger life or safety. In such cases, employees will be compensated only for the actual time worked. In case of a situation described above whereby the Primary Employer or any Employer requests employees to wait in a designated area available for work the employees will be compensated for the waiting time.

7.6 Recognized holidays shall be as follows: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving and Christmas Day. Under no circumstances shall any work be performed on Labor Day except in cases of emergency involving life or property. In the event a holiday falls on Saturday, the previous day, Friday, shall be observed as such holiday. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. There shall be no paid holidays. If employees are required to work on a holiday, they shall receive the appropriate rate as provided in the Master Agreement not to exceed double the straight time rate of pay.

ARTICLE 8

GRIEVANCE PROCEDURE

8.1 It is mutually agreed that any question arising out of and during the term of this Agreement involving its interpretation and application (other than successorship) shall be considered a grievance. Questions between or among parties signatory to the Master Agreement arising out of or involving the interpretation of the Master Agreement shall be resolved under the grievance procedure provided in the Master Agreement.

8.2 The Primary Employer and other Employers, as well as a Union, may bring forth grievances under this Article.

8.3 A grievance shall be considered null and void if not brought to the attention of the Employer(s) within five (5) working days after the incident that initiated the alleged grievance occurred or reasonably should have been discovered, whichever is later. The term "working days" as used in this Article shall exclude Saturdays, Sundays or holidays regardless of whether any work is actually performed on such days.

8.4 Grievances shall be settled according to the following procedure (provided that grievances that do not involve an individual grievant or grievants shall be discussed by Primary Employer and the Union, and then, if not resolved within five (5) working days of written notice unless extended by mutual consent, shall commence at Step 2):

Step 1

The Steward and the grievant shall attempt to resolve the grievance with the craft supervisor within five (5) working days after the Grievance has been brought to the attention of the Employer.

Step 2

In the event the matter remains unresolved in Step 1 above after five (5) working days, within five (5) working days thereafter, the alleged grievance may be referred in writing to the Business Manager of the Union or his designee and the site construction manager or Labor Relations representative of the Employer(s) for discussion and resolution. A copy of the written grievance shall also be mailed, faxed or emailed to the Primary Employer.

Step 3

In the event the matter remains unresolved in Step 2 above within five (5) working days, within five (5) working days thereafter, the grievance

may be referred in writing to the Business Manager of the Union or his designee and the Manager of Labor Relations of the Employer(s) or the Manager's designated representative and the Primary Employer for discussion and resolution.

Step 4

If the grievance is not settled in Step 3 within five (5) working days, within five (5) days thereafter, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. The request for arbitration and/or the request for an extension of time must be in writing with a copy to the Primary Employer. Should the parties be unable to mutually agree on the selection of an Arbitrator, selection for that given arbitration shall be made by seeking a list of seven (7) labor arbitrators with construction experience from the Federal Mediation and Conciliation Service and alternately striking names from the list of names on the list until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall alternate between the party bringing forth the grievance and the party defending the grievance.

8.5 The Arbitrator shall conduct a hearing at which the parties to the grievance shall be entitled to present testimonial and documentary evidence. Hearings will be transcribed by a certified court reporter. The parties shall be entitled to file written briefs after the close of the hearing and receipt of the transcript.

8.6 Upon expiration of the time for the parties to file briefs, the Arbitrator shall issue a written decision that will be served on all parties and on the Primary Employer. The Arbitrator shall have the authority to utilize any equitable or legal remedy to prevent and/or cure any breach or threatened breach of this Agreement. The Arbitrator's decision shall be final and binding as to all parties signatory to this Agreement.

8.7 The cost of the Arbitrator and the court reporter, and any cost to pay for facilities for the hearing, shall be borne equally by the parties to the grievance. All other costs and expenses in connection with the grievance hearing shall be borne by the party who incurs them.

8.8 The Arbitrator's decision shall be confined to the issue(s) posed by the grievance and the Arbitrator shall not have the authority to modify, amend, alter, add to or subtract from any provision of this Agreement.

8.9 Any party to a grievance may invite the Primary Employer to participate in resolution of a grievance. The Primary Employer may, at its own initiative, participate in Steps 1 through 3 of the grievance procedure.

8.10 In determining whether the time limits of Steps 2 through 4 of the grievance procedure have been met, a written referral or request shall be considered timely if it is personally delivered, sent by overnight mail, electronic mail, or faxed within the five (5) working day period. Any of the time periods set forth in this Article may be extended in writing by mutual consent of the parties to the grievance. Failure to process a grievance, or failure to respond in writing within the time limits provided above, without a request for an extension of time, shall be deemed a waiver of such grievance to the other without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances.

8.11 In order to encourage the resolution of disputes and grievances, the parties agree that settlements shall not be precedent setting.

ARTICLE 9

WORK JURISDICTION AND PRE-JOB MEETINGS

9.1 All Covered Work will be assigned to the appropriate Union as identified in Attachment B.

9.2 Prior to the commencement of work at the site of construction the Primary Employer shall hold a Pre-Job Conference with the Unions for the purpose of discussing the scope, schedule, manpower requirements, and jurisdictional work assignments. A Pre-Job Conference will be held prior to the commencement of work to establish the scope of work in each contractor's contract.

9.3 In the event of any jurisdictional or similar dispute concerning the Employer's assignment of work on this Project, the Employer and the Unions agree to cooperate to attempt to resolve such dispute expeditiously and efficiently; however, nothing in this Section shall require the Unions to agree to any modification of this Agreement. This Article (including Attachment B), rather than any jurisdictional dispute resolution procedure in a Union's Master Agreement, shall apply to jurisdictional disputes involving the assignment of work on this Project to a Union.

ARTICLE 10

GENERAL WORKING CONDITIONS

10.1 The selection of craft foremen and/or general foremen shall be entirely the responsibility of the Employer, it being understood that in the selection of such foremen and/or general foremen the Employer will give primary consideration to the qualified individuals referred to the Employer who are available in the local area. After giving such consideration, the Employer may select such individuals from other areas. All foremen shall take orders from the designated Employer representatives.

10.2 There shall be no limit on production by employees or restrictions on the full use of tools or equipment. Employees using tools shall perform any of the work of the trade and shall work under the direction of the craft foremen. There shall be no restrictions on efficient use of manpower other than as may be required by safety regulations.

10.3 The Primary Employer shall establish and employees shall observe such reasonable project job site work rules as the Employer deems appropriate. These rules will be reviewed and discussed at the Pre-Job conference, distributed to all employees, posted at the project site by the Primary Employer, and may be amended thereafter as necessary.

ARTICLE 11

MANAGEMENT RIGHTS

11.1 The Primary Employer and Employers retain and shall exercise full and exclusive authority and responsibility for the management of their respective operations and work forces, except as expressly limited by the terms of this Agreement or the Master Agreement. This authority includes, but is not limited to, the rights retained by Employers under the Master Agreement and the rights to:

11.1.1 Plan, direct and control the operation of all the work.

11.1.2 Decide the number and type of employees required for the work.

11.1.3 Hire, promote and lay off employees as deemed appropriate to meet work requirements and/or skills required, and to select and hire directly all supervisory personnel above the classification of general foreman it considers necessary and desirable, without such persons being referred by the Union.

11.1.4 Discharge, suspend or discipline employees in accordance with the applicable Master Agreement.

11.1.5 Require all employees to observe the Primary Employer's, Employers' and Owners' reasonable Project Rules, Security, Environmental and Safety Regulations, consistent with the provisions of this Agreement. These Project Work Rules and Regulations shall be supplied to the Union, to all employees and posted on the job site.

11.1.6 Determine the work methods and procedures

11.1.7 Determine the competency of all employees.

11.1.8 Assign and schedule work at its sole discretion and determine when overtime will be worked. There shall be no refusal by any Union to perform work, including overtime work, assigned. Such cases shall be subject to the grievance procedure.

11.1.9 Utilize any safe work methods, procedures or techniques and select and use any type or kind of materials, apparatus or equipment regardless of source, manufacturer or designer.

11.1.10 Purchase materials or equipment from any source it deems appropriate.

11.1.1 The foregoing listing of management rights shall not be deemed to exclude other functions not specifically set forth herein. The Employers, therefore, retain all legal rights not specifically given up in this Agreement.

ARTICLE 12

SUCCESSORSHIP AND SURVIVABILITY

12.1 The subcontracting obligations described in Article 3 are independent obligations of Primary Employer which shall survive any full or partial termination of Primary Employer's involvement in the Project for any reason, including, without limitation: (i) any full or partial termination or transfer of Primary Employer's right to control and coordinate construction work on the Project; (ii) any full or partial termination or transfer of a contract, if any, between Primary Employer and any Owner for any Covered Work; (iii) the transfer of all or any portion of the Project or any interest in the Project by any Project Owner; or (iv) any other event that results in the replacement of Primary Employer with another contractor.

12.2 The parties agree that: (i) if Primary Employer's involvement in the Project is terminated as described in Section 12.1, and (ii) Covered Work is performed by a contractor or subcontractor that is not in compliance with the provisions of Article 3, then Primary Employer shall pay liquidated damages, as described in Section 12.3, to compensate for the actual damages caused by reason thereof. The parties agree that such damages would be unreasonably difficult, costly, inconvenient or impracticable to calculate and, accordingly, they agree to liquidated damages which bear a reasonable relationship to the actual harm suffered by the Union and their members, as provided in Section 12.3 ("Liquidated Damages").

12.3 In the event that Liquidated Damages are owed as described in Section 12.2, Primary Employer shall pay an amount equal to the journeyman total compensation package of the applicable Union for each hour that work was performed on the Project within the scope of this Agreement by employees of contractors or subcontractors who are not signed to this Agreement. The Liquidated Damages shall be paid as follows: Half to the qualified pension plan and half to the qualified health and welfare plan of the Union having jurisdiction over the work performed by the contractor not signatory to this Agreement. The parties agree that the Unions shall enforce, collect and receive Liquidated Damages pursuant to Article 12 on behalf of its qualified pension plan and its qualified health and welfare plan. The qualified pension plans and the qualified health and welfare plans shall have no right to enforce independently the provisions of this Agreement,

including, but not limited to, the Liquidated Damages provisions contained in Article 12.

12.4 Primary Employer shall be released from all obligations under this Agreement with respect to all or any portion of the Project, including liability for the payment of Liquidated Damages, and shall have no liability for any breach of this Agreement by a successor upon Primary Employer's receipt of a fully executed release by the Union. Such release shall not be withheld if, under all the circumstances, the Union, in the exercise of its reasonable judgment, determines that the successor has the financial means to complete the Project and to comply with the successor Primary Employer's obligations and undertakings under this Agreement, including any obligation to pay Liquidated Damages.

12.5 This Article shall be enforceable in any court of competent jurisdiction, and shall not be subject to the grievance procedure of Article 8.

ARTICLE 13

HELMETS TO HARDHATS

13.1 The Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans and members of the National Guard and Reserves who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment ("Center"), a joint Labor-Management Cooperation Trust Fund, established under the authority of Section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. Section 175(a), and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. Section 186(c)(9), and a charitable tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

13.2 The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans and members of the National Guard and Reserves interested in working on this Project and apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Union will give credit to such veterans and members of the National Guard and Reserves for bona fide, provable past experience.

13.3 In recognition of the work of the Center and the value it will bring to the Project, within thirty (30) days of the commencement of Covered Work, Primary Employer shall make a onetime contribution of \$1,000 to the Center on behalf of itself and all other Employers employing workers under the terms of this Agreement.

13.4 The Center shall function in accordance with, and as provided in the Agreement and Declaration of Trust creating the fund, and any amendments thereto, and any other of its governing documents. Primary Employer approves and consents to the appointment of the Trustees designated pursuant to the Trust Agreement establishing the Center and hereby adopts and agrees to be bound by the terms and provisions of the Trust Agreement.

ARTICLE 14

GENERAL PROVISIONS

14.1 If any article or provision of this Agreement shall become invalid, inoperative and/or unenforceable by operation of law or by declaration of any competent authority of the executive, legislative, judicial or administrative branches of the federal or state government, the parties shall suspend the operation of such article or provision during the period of its invalidity, and the Primary Employer and the Unions shall negotiate in its place and stead an article or provision that will satisfy the objections to its validity and that, to the greatest extent possible, will be in accord with the intent and purpose of the article or provision in question. The new article or provision negotiated by the Primary Employer and the Unions shall be binding on all parties signatory to this Agreement. At all times relevant the provisions of Article 6 will apply.

14.2 If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law, or by any of the above mentioned tribunals of competent jurisdiction, the remainder of the Agreement or application of such article or provision to persons or circumstances other than to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.

14.3 The provisions of this Agreement shall take precedence over conflicting provisions of the Master Agreement or any other local, area, regional, or national collective bargaining agreement

14.4 Except as enumerated in this Agreement, all other terms and conditions of employment described in the Master Agreement shall apply.

14.5 This Agreement may be amended or otherwise modified by mutual agreement in writing between Primary Employer and the Unions. Employers executing the Agreement to be Bound acknowledge and accept all such amendments and modifications executed prior to their respective execution of the Agreement to be Bound.

14.6 Each person executing this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of the party or parties indicated.

14.7 This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any signature pages may be assembled to form a single original document.

ARTICLE 15

TERM OF AGREEMENT

15.1 The term of this Agreement shall commence on the date indicated below as the date of execution, and shall continue in effect until completion of all Covered Work pursuant to Article 2.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of _____, _____.

[PRIMARY EMPLOYER]

OPERATING ENGINEERS LOCAL 3

By: _____
[Name, Primary Employer]

By: _____
Russ Burns, Business Manager

MCE, Project Owner or Electricity Purchaser

NORTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS

By: _____
Dawn Weisz, CEO

By: _____
Oscar De La Torre

NORTHERN CALIFORNIA CARPENTERS REGIONAL COUNCIL

By: _____
Bob Alvarado, Executive Officer

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 302

By: _____
Tom Hansen, Business Manager

IRONWORKERS LOCAL 378

By: _____
Jeff McEuen, Business Manager

**ATTACHMENT A
AGREEMENT TO BE BOUND**

**PROJECT LABOR AGREEMENT
_____ RENEWABLE PROJECT**

The undersigned hereby certifies and agrees that:

- 1.) It is an Employer as that term is defined in Section 1.4 of the Solar One Project Labor Agreement (“Agreement”) because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work on the Project (as defined in Article 2 of the Agreement), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.
- 2.) In consideration of the award of such contract or subcontract, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.
- 3.) If it performs Covered Work, it will be bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.
- 4.) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.
- 5.) It will secure a duly executed Agreement to be Bound, in form identical to this document, from any Employer(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED: _____ Name of Employer

 (Authorized Officer & Title)

 (Address)

ATTACHMENT B
WORK ASSIGNMENTS

ITEM	WORK ACTIVITY	ASSIGNMENT
1.	Surveying	OE
2.	Soil testing, compaction testing	OE
3.	Grading, cranes, trenching machines, forklift work serving multiple crafts	OE
4.	Curbs and gutters	Carp/IW/Laborers
5.	Vegetation management and weed control	Laborers
6.	Chain link perimeter fencing	Laborers/OE
7.	Dust control	Laborers
8.	Landscaping and erosion control	Laborers
9.	Rigging for off-loading of large equipment or materials of multiple crafts	IW
10.	Excavation and backfilling of trenches by hand	Laborers
11.	Drinking water distribution	Laborers
12.	General site cleanup	Laborers
13.	Concrete foundations	Carp/IW/Laborers
14.	Post insertion <ul style="list-style-type: none"> • Seated equipment • Walk-behind equipment (no seat and <50 HP) 	OE/Piledrivers Laborers
15.	Uncrating of metallic components of the racking system	Laborers
16.	Supporting steel, brackets, I-Beams, and other metallic components of the racking system between the post and module attachment	IW
17.	Cleanup of crating materials for the racking system	Laborers

ITEM	WORK ACTIVITY	ASSIGNMENT
18.	<p>Handling and installation of PV Modules:</p> <p>The staging area placement, inspection, uncrating, and physical installation of panels will be the work of the Laborers, including cleanup of crate materials.</p> <p>The installation of PV panels wiring is the work of the IBEW</p>	<p>Laborers</p> <p>IBEW</p>
19.	Electrical and communications wiring, cables and conduit below and above ground, AC and DC connections, wire trays, combiner boxes, tracking control boxes and other electrical equipment	IBEW
20.	Mounting and alignment of drive motors; pivot shaft	Millwright
21.	Handling and installation of inverter enclosures	IBEW/IW
22.	Industry standard electrical startup and commissioning	IBEW
23.	Buildings	BTs Plan Jurisdiction
24.	Water storage tanks and piping	Boilermaker/UA

Any other work assignments will be based on this table and traditional building trades jurisdiction.

LETTER AGREEMENT

June 20 2017

Tom Hansen
Business Manager
IBEW Local 302
1875 Arnold Drive
Martinez, CA 94553

Re: MCE Solar Projects

Dear Mr. Hansen:

This letter memorializes an Agreement between MCE and IBEW Local 302 (the "Union") (the "Agreement"). This Agreement pertains to all future solar projects by MCE located in Contra Costa County, California (the "Projects") subject to Board approval. MCE and the Union have the authority to enter into this agreement.

MCE has entered into this Agreement with the Union in consideration for its commitment to establish a Project-specific partnership with MCE that will ensure that the Union provides a requisite number of skilled workers represented by the Union to perform "Covered Work" as defined in this Agreement and to allow the Project to be constructed and completed on schedule in a high quality and cost effective manner.

No later than 60 days prior to the start of construction of each Project, the parties shall replace this letter agreement with a more detailed agreement in the form of the attached Project Labor Agreement for that Project ("PLA") to be signed by MCE's Engineering and Procurement and Construction Contractor ("EPC"), the Union and the other Unions shown on the PLA. MCE will also require its EPC to sign or cause its subcontractor to sign the attached side letter with IBEW Local 1245. IBEW Local 302 agrees not to make any written or verbal statements about MCE that are disparaging, untrue or inaccurate; Doing so will cause this agreement to be void.

MCE recognizes the Union as the sole and exclusive collective bargaining agent for its construction craft employees.

MCE


By: Dawn Weisz, CEO

Agreed:

IBEW Local 302


By: Tom Hansen, Business Manager

**PROJECT LABOR AGREEMENT
FOR THE
_____ SOLAR PROJECT**

CONTRA COSTA COUNTY, CALIFORNIA

ARTICLE 1

INITIAL PROVISIONS

1.1 This Project Labor Agreement (“Agreement”) is entered into by _____ (“Primary Employer”), Operating Engineers Local 3, Northern California Carpenters Regional Council, Northern California District Council of Laborers and its affiliated local unions, IBEW Local 302, and Ironworkers Local 378 who have executed this Agreement (the “Unions”).

1.2 The _____ Project (the “Project”) is an approximately _____ MW photovoltaic solar power plant and any associated electricity storage facilities located in Contra Costa County, California. The Project is either owned by MCE (“Owner”) or MCE is the Power Supply Offtaker (“Offtaker”). It is understood and agreed by and between the Parties to this Agreement that the final plans for the Project may be subject to modifications and approval by those public agencies possessing lawful approval authority over the Project and that this Agreement applies to the Project as it is finally approved by such entities and agencies and only to the Project.

1.3 Primary Employer is an employer primarily engaged in the construction industry and has the authority to enter into this agreement.

1.4 As provided below, all construction managers, contractors, subcontractors or other persons or entities assigning, awarding or subcontracting Covered Work (as defined in Article 2), or performing Covered Work, will be subject to this Agreement by executing Attachment A, the Agreement to be Bound (all of whom, including the Primary Employer, are individually and collectively referred to as “Employer” or “Employers”).

1.5 The Unions are labor organizations whose members are construction industry employees. The Unions are party to multi-employer collective bargaining agreements (“Master Agreement”) applicable to employers working within the geographic jurisdiction.

1.6 A large labor pool represented by the Unions will be required to execute the Covered Work involved in the Project. Employers wish and it is the purpose of this Agreement to ensure that a sufficient supply of skilled craft workers are available at the Project, that all construction work performed by the members of the Unions on this Project shall proceed continuously, without interruption, in a safe and efficient manner, economically with due consideration for the protection of labor standards, wages and working conditions. In furtherance of these purposes and to secure optimum productivity, harmonious relations between the parties and the orderly performance of the work, the parties to this Agreement agree to establish adequate and fair wage levels and working conditions.

1.7 In the interest of the future of the construction industry in the local area, of which the Unions are a vital part, and to maintain the most efficient and competitive posture possible, the Unions pledge to work and cooperate with the Primary Employer, Employers and with other construction employers engaged on the Project to produce the most efficient utilization of labor and equipment in accordance with this Agreement. In particular, the Unions shall make all efforts to first source local labor to the Project and shall cooperate with each Employer’s efforts to comply with all applicable laws and regulations related to such local hiring requirements.

1.8 The parties recognize the importance of solar power in assuring that California is provided with adequate supplies of renewable energy for economic growth, the creation of job opportunities and for a greater degree of energy independence. By entering into this Agreement, the parties recognize the unique nature of a solar photovoltaic power plant and that the terms and conditions covered by this Agreement are therefore unique. Accordingly, the parties have in good faith arrived at the special conditions contained in this Agreement, and the parties agree to work together jointly to support the Project and make it successful.

ARTICLE 2

SCOPE OF AGREEMENT

2.1 This Agreement covers all on-site construction, alteration, demolition or repair of buildings, structures, and other works which are part of the Project. All work covered by this Agreement is referred to as "Covered Work." This Agreement also covers work done in temporary yards or facilities adjacent to or near the Project that is otherwise Covered Work.

2.2 The following are specifically excluded from the definition of Covered Work:

2.2.1 Any work performed on or near the Project site by federal, state, county, city or other governmental bodies and/or agencies or their contractors or work performed by utilities or their contractors.

2.2.2 Work performed by supervisors not covered by a collective bargaining agreement, technical or non-manual employees including but not limited to executives, office and clerical personnel, drafters, staff engineers, technical advisors, vendor quality control representatives, logistic and materials support, timekeepers, messengers, or any other employees above the classification of general foreman who perform administrative/clerical functions.

2.2.3 Operations and maintenance work.

2.3 Purchase of any manufactured item produced in a genuine manufacturing facility for the supply of products is not Covered Work and shall not be considered subcontracting under Article 3 below. Any offsite fabrication, kitting, preparation or other assembly of components for the Project is Covered Work and shall be performed on site. For the convenience of the Employer, such work may be performed offsite if performed in accordance with the union standards for the applicable Union established by this Agreement. Covered Work does not include creating inverter skids, if they are created, built, or assembled in a genuine manufacturing facility. Any manufacturer owned in whole or in part, or with any ownership or control relationship with a general contractor or electrical contractor shall not be recognized as a genuine manufacturer.

ARTICLE 3

SUBCONTRACTING

3.1 Primary Employer and each other Employer agree that they will contract for the assignment, awarding or subcontracting of Covered Work, or authorize another party to assign, award or subcontract Covered Work, only to a person, firm, corporation or other entity that, at

the time the contract is executed, has become a party to this Agreement by executing Attachment A, the Agreement to be Bound.

3.2 Primary Employer and each other Employer agree that they will subcontract Covered Work only to a person, firm, corporation or other entity who is or becomes a party to this Agreement, who is primarily a C-10 electrical contractor (for IBEW Covered Work), and who is or becomes signatory to the Master Agreement or, in the case of a national contractor, a national agreement with the applicable Union. Before being authorized to perform any Covered Work, Employers (other than Primary Employer) shall become a party to this Agreement by signing Attachment A, the Agreement to be Bound and the applicable Master Agreement. Every Employer shall notify the Union in writing within five business days after it has subcontracted work, and shall at the same time provide to the Union a copy of the executed Agreement to be Bound. Any Employer not already bound to the Master Agreement, who signs and becomes bound to such agreement to participate on this Project, shall not be required to apply the terms of that Master Agreement to any other construction project for which such Employer is already engaged contractually, but shall only be required to apply such agreement to this Project and future projects which it undertakes and which are in the scope of work covered by that Master Agreement.

3.3 Nothing in this Agreement shall in any manner whatsoever limit the rights of the Primary Employer and every other Employer, to subcontract Covered Work or to select its contractors or subcontractors; provided, however, that all Employers, at all tiers, assigning, awarding, contracting or performing, or authorizing another to assign, award, contract or perform Covered Work shall be required to comply with the provisions of this Agreement. Primary Employer and every other Employer shall notify each of its contractors and subcontractors of the provisions of this Agreement and require as a condition precedent to the assigning, awarding or subcontracting of any Covered Work or allowing any subcontracted Covered Work to be performed, that all such contractors and subcontractors at all tiers become signatory to this Agreement, and the applicable Master Agreement or national agreement as provided in Section 3.2 above. Any Employer that fails to provide the Union with a copy of the Agreement to be Bound executed by its contractor or subcontractor shall be liable for any failure of that contractor or subcontractor, or any contractor or subcontractor at a lower tier, to comply with the provisions of this Agreement, including any contributions to any trust funds that the contractor or subcontractor, or any subcontractor to that subcontractor, fails to make.

ARTICLE 4

WAGES AND BENEFITS

4.1 All employees performing Covered Work and covered by this Agreement (including foremen and general foremen if they are covered by the Master Agreement) shall be classified and paid wages and benefits, and contributions made on their behalf to multi-employer trust funds, all in accordance with the applicable Union's then current multi-employer Master Agreement.

4.2 Employees performing Covered Work in the IBEW CW classification shall receive wages and benefits as specified in the most current wage sheet for that classification.

ARTICLE 5

UNION RECOGNITION AND REFERRAL

5.1 The Employers recognize the Unions signatory to this Agreement as the sole and exclusive collective bargaining agent for their construction craft employees performing Covered Work for the Project, and further recognize the traditional and customary craft jurisdiction of the Unions.

5.2 All employees performing Covered Work shall be or shall become and then remain members in good standing of the applicable Union as a condition of employment on or before the eighth (8th) day of employment, or the eighth (8th) day following the execution of this Agreement, whichever is later.

5.3 The Unions shall be the source of all craft employees for Covered Work for the Project. Employers agree to be bound by the hiring practices of the Unions, including hiring of apprentices, and to utilize its registration facilities and referral systems.

5.4 The Unions shall exert their utmost efforts, including requesting assistance from other local unions, to recruit a sufficient number of skilled craftsmen to fulfill the manpower requirements of the Employers. In the event the referral facilities maintained by the Union does not refer the employees as requested by the Employer within a forty-eight (48) hour period after such requisition is made by the Employer (Saturdays, Sundays and holidays excepted), the Employer may employ applicants from any source, but shall arrange for a dispatch to be issued for those applicants from the Union within forty-eight (48) hours of the commencement of employment, and the dispatch shall upon request be issued by the Union to the employee. Employer will notify the Union of such gate-hires.

5.5 Each Union shall have the right to designate a working journeyman as a working steward. The steward shall be a qualified employee performing the work of that craft and shall not exercise any supervisory functions. The steward shall be concerned with the employees of the steward's Employer and not with the employees of any other Employer. A steward shall be allowed sufficient time to perform his/her duties.

ARTICLE 6

WORK STOPPAGES AND LOCKOUTS

6.1 During the term of this Agreement, there shall be no strikes, sympathy strikes, picketing, work stoppages, slow downs, handbilling where the handbilling relates to the Project or to the Owner, Employer, or other Employer working or providing work on the Project, or interference with the work or other disruptive activity of any kind at the Project site for any reason by the Union, its agents, representatives, or by any employee, and there shall be no lockout by any Employer. Failure of either a Union or an employee to cross any picket line established at the Employer's project site is a violation of this Article.

6.2 The Unions shall not sanction, aid or abet, encourage, condone or participate in or continue any work stoppage, delay, strike, picketing or any other disruptive activity at the Project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in

or encourages any activities which interfere with the normal operation of the Project or which violate this Article, shall be subject to disciplinary action, including discharge, and, if justifiably discharged for the above reasons, shall not be eligible for rehire or further work on the Project.

6.3 A Union shall not be liable for acts of employees that it does not represent. With respect to employees the Union does represent, the principal officer or officers of the Union will immediately instruct, and order and use the best efforts of his office to cause such employees to cease any violations of this Article. A Union complying with this obligation shall not be liable for any unauthorized acts of the employees it represents. The failure of the Employer to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

6.4 The Unions agree that if any union or any other persons, whether parties to this Agreement or otherwise, engage in any picketing or work stoppages, the signatory Unions shall consider such work stoppage or picketing to be illegal and refuse to honor such picket line or work stoppage.

6.5 In the event of any work stoppage, strike, sympathy strike, picketing, handbilling or interference with the work or any other disruptive activity at the Project site in violation of this Article, the Primary Employer may suspend all or any portion of the Project work affected by such activity at the Primary Employer's discretion and without penalty.

6.6 In lieu of, or in addition to, any other action at law or equity, any party may institute the following procedure when a breach of this Article is alleged, after the Union has been notified of the fact, understanding that the grieving party has the discretion to opt for resolution of any dispute under this Article or through Article 8 instead.

6.6.1 The party invoking this procedure shall notify Thomas Pagan, Norman Brand or Joe Grodin, who the parties to this agreement agree shall be the permanent Arbitrators under this procedure. In the event that any of the permanent Arbitrators is unavailable at any time, the American Arbitration Association shall select an alternative arbitrator within twenty-four (24) hours of notice. Notice to the Arbitrator shall be by the most expeditious means available, with notice by fax or electronic means or any other effective written means to the party alleged to be in violation and the Union.

6.6.2 Upon receipt of said notice, the Arbitrator selected above shall set and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists or is threatened to resume.

6.6.3 The Arbitrator shall notify the parties by fax or electronic means or any other effective written means of the place and time he has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.

6.6.4 The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The Award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The Arbitrator may order cessation of the violation of this Article by the Union, and such Award shall be served on all parties by hand or registered mail or by

electronic mail upon issuance. The Union accepts service pursuant to any of the foregoing means of notice and expressly waives notice by more formal means.

6.6.5 Such Award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. The fax or electronic notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's Award as issued under Section 6.6.4 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the Arbitrator's Award shall be served on all parties by hand or by delivery to their last known address or by registered mail or by electronic mail. All parties waive the right to require the issuance of a bond or other security for issuance of an injunction or an appeal to a refusal to issue one under this Article.

6.6.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance therewith are hereby waived by the parties to whom they accrue.

6.6.7 The fees and expenses of the Arbitrator shall be borne by the party or parties found in violation, or in the event no violation is found, such fees and expenses shall be borne by the moving party.

6.6.8 If the Arbitrator determines that a violation has occurred in accordance with Section 6.6.4 above, the party or parties found to be in violation shall pay as liquidated damages the following amounts: for the first shift in which the violation occurred, \$10,000; for the second shift, \$15,000; for the third shift, \$20,000; for each shift thereafter on which the craft has not returned to work, \$20,000 per shift. The Arbitrator shall retain jurisdiction to determine compliance with this section and this Article.

6.7 The procedures contained in this Article shall be applicable to alleged violations of this Article. Disputes alleging violation of any other provision of this Agreement, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved under the grievance procedures of Article 8.

6.8 Notwithstanding the provisions of Section 6.1 above, it is agreed that with forty eight (48) hours prior written notice to the Primary Employer, the Union retains the right to withhold the services of its members from a particular contractor or subcontractor who fails with respect to work on the Project to make timely payments to the Union's benefit plans or to pay timely its weekly payroll in accordance with its agreements with the Union; provided, however, that in the event the Union or any of its members withhold their services from such contractor or subcontractor, Primary Employer shall have the right to replace such contractor or subcontractor with any other contractor or subcontractor who executes the Agreement to be Bound.

6.9 In the event that the Master Agreement of a Union expires and the parties to that agreement fail to reach agreement on a new contract by the date of expiration, the Union shall continue to provide employees to the Employers working on the Project under all the terms of the expired agreement until a new agreement is negotiated, at which time all terms and conditions of that new agreement shall be applied to Covered Work at the Project, except to the extent they conflict with any provision of this Agreement. In addition, if the new Master

Agreement provides for wage or benefit increases, then any Employer shall pay to its employees who performed Covered Work at the Project during the hiatus between the effective dates of such labor agreements, an amount equal to any such wage and benefit increases established by the new labor agreement applicable to such work performed during the hiatus.

ARTICLE 7

WORK RULES, HOLIDAYS

7.1 The standard work day shall consist of eight (8) hours of work between 6:00 a.m. and 5:30 p.m. with one-half hour designated as an unpaid period for lunch. The standard work week shall be five (5) consecutive days starting on Monday. Nothing herein shall be construed as guaranteeing any employee eight (8) hours of work per day or forty (40) hours of work per week.

7.2 Handling and installation of PV modules will be primarily performed by employees in the IBEW CW classification. There shall be at least one journeyman and one apprentice for each four CWs.

7.3 There shall be at least one journeyman for each apprentice for IBEW Covered Work other than PV module handling and installation.

7.4 Employers may utilize Ironworker apprentices for all Ironworker Covered Work, provided that there shall be at least one journeyman for each one apprentice.

7.5 It will not be considered a violation of this Agreement when the Primary Employer or any Employer considers it necessary to shut down to avoid loss of human life because of an emergency situation that could endanger life or safety. In such cases, employees will be compensated only for the actual time worked. In case of a situation described above whereby the Primary Employer or any Employer requests employees to wait in a designated area available for work the employees will be compensated for the waiting time.

7.6 Recognized holidays shall be as follows: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving and Christmas Day. Under no circumstances shall any work be performed on Labor Day except in cases of emergency involving life or property. In the event a holiday falls on Saturday, the previous day, Friday, shall be observed as such holiday. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. There shall be no paid holidays. If employees are required to work on a holiday, they shall receive the appropriate rate as provided in the Master Agreement not to exceed double the straight time rate of pay.

ARTICLE 8

GRIEVANCE PROCEDURE

8.1 It is mutually agreed that any question arising out of and during the term of this Agreement involving its interpretation and application (other than successorship) shall be considered a grievance. Questions between or among parties signatory to the Master Agreement arising out of or involving the interpretation of the Master Agreement shall be resolved under the grievance procedure provided in the Master Agreement.

8.2 The Primary Employer and other Employers, as well as a Union, may bring forth grievances under this Article.

8.3 A grievance shall be considered null and void if not brought to the attention of the Employer(s) within five (5) working days after the incident that initiated the alleged grievance occurred or reasonably should have been discovered, whichever is later. The term "working days" as used in this Article shall exclude Saturdays, Sundays or holidays regardless of whether any work is actually performed on such days.

8.4 Grievances shall be settled according to the following procedure (provided that grievances that do not involve an individual grievant or grievants shall be discussed by Primary Employer and the Union, and then, if not resolved within five (5) working days of written notice unless extended by mutual consent, shall commence at Step 2):

Step 1

The Steward and the grievant shall attempt to resolve the grievance with the craft supervisor within five (5) working days after the Grievance has been brought to the attention of the Employer.

Step 2

In the event the matter remains unresolved in Step 1 above after five (5) working days, within five (5) working days thereafter, the alleged grievance may be referred in writing to the Business Manager of the Union or his designee and the site construction manager or Labor Relations representative of the Employer(s) for discussion and resolution. A copy of the written grievance shall also be mailed, faxed or emailed to the Primary Employer.

Step 3

In the event the matter remains unresolved in Step 2 above within five (5) working days, within five (5) working days thereafter, the grievance may be referred in writing to the Business Manager of the Union or his designee and the Manager of Labor Relations of the Employer(s) or the Manager's designated representative and the Primary Employer for discussion and resolution.

Step 4

If the grievance is not settled in Step 3 within five (5) working days, within five (5) days thereafter, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. The request for arbitration and/or the request for an extension of time must be in writing with a copy to the Primary Employer. Should the parties be unable to mutually agree on the selection of an Arbitrator, selection for that given arbitration shall be made by seeking a list of seven (7) labor arbitrators with construction experience from the Federal Mediation and Conciliation Service and alternately striking names from the list of names on the list until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall alternate between the party bringing forth the grievance and the party defending the grievance.

8.5 The Arbitrator shall conduct a hearing at which the parties to the grievance shall be entitled to present testimonial and documentary evidence. Hearings will be transcribed by a certified court reporter. The parties shall be entitled to file written briefs after the close of the hearing and receipt of the transcript.

8.6 Upon expiration of the time for the parties to file briefs, the Arbitrator shall issue a written decision that will be served on all parties and on the Primary Employer. The Arbitrator shall have the authority to utilize any equitable or legal remedy to prevent and/or cure any breach or threatened breach of this Agreement. The Arbitrator's decision shall be final and binding as to all parties signatory to this Agreement.

8.7 The cost of the Arbitrator and the court reporter, and any cost to pay for facilities for the hearing, shall be borne equally by the parties to the grievance. All other costs and expenses in connection with the grievance hearing shall be borne by the party who incurs them.

8.8 The Arbitrator's decision shall be confined to the issue(s) posed by the grievance and the Arbitrator shall not have the authority to modify, amend, alter, add to or subtract from any provision of this Agreement.

8.9 Any party to a grievance may invite the Primary Employer to participate in resolution of a grievance. The Primary Employer may, at its own initiative, participate in Steps 1 through 3 of the grievance procedure.

8.10 In determining whether the time limits of Steps 2 through 4 of the grievance procedure have been met, a written referral or request shall be considered timely if it is personally delivered, sent by overnight mail, electronic mail, or faxed within the five (5) working day period. Any of the time periods set forth in this Article may be extended in writing by mutual consent of the parties to the grievance. Failure to process a grievance, or failure to respond in writing within the time limits provided above, without a request for an extension of time, shall be deemed a waiver of such grievance to the other without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances.

8.11 In order to encourage the resolution of disputes and grievances, the parties agree that settlements shall not be precedent setting.

ARTICLE 9

WORK JURISDICTION AND PRE-JOB MEETINGS

9.1 All Covered Work will be assigned to the appropriate Union as identified in Attachment B.

9.2 Prior to the commencement of work at the site of construction the Primary Employer shall hold a Pre-Job Conference with the Unions for the purpose of discussing the scope, schedule, manpower requirements, and jurisdictional work assignments. A Pre-Job Conference will be held prior to the commencement of work to establish the scope of work in each contractor's contract.

9.3 In the event of any jurisdictional or similar dispute concerning the Employer's assignment of work on this Project, the Employer and the Unions agree to cooperate to attempt to resolve such dispute expeditiously and efficiently; however, nothing in this Section shall require the Unions to agree to any modification of this Agreement. This Article (including Attachment B), rather than any jurisdictional dispute resolution procedure in a Union's Master Agreement, shall apply to jurisdictional disputes involving the assignment of work on this Project to a Union.

ARTICLE 10

GENERAL WORKING CONDITIONS

10.1 The selection of craft foremen and/or general foremen shall be entirely the responsibility of the Employer, it being understood that in the selection of such foremen and/or general foremen the Employer will give primary consideration to the qualified individuals referred to the Employer who are available in the local area. After giving such consideration, the Employer may select such individuals from other areas. All foremen shall take orders from the designated Employer representatives.

10.2 There shall be no limit on production by employees or restrictions on the full use of tools or equipment. Employees using tools shall perform any of the work of the trade and shall work under the direction of the craft foremen. There shall be no restrictions on efficient use of manpower other than as may be required by safety regulations.

10.3 The Primary Employer shall establish and employees shall observe such reasonable project job site work rules as the Employer deems appropriate. These rules will be reviewed and discussed at the Pre-Job conference, distributed to all employees, posted at the project site by the Primary Employer, and may be amended thereafter as necessary.

ARTICLE 11

MANAGEMENT RIGHTS

11.1 The Primary Employer and Employers retain and shall exercise full and exclusive authority and responsibility for the management of their respective operations and work forces, except as expressly limited by the terms of this Agreement or the Master Agreement. This

authority includes, but is not limited to, the rights retained by Employers under the Master Agreement and the rights to:

11.1.1 Plan, direct and control the operation of all the work.

11.1.2 Decide the number and type of employees required for the work.

11.1.3 Hire, promote and lay off employees as deemed appropriate to meet work requirements and/or skills required, and to select and hire directly all supervisory personnel above the classification of general foreman it considers necessary and desirable, without such persons being referred by the Union.

11.1.4 Discharge, suspend or discipline employees in accordance with the applicable Master Agreement.

11.1.5 Require all employees to observe the Primary Employer's, Employers' and Owners' reasonable Project Rules, Security, Environmental and Safety Regulations, consistent with the provisions of this Agreement. These Project Work Rules and Regulations shall be supplied to the Union, to all employees and posted on the job site.

11.1.6 Determine the work methods and procedures

11.1.7 Determine the competency of all employees.

11.1.8 Assign and schedule work at its sole discretion and determine when overtime will be worked. There shall be no refusal by any Union to perform work, including overtime work, assigned. Such cases shall be subject to the grievance procedure.

11.1.9 Utilize any safe work methods, procedures or techniques and select and use any type or kind of materials, apparatus or equipment regardless of source, manufacturer or designer.

11.1.10 Purchase materials or equipment from any source it deems appropriate.

11.1.1 The foregoing listing of management rights shall not be deemed to exclude other functions not specifically set forth herein. The Employers, therefore, retain all legal rights not specifically given up in this Agreement.

ARTICLE 12

SUCCESSORSHIP AND SURVIVABILITY

12.1 The subcontracting obligations described in Article 3 are independent obligations of Primary Employer which shall survive any full or partial termination of Primary Employer's involvement in the Project for any reason, including, without limitation: (i) any full or partial termination or transfer of Primary Employer's right to control and coordinate construction work on the Project; (ii) any full or partial termination or transfer of a contract, if any, between Primary Employer and any Owner for any Covered Work; (iii) the transfer of all or any portion of the Project or any interest in the Project by any Project Owner; or (iv) any other event that results in the replacement of Primary Employer with another contractor.

12.2 The parties agree that: (i) if Primary Employer's involvement in the Project is terminated as described in Section 12.1, and (ii) Covered Work is performed by a contractor or subcontractor that is not in compliance with the provisions of Article 3, then Primary Employer shall pay liquidated damages, as described in Section 12.3, to compensate for the actual damages caused by reason thereof. The parties agree that such damages would be unreasonably difficult, costly, inconvenient or impracticable to calculate and, accordingly, they agree to liquidated damages which bear a reasonable relationship to the actual harm suffered by the Union and their members, as provided in Section 12.3 ("Liquidated Damages").

12.3 In the event that Liquidated Damages are owed as described in Section 12.2, Primary Employer shall pay an amount equal to the journeyman total compensation package of the applicable Union for each hour that work was performed on the Project within the scope of this Agreement by employees of contractors or subcontractors who are not signed to this Agreement. The Liquidated Damages shall be paid as follows: Half to the qualified pension plan and half to the qualified health and welfare plan of the Union having jurisdiction over the work performed by the contractor not signatory to this Agreement. The parties agree that the Unions shall enforce, collect and receive Liquidated Damages pursuant to Article 12 on behalf of its qualified pension plan and its qualified health and welfare plan. The qualified pension plans and the qualified health and welfare plans shall have no right to enforce independently the provisions of this Agreement, including, but not limited to, the Liquidated Damages provisions contained in Article 12.

12.4 Primary Employer shall be released from all obligations under this Agreement with respect to all or any portion of the Project, including liability for the payment of Liquidated Damages, and shall have no liability for any breach of this Agreement by a successor upon Primary Employer's receipt of a fully executed release by the Union. Such release shall not be withheld if, under all the circumstances, the Union, in the exercise of its reasonable judgment, determines that the successor has the financial means to complete the Project and to comply with the successor Primary Employer's obligations and undertakings under this Agreement, including any obligation to pay Liquidated Damages.

12.5 This Article shall be enforceable in any court of competent jurisdiction, and shall not be subject to the grievance procedure of Article 8.

ARTICLE 13

HELMETS TO HARDHATS

13.1 The Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans and members of the National Guard and Reserves who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment ("Center"), a joint Labor-Management Cooperation Trust Fund, established under the authority of Section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. Section 175(a), and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. Section 186(c)(9), and a charitable tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to

apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

13.2 The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans and members of the National Guard and Reserves interested in working on this Project and apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Union will give credit to such veterans and members of the National Guard and Reserves for bona fide, provable past experience.

13.3 In recognition of the work of the Center and the value it will bring to the Project, within thirty (30) days of the commencement of Covered Work, Primary Employer shall make a onetime contribution of \$1,000 to the Center on behalf of itself and all other Employers employing workers under the terms of this Agreement.

13.4 The Center shall function in accordance with, and as provided in the Agreement and Declaration of Trust creating the fund, and any amendments thereto, and any other of its governing documents. Primary Employer approves and consents to the appointment of the Trustees designated pursuant to the Trust Agreement establishing the Center and hereby adopts and agrees to be bound by the terms and provisions of the Trust Agreement.

ARTICLE 14

GENERAL PROVISIONS

14.1 If any article or provision of this Agreement shall become invalid, inoperative and/or unenforceable by operation of law or by declaration of any competent authority of the executive, legislative, judicial or administrative branches of the federal or state government, the parties shall suspend the operation of such article or provision during the period of its invalidity, and the Primary Employer and the Unions shall negotiate in its place and stead an article or provision that will satisfy the objections to its validity and that, to the greatest extent possible, will be in accord with the intent and purpose of the article or provision in question. The new article or provision negotiated by the Primary Employer and the Unions shall be binding on all parties signatory to this Agreement. At all times relevant the provisions of Article 6 will apply.

14.2 If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law, or by any of the above mentioned tribunals of competent jurisdiction, the remainder of the Agreement or application of such article or provision to persons or circumstances other than to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.

14.3 The provisions of this Agreement shall take precedence over conflicting provisions of the Master Agreement or any other local, area, regional, or national collective bargaining agreement

14.4 Except as enumerated in this Agreement, all other terms and conditions of employment described in the Master Agreement shall apply.

14.5 This Agreement may be amended or otherwise modified by mutual agreement in writing between Primary Employer and the Unions. Employers executing the Agreement to be

Bound acknowledge and accept all such amendments and modifications executed prior to their respective execution of the Agreement to be Bound.

14.6 Each person executing this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of the party or parties indicated.

14.7 This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any signature pages may be assembled to form a single original document.

ARTICLE 15

TERM OF AGREEMENT

15.1 The term of this Agreement shall commence on the date indicated below as the date of execution, and shall continue in effect until completion of all Covered Work pursuant to Article 2.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of _____, 2017.

Primary Employer

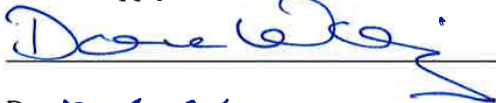
OPERATING ENGINEERS LOCAL 3

By: _____

By: Russ Burns, Business Manager

NORTHERN CALIFORNIA DISTRICT
COUNCIL OF LABORERS

Power Supply Offtaker



By: MCE, CEO

By: _____
Oscar De La Torre

NORTHERN CALIFORNIA CARPENTERS
REGIONAL COUNCIL

By: Bob Alvarado, Executive Officer

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 302**

By: Tom Hansen, Business Manager

IRONWORKERS LOCAL 378

By: Jeff McEuen, Business Manager

ATTACHMENT A
AGREEMENT TO BE BOUND

PROJECT LABOR AGREEMENT
_____ PROJECT

The undersigned hereby certifies and agrees that:

- 1.) It is an Employer as that term is defined in Section 1.4 of the _____ Project Labor Agreement (“Agreement”) because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work on the Project (as defined in Article 2 of the Agreement), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.
- 2.) In consideration of the award of such contract or subcontract, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.
- 3.) If it performs Covered Work, it will be bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.
- 4.) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.
- 5.) It will secure a duly executed Agreement to be Bound, in form identical to this document, from any Employer(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED: _____

Name of Employer

(Authorized Officer & Title)

(Address)

ATTACHMENT B
WORK ASSIGNMENTS

ITEM	WORK ACTIVITY	ASSIGNMENT
1.	Surveying	OE
2.	Soil testing, compaction testing	OE
3.	Grading, cranes, trenching machines, forklift work serving multiple crafts	OE
4.	Curbs and gutters	Carp/IW/Laborers
5.	Vegetation management and weed control	Laborers
6.	Chain link perimeter fencing	Laborers/OE
7.	Dust control	Laborers
8.	Landscaping and erosion control	Laborers
9.	Rigging for off-loading of large equipment or materials of multiple crafts	IW
10.	Excavation and backfilling of trenches by hand	Laborers
11.	Drinking water distribution	Laborers
12.	General site cleanup	Laborers
13.	Concrete foundations	Carp/IW/Laborers
14.	Post insertion <ul style="list-style-type: none"> • Seated equipment • Walk-behind equipment (no seat and <50 HP) 	OE/Piledrivers Laborers
15.	Uncrating of metallic components of the racking system	Laborers
16.	Supporting steel, brackets, I-Beams, and other metallic components of the racking system between the post and module attachment	IW
17.	Cleanup of crating materials for the racking system	Laborers
18.	Handling and installation of PV Modules: The staging area placement, inspection, uncrating, and physical installation of panels will be the work of the Laborers, including cleanup of crate materials. The installation of PV panels wiring is the work of the IBEW	Laborers IBEW

ITEM	WORK ACTIVITY	ASSIGNMENT
19.	Electrical and communications wiring, cables and conduit below and above ground, AC and DC connections, wire trays, combiner boxes, tracking control boxes and other electrical equipment	IBEW
20.	Mounting and alignment of drive motors; pivot shaft	Millwright
21.	Handling and installation of inverter enclosures	IBEW/IW
22.	Industry standard electrical startup and commissioning	IBEW
23.	Buildings	BTs Plan Jurisdiction
24.	Water storage tanks and piping	Boilermaker/UA

Any other work assignments will be based on this table and traditional building trades jurisdiction.



December 7, 2017

TO: MCE Technical Committee

FROM: David Potovsky, Power Supply Contracts Manager

RE: Resolution T2017-01 Approving Power Purchase Agreement with Sand Hill C, LLC (Agenda Item #07)

ATTACHMENTS: A. Proposed Resolution T2017-01 Approving Power Purchase Agreement between MCE and Sand Hill C, LLC
B. Proposed Power Purchase and Sale Agreement between MCE and Sand Hill C, LLC

Dear Technical Committee Members:

SUMMARY

As part of this year's procurement process for short term Portfolio Content Category 1 (PCC1) energy, staff received a "hybrid" offer from Sustainable Power Group (sPower) that included both short- and long-term renewable energy volumes. Both offers were compelling from a price and time of delivery perspective and were presented to the Ad Hoc Contracts Committee on September 21 and October 16, 2017. Given MCE's open positions, the Committee recommended moving forward with both transactions.

Under the draft agreements, the short-term volumes (2018-2019) would be contracted using a standard form EEI (Edison Electric Institute) Master Contract and Confirmation. The long-term offer for energy would be contracted using a standard Power Purchase Agreement (PPA).

The energy for the long-term offer would be sourced from an 80 MW wind project located in the Altamont Pass area of Alameda County, CA. This facility is currently in the development stage and is expected to achieve commercial operation by the end of 2020. The project is partially a repower of an existing wind facility; approximately 40% repower, 60% new build. New, more efficient technology will reduce wildlife impacts related to existing turbines. The project is being developed by Sand Hill C, LLC ("Sand Hill Wind"), a wholly-owned subsidiary of Salt Lake City and San Francisco-based sPower. MCE is currently contracted with sPower on the 105 MW Antelope Expansion 2 Solar Project as well as MCE Solar One, a 10.5 MW project located in Richmond.

After reviewing sPower's offer with MCE's Ad Hoc Contracts Committee, staff negotiated the attached draft PPA for the purchase of energy, capacity and renewable attributes from the Sand

Hill Wind project. The Sand Hill Wind project is particularly interesting to the Committee because of the competitive price and the technological diversity and delivery profile that wind resources add to MCE's renewable energy portfolio. Moreover, the Sand Hill Wind facility is located within Northern California, thereby providing the most valuable form of renewable energy, Portfolio Content Category 1. In addition, the nearby location would reduce the risk of congestion-related delivery impacts. Renewable energy volumes produced by the facility would complement MCE's existing renewable energy supply with output from a regionally-located generating project, and the timing of deliveries would fill annual net short positions identified in MCE's Integrated Resources Plan.

Additional information is provided below regarding sPower and the Sand Hill Wind PPA.

BACKGROUND

sPower (<http://www.spower.com>)

- U.S. based power generation and development company
- Wholly owned subsidiary of AES & AimCo
 - AES – Global 200 Power Co. \$14B in revenue
 - AIMCo – Canadian Institutional Investment Manager. \$100B in assets under management
- Developer, constructor, and operator of 1,300 MWs of utility-scale wind and solar generating facilities in North America
- \$2.5B of deployed renewable energy assets
- Headquartered in Salt Lake City, UT with offices in San Francisco and New York
- 100+ employees worldwide
- Customers include: MCE, Lancaster Choice Energy, City of Palo Alto, LADWP and SCAPA (Riverside, Azusa, Pasadena, Vernon & Colton)

CONTRACT OVERVIEW

Sand Hill C, LLC

- Project is partially a repower of an existing wind facility; approximately 40% repower, 60% new build. New, more efficient technology will reduce wildlife impacts related to existing turbines.
- Project: 80 MW of wind generation – capable of supplying the annual electric needs of approximately 44,000 MCE residential customers
- Project location: Altamont Pass, California (Alameda County)
- Project will utilize technologically proven ground mount wind technology
- Guaranteed commercial operation date: December 31, 2020
- Contract term: 20 years
- Delivery profile: as generated
- Expected annual energy production: an average of approximately 263,000 MWhs, including all capacity and environmental attributes associated therewith
- Energy price: fixed energy price applicable to each year of contract
- No credit/collateral obligations for MCE

REVIEW

The Sand Hill Wind project is a good fit for MCE's resource portfolio based on the following

considerations:

- The project supports MCE's future renewable energy requirements;
- Wind resources provide diversity to MCE's portfolio in both technology and delivery profile;
- Energy from the project is competitively priced;
- The project is located within Northern California and meets the highest value renewable portfolio standards category "PCC1"; and
- The project is being developed and operated by an experienced team.

RECOMMENDATION

Authorize, via Resolution T2017-01, execution of the Power Purchase and Sale Agreement between MCE and Sand Hill C, LLC for renewable energy supply.

RESOLUTION NO. T2017-01

**A RESOLUTION OF THE TECHNICAL COMMITTEE OF
MARIN CLEAN ENERGY APPROVING A POWER PURCHASE AGREEMENT
BETWEEN MARIN CLEAN ENERGY AND SAND HILL C, LLC**

WHEREAS, Marin Clean Energy (MCE) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

WHEREAS, MCE members include the following communities: the County of Marin, the County of Napa, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the Town of Corte Madera, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Mill Valley, the City of Napa, the City of Novato, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Walnut Creek, and the Town of Yountville; and The City of Concord, The Town of Danville, The City of Martinez, The Town of Moraga, The City of Oakley, The City of Pinole, The City of Pittsburg, The City of San Ramon and Unincorporated Contra Costa County; and

WHEREAS, the MCE Board of Directors delegated approval authority for power purchase agreements to the MCE Technical Committee at its meeting on May 19, 2016; and;

WHEREAS, MCE, via the 2016 Integrated Resource Plan, identified procurement policies and needs to meet future renewable energy requirements and solicited offers for long-term renewable energy commitments to meet said procurement needs;

WHEREAS, Sand Hill C, LLC submitted an offer that warranted inclusion in MCE staff's review with its Ad Hoc Contracts Committee;

WHEREAS, MCE's Ad Hoc Contracts Committee reviewed the offer submitted by Sand Hill C, LLC and directed MCE staff to further pursue a Power Purchase Agreement with Sand Hill C, LLC;

WHEREAS, MCE and Sand Hill C, LLC have jointly negotiated a mutually agreeable Power Purchase Agreement for 80 MW of long-term renewable energy, capacity, and associated attributes; and

WHEREAS, MCE and Sand Hill C, LLC now desire to enter into said Power Purchase Agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Technical Committee of MCE that the MCE Technical Committee authorizes execution of the Power Purchase and Sale Agreement between MCE and Sand Hill C, LLC for long-term renewable energy, capacity, and associated attributes.

PASSED AND ADOPTED at a regular meeting of the MCE Technical Committee on this 7th day of December 2017, by the following vote:

TECHNICAL COMMITTEE	AYES	NOES	ABSTAIN	ABSENT
Kate Sears, County of Marin				
Greg Lyman, City of El Cerrito				
Kevin Haroff, City of Larkspur				
Ford Greene, Town of San Anselmo				
Ray Withy, City of Sausalito				
Emmett O'Donnell, Town of Tiburon				
Scott Perkins, City of San Ramon				
Rob Schroder, City of Martinez				
Don Tatzin, City of Lafayette				

CHAIR, MCE TECHNICAL COMMITTEE

Attest:

SECRETARY, MCE

RENEWABLE POWER PURCHASE AGREEMENT**COVER SHEET****Seller:** Sand Hill C, LLC**Buyer:** Marin Clean Energy, a California joint powers authority**Description of Facility:** An 80 MW AC wind powered electric generating facility located in Alameda County, California.**Milestones:**

Milestone	Expected Date for Completion
Evidence of Site Control	Obtained
Documentation of Conditional Use Permit if required: CEQA [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [x]EIR	November 30, 2018
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	June 30, 2018
Executed Interconnection Agreement	November 30, 2018
Financial Close	September 30, 2019
Expected Construction Start Date	April 30, 2019
Initial Synchronization	December 15, 2019
Network Upgrades completed (evidenced by delivery of permission to parallel letter from the PTO)	December 15, 2019
Expected Commercial Operation Date	December 31, 2019

Delivery Term: Twenty (20) Contract Years**Expected Energy:**

Contract Year	Expected Energy (MWh)
1	241,000
2	263,000
3	263,000
4	263,000
5	263,000
6	263,000
7	263,000
8	263,000
9	263,000
10	263,000
11	263,000
12	263,000
13	263,000
14	263,000
15	263,000
16	263,000
17	263,000
18	263,000
19	263,000
20	263,000

Contract Price

The Contract Price of the Product shall be:

Contract Year	Contract Price
1 – 20	[REDACTED] MWh (flat, with no escalation)

Product

- Energy
- Green Attributes (if Renewable Energy Credit, please check the applicable box below):
 - Portfolio Content Category 1
 - Portfolio Content Category 2
 - Portfolio Content Category 3
- Capacity Attributes (select options below as applicable)
 - Energy Only Status
 - Full Capacity Deliverability Status and Expected FCDS Date: December 31, 2022

Scheduling Coordinator: Buyer

Security, Damage Payment, and Guarantor

Development Security: [REDACTED]

Performance Security: [REDACTED]

Damage Payment: [REDACTED]

Guarantor: _____ (if applicable)

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Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Installed Capacity Certificate
Exhibit J	Form of Construction Start Certificate
Exhibit K	Buyer Bid Curtailment and Buyer Curtailment Orders
Exhibit L	Form of Letter of Credit
Exhibit M	Form of Guaranty
Exhibit N	Form of Replacement RA Notice
Exhibit O	Notices

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of _____ (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility;
and

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12.

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

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

“**After-Tax Basis Factor**” means a percentage (greater than 100%) in an amount such that when a payment amount is multiplied by such percentage, the resulting grossed-up payment, after deduction of the amount of all taxes required to be paid by the recipient of such payment in respect of the receipt or accrual of the grossed-up payment equals the amount of the payment prior to gross-up (assuming for this purpose that the recipient of such payment is subject to federal income taxation at the then highest marginal federal income tax rate applicable to U.S. corporations (excluding subchapter S corporations), as in effect from time to time for the applicable period and subject to state and local taxation at the then highest marginal California state and local income

tax or franchise tax rate applicable to corporations generally, taking into account the deductibility of state income taxes from federal income taxes to the extent allowable under applicable Law).

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

“**Availability Incentive Payments**” has the meaning set forth in the CAISO Tariff.

“**Available Capacity**” means the capacity from the Facility, expressed in whole MWs, that is available to generate Energy.

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

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

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

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

“**Buyer Bid Curtailment**” means the occurrence of all of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to produce less Energy from the Facility than forecasted to be produced from the Facility for a period of time;

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

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

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

(iii) submitted a Self-Schedule for less than the full amount of Energy forecasted to be produced from the Facility; and

(c) if the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the Buyer Bid Curtailment shall not include any Energy that was not generated due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce generation from the 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.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order or a (c) Buyer Default, and no other circumstances exist that constitute a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period. The duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up, not to exceed the Ramp Rate designated in Exhibit K.

“Buyer Default” means a failure by Buyer (or its agents, including its agents performing Scheduling functions) to perform its obligations hereunder, and includes an Event of Default of Buyer.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.8(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 Energy produced by the Facility net of Electrical Losses and Station Use.

“CAISO Charges Invoice” has the meaning set forth in Section 4.3(d).

“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), and X-1 2 (2011), 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 CAISO Grid 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.

“**CEC**” means the California Energy Commission or its successor agency.

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to periods before the date that is ninety (90) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

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

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

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

Furthermore, it shall not be a “Change of Control” as a result of transfers of any economic and voting interests to a YieldCo or a subsidiary of a YieldCo that is owned by the YieldCo and Affiliates of sPower and other Persons that have transferred projects to such subsidiary of the YieldCo.

“**Collateral Assignment Agreement**” has the meaning set forth in Section 14.2.

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

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

“**Commercial Operation Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) sixty (60).

“**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.

“**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.

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

“**CPUC**” means the California Public Utilities Commission, or successor entity.

“**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.

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

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Energy from the Facility 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 or distribution operator (if interconnected to distribution or sub-transmission system) 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 Energy to the Delivery Point; or

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

provided, however, that Curtailment Order shall not include any Buyer Bid Curtailment or Buyer Curtailment Order.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order.

"Daily Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) sixty (60).

"Damage Payment" means the dollar amount set forth on the Cover Sheet.

"Day-Ahead Forecast" has the meaning set forth in Section 4.4(c).

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

"Deemed Delivered Energy" means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Metered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available (and no other reasonably accurate VER forecast is available), the result of the equation reasonably calculated and provided by Seller to reflect the potential generation of the Facility as a function of Available Capacity and wind speed and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of Metered Energy delivered to the Delivery Point during the Buyer Curtailment Period (or other relevant period); *provided that*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

"Deemed Delivered Energy Price" means the sum of the following expressed in \$/MWh: (1) the Contract Price plus (2) the product obtained by multiplying (X) by (Y), where (X) is the Then-Applicable Production Tax Credit and (Y) equals the After-Tax Basis Factor.

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

“**Deficient Month**” has the meaning set forth in Section 4.8(e).

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

“**Delivery Term**” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

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

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

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

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

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

“**Effective FCDS Date**” means the date identified in Seller’s Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

“**EIRP Forecast**” means the final forecast of the Energy to be produced by the Facility prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol.

“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point.

“**Eligible Intermittent Resource Protocol**” or “**EIRP**” has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

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

“**Energy**” means electrical energy, measured in MWh.

“**Energy Supply Bid**” has the meaning defined in the CAISO Tariff.

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

“**Expected Commercial Operation Date**” has the meaning set forth on the Cover Sheet.

“**Expected Construction Start Date**” has the meaning set forth on the Cover Sheet.

“**Expected Energy**” means the quantity of Energy (with associated Product) that Seller expects to be able to deliver to Buyer during each Contract Year in the quantity specified on the Cover Sheet.

“**Expected FCDS Date**” means the date set forth in the deliverability Section of the Cover Sheet, which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

“**Facility**” means the energy generating facility described on the Cover Sheet and in Exhibit A.

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

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

“**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 or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

“**Forecasting Penalty**” has the meaning set forth in Section 4.4(e).

“**Forward Certificate Transfers**” has the meaning set forth in Section 4.8(a).

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

“**Full Capacity Deliverability Status Finding**” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“**Future Environmental Attributes**” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction

credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

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

“**Governmental Authority**” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, 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 (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy generated by the Facility. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

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

“**Guaranteed Capacity**” has the meaning set forth in Exhibit A.

“**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 Energy Production**” has the meaning set forth in Section 4.7.

“**Guarantor**” means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“**Guaranty**” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit M, or as reasonably acceptable to Buyer.

“**Imbalance Energy**” means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Metered Energy deviates from the amount of Scheduled Energy.

“**Indemnified Party**” has the meaning set forth in Section 16.1.

“**Indemnifying Party**” has the meaning set forth in Section 16.1.

“**Initial Synchronization**” means the initial delivery of Energy from the Facility to the Delivery Point.

“**Installed Capacity**” means the actual generating capacity of the Facility at the Delivery Point, adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

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

“**Inter-SC Trade**” has the meaning set forth in CAISO Tariff.

“**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 Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in order to meet the terms and conditions of this Agreement.

“**Interest Rate**” has the meaning set forth in Section 8.2.

“**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 December 19, 2008, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“**Law**” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

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

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least BBB+ with an outlook designation of “stable” from S&P or Baa1 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit L.

“**Local Capacity Area Resources**” has the meaning set forth in the CAISO Tariff.

“**Locational Marginal Price**” or “**LMP**” has the meaning set forth in 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 for delivery to the Delivery Point, 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 Exhibit G.

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

“**Metered Energy**” means the Energy generated by the Facility expressed in MWh, as recorded by the CAISO Approved Meter(s) and net of all Electrical Losses and Station Use.

“**Meter Service Agreement**” means an applicable meter service agreement.

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

“**Monthly Delivery Forecast**” has the meaning set forth in Section 4.4(b).

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**Multiplier**” has the meaning set forth in Section 3.8(b).

“**MW**” means megawatts measured in alternating current.

“**MWh**” means megawatt-hour measured in alternating current.

“**Negative LMP**” means, in any Settlement Interval, the LMP at the Facility’s PNode is less than Zero dollars (\$0).

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

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

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

“**Non-Availability Charges**” has the meaning set forth in the CAISO Tariff.

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

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

“**NERC Generator Owner/Generator Operator Requirements**” means the applicable requirements issued by the North American Electric Reliability Corporation.

“**Participating Generator Agreement**” means an applicable participating generator agreement.

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

“**Party**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” has the meaning set forth in Section 4.7.

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

“**Permitted Transferee**” means an entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) as set forth in its most recent audited financial statements or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

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

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

“**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 Content Category 2**” or “**PCC2**” 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)(2), as may be amended from time to time or as further defined or supplemented by Law.

“**Portfolio Content Category 3**” or “**PCC3**” 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)(3), as may be amended from time to time or as further defined or supplemented by Law.

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

“**Production Tax Credit**” or “**PTC**” means the tax credits applicable to electricity produced from certain renewable resources pursuant to Section 45 of the Internal Revenue Code of 1986 (as such may be amended, supplemented or replaced (in whole or in part) from time to time), measured in US dollars per megawatt-hour (USD \$/MWh); provided, that as used in this Agreement, the term Production Tax Credit is expressly limited to the Production Tax Credit available to the Facility for the first ten years after being placed in service, and shall not include any Production Tax Credits (however described) that the Facility may become eligible for at a later date, such as in connection with a later repowering of the Facility.

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

“**Prudent Operating Practice**” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

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

“**ORE**” means qualified reporting entity under the applicable WREGIS rules.

“**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 December 31, 2022.

“**RA Shortfall Month**” means, if the Effective FCDS Date has not occurred on or before the RA Guarantee Date, the applicable calendar month within the RA Shortfall Period for purposes of calculating an RA Deficiency Amount under Section 3.8(b).

“**RA Shortfall Period**” means the period of consecutive calendar months that starts with the calendar month in which the RA Guarantee Date occurs and concludes on the earlier of (i) the

second calendar month following the calendar month in which the Effective FCDS Date occurs and (ii) the end of the Delivery Term.

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

“**Receiving Party**” has the meaning in Section 18.2.

“**Remedial Action Plan**” has the meaning 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 a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

“**Replacement RA**” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within NP 15 TAC Area and described as a Local Capacity Area Resource.

“**Resource Adequacy Benefits**” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“**Resource Data Template**” has the meaning set forth in the CAISO Tariff.

“**S&P**” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

“**SC Set-Up Fee**” has the meaning set forth in Section 4.3.

“**Schedule**” means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified Delivery Point.

“**Scheduled Energy**” means the Energy included in the Schedule awarded in the applicable CAISO market (which, as of the Effective Date, the Parties intend to be the Day-Ahead Market) and developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

“**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 4.8(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, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Form of Construction Start Date Certificate in Exhibit J to Buyer, provided that Seller may not modify the Delivery Point established in Exhibit A as of the Effective Date without the consent of Buyer.

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

“**sPower**” means Sustainable Power Group, LLC, a Delaware limited liability company.

“**Station Use**” means:

(a) The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced by the Facility that is consumed within the Facility's electric energy distribution system as losses.

"System Emergency" means any condition that: (a) 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, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

"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.

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

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

"Test Energy" means the Metered Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

"Then-Applicable Production Tax Credit" means, in any applicable Contract Year, the Production Tax Credit applicable to the Facility as adjusted (to the extent allowable under applicable Law) for the Production Tax Credit inflation adjustment factor most recently published by notice in the Federal Register. The Then-Applicable Production Tax Credit utilized for any given invoice will be determined in accordance with the previous sentence on the last day of the calendar month covered by such invoice.

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

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

"Ultimate Parent" means FTP Power, LLC, a Delaware limited liability company.

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

“**USFWS**” has the meaning set forth in Section 2.1(b).

“**USFWS Event**” has the meaning set forth in Section 2.1(b).

“**WECC**” means the Western Electricity Coordinating Council or its successor.

“**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 4.8(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 July 15, 2013, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

“**YieldCo**” means an entity (a) in which (i) at least a majority of the voting equity securities are owned, directly or indirectly, by sPower, or (ii) sPower directly or indirectly maintains the right to appoint a majority of the board of directors or similar governing body of such entity (or where the general partner is a wholly owned subsidiary of sPower and other investors are the limited partners), (b) that has issued, or has publicly announced an intention to issue, equity to the public in a registered securities offering, (c) that intends to distribute a significant portion of its cash flows from owned, operating assets to its investors, and (d) that has acquired or intends to acquire, among other assets, projects owned by sPower and its Affiliates.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression "and/or" when used as a conjunction shall connote "any or all of";

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

1.3 **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.

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**”).

(b) Notwithstanding any other provision in this Agreement, upon the occurrence of a USFWS Event, Seller shall have the right until October 1, 2018 to either (i) extend each of the Milestones by nine (9) months and relocate the Site (but not the Delivery Point) of the Facility or (ii) terminate this Agreement; provided that if Seller terminates this Agreement pursuant to this provision, Buyer shall be entitled to retain as liquidated damages a payment in the amount of [REDACTED] and shall return the remainder of Seller’s Development Security in accordance with Section 8.7. “**USFWS Event**” means either (A) Seller has determined in good faith (based on a review of relevant studies and data available to Seller, including information provided by the U.S. Fish and Wildlife Service (“**USFWS**”)) that the Facility’s average annual eagle take may reasonably be expected to exceed thirteen (13) birds, or (B) USFWS has communicated to Seller for the first time after the Effective Date that the Facility is likely to result in a level of eagle take that exceeds levels for which USFWS is willing to grant an applicable Facility permit.

(c) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 **Conditions Precedent.** The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer a completion certificate from a licensed professional engineer substantially in the form of Exhibit H;

(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 commencement of operation of the Facility have been obtained, and all applicable conditions thereof have been satisfied, and shall be in full force and effect;

(e) Seller has received the requisite pre-certification of the CEC Certification and Verification (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than ninety (90) days from the Commercial Operation Date);

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

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

(h) Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any.

2.3 **Progress Reports.** Subject to Section 2.4 and the other provisions hereof, the Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonable 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. 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 as a result of missing Milestone(s).

2.4 **Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure or Buyer default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (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.

ARTICLE 3 PURCHASE AND SALE

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the Contract Price, all of the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Buyer shall compensate Seller in accordance with Exhibit C. Except for Deemed Delivered Energy, Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, 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 from Seller, all of the Green Attributes, attributable to the Metered Energy produced by the Facility.

3.3 **Imbalance Energy.**

(a) Buyer and Seller recognize that from time to time the amount of Metered Energy will deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Subject to Seller's responsibility for CAISO penalties pursuant to Section 4.3(c), to the extent there are such deviations between Metered Energy and Scheduled Energy, any CAISO costs, charges or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

(b) [Intentionally omitted.]

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

3.5 **Future Environmental Attributes.**

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

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above (in any event subject to Section 3.12); *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** Buyer shall have the exclusive option to purchase all, but not less than all, of the Test Energy that is available from the Facility prior to the Delivery Term. No less than fourteen (14) days prior to the first day on which Test Energy will be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. Buyer shall have fourteen (14) days to determine whether it will exercise the option to purchase Test Energy. Buyer's option to purchase Test Energy shall terminate if Buyer fails to exercise and respond by written notice to the option to purchase Test Energy within the above fourteen (14) day period. If Buyer exercises its option to purchase Test Energy, Seller shall deliver, and Buyer shall purchase, all Test Energy available from the Facility. The Parties acknowledge and agree that following termination of Buyer's option, Seller has no obligation to sell or deliver Test Energy to Buyer prior to the commencement of the Delivery Term, and Seller may market, sell and deliver all or portions of the Test Energy from the Facility to one or more third parties. As compensation for such Test Energy, Buyer shall pay Seller an amount equal to fifty percent (50%) of the Contract Price. 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, and shall also request Interim Deliverability Status for the Facility for the period prior to Full Capacity Deliverability Status. 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 and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, 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 actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and 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.** The Parties acknowledge and agree that if Seller is unable to obtain Full Capacity Deliverability Status by the RA Guarantee Date, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages (and as a sole remedy) due to Buyer, including for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** Commencing on the RA Guarantee Date, and through the end of the Delivery Term, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility, minus (ii) the Net Qualifying Capacity of the Facility (including any partial or interim amounts able to be recognized by Buyer), multiplied by, at Buyer's option, either \$5.00/kW-month, or the current price for CPM Capacity as listed in Section 43.7.1 of the CAISO Tariff or its equivalent successor (such CPM Capacity amount, the "**Multiplier**"), expressed in \$/kW-month; *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit N at least fifty (50) Business Days before the applicable CPUC operating month for the purpose of monthly Resource Adequacy Benefits reporting. If the price for CPM Capacity ceases to be published by CAISO and no equivalent successor is published, the Multiplier shall be equal to the last price for CPM Capacity listed in the CAISO Tariff and escalated by two percent (2%) every twelve (12) months thereafter. In any event, the Multiplier may not exceed \$120/kW-year.

3.9 **CEC Certification and Verification.** Subject to Section 3.12, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility 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). 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 **Eligibility.** Subject to Section 3.12, 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 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.

3.11 **California Renewables Portfolio Standard.** Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap.** If Seller reasonably establishes that a change in Laws occurring after the Effective Date has increased Seller's cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller's obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed in Sections 3.12(a), (b) and (c), then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at twenty thousand dollars (\$20,000.00) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**"):

- (a) CEC Certification and Verification;
- (b) Green Attributes, WREGIS and Future Environmental Attributes; and
- (c) Capacity Attributes.

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions.**"

If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives

an invoice and documentation of such costs from Seller.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Metered Energy on an as-generated, instantaneous basis. Notwithstanding anything to the contrary in this Agreement (including with respect to any Force Majeure Event), Buyer shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties (except as provided in Section 4.3(c)) or congestion charges associated with Metered Energy upon and after its receipt at and from the Delivery Point. Seller shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Metered Energy up to the Delivery Point. Seller shall also be responsible for any other charges, costs or penalties assessed by CAISO that are associated with the Facility or Seller's violation of applicable regulatory requirements. Each Party shall perform all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Metered Energy as part of the Product being delivered. 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.

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Metered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

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

4.3 Scheduling Coordinator Responsibilities.

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point, provided that Buyer shall be responsible for all acts and omissions of any Buyer-designated third party Scheduling Coordinator and for all costs, charges and liabilities incurred by any such third party Scheduling Coordinator to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer

directly. Buyer and any Buyer-designated third party Scheduling Coordinator shall comply with all obligations as Scheduling Coordinator for the Facility under the CAISO Tariff and shall conduct all scheduling in full compliance with the terms of this Agreement, all applicable Laws, and all CAISO requirements (including the CAISO Tariff). 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 any Buyer-designated third party as Seller's 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 Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's or Buyer's designated third party's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer or in connection with a Buyer Default. Seller is responsible for and shall pay Buyer an amount equal to the actual costs (including the costs of Buyer employees or agents if Buyer acts directly as the Facility's Scheduling Coordinator) reasonably incurred by Buyer, as a result of Buyer or Buyer's designated third party acting as the Facility's Scheduling Coordinator, including the costs associated with the registration of the Facility with the CAISO and the installation, configuration, and testing of all equipment and software necessary for Buyer or Buyer's designated third party to act as Scheduling Coordinator or to Schedule the Facility ("**SC Set-Up Fee**"); *provided*, that the SC Set-Up Fee shall not exceed Fifty Thousand Dollars (\$50,000). Buyer (as Seller'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. Buyer or Buyer's designated third party (in either case, as Seller's SC) shall promptly make available to Seller all such information as is in its possession and necessary to comply with any requirements of Law applicable to Seller or the Facility, including information necessary for filing of "Electric Quarterly Reports" with FERC and information necessary to enable Seller to comply with NERC Generator Owner/Generator Operator Requirements.

(b) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, forecast data, all outage requests, Forced Facility Outage, Forced Facility Outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, Bid cost recovery, Inter-SC Trade credits,

or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or 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 are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges 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 the actions or inactions of Seller, which such actions or inactions are not consistent with the CAISO requirements, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. The CAISO Charges Invoices shall be rendered by Buyer after settlement information becomes available from the CAISO that identifies any CAISO charges. The CAISO Charges Invoice shall include all information and supporting documentation from the CAISO reasonably necessary for Seller to validate any such charges or penalties, including information regarding Scheduling by Buyer (as Seller's SC). Notwithstanding the foregoing, Seller acknowledges that CAISO may issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall reflect any such adjustments on subsequent CAISO Charges Invoices. Seller shall pay the amount of CAISO Charges Invoices within thirty (30) 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 Seller'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 File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

4.4 **Forecasting.** Seller shall provide the forecasts described below. Seller's forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity and expected Metered Energy of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) **Annual Forecast of Average Expected Energy.** No less than ninety (90) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Metered Energy, by hour, for the following calendar year in the form set forth in Exhibit F, or as otherwise reasonably acceptable to Buyer.

(b) **Monthly Delivery Forecast of Available Capacity.** No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer ("**Monthly Delivery Forecast**").

(c) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Facility's Available Capacity (or if requested by Buyer, the expected Metered Energy) for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Facility's Available Capacity (or if requested by Buyer, the expected Metered Energy). Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Facility Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

(d) **Hourly and Sub-Hourly Forecasts.** Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Facility Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(e) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.4(d), Seller will be responsible for a “**Forecasting Penalty**” equal to the absolute value of the Real-Time Price, in each case for each MWh of Energy deviation, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 4.4. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(f) CAISO Tariff Requirements. Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer’s SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.5 Dispatch Down/Curtailment

(a) General. Seller agrees to reduce the Facility’s generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment; provided that reductions in generation in accordance with either a Buyer Curtailment Order or Buyer Bid Curtailment will be subject to the limitations set forth in Exhibit K.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders (such as Negative LMPs) pursuant to a Buyer Curtailment Order or Buyer Bid Curtailment; provided that reductions in generation in accordance with either a Buyer Curtailment Order or a Buyer Bid Curtailment will be subject to the limitations set forth in Exhibit K, and further, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the applicable Deemed Delivered Energy Price.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Metered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is the Negative LMP Costs, if any, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer 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, Seller shall take the

steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.5(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

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

(a) **Facility Maintenance.** Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller.

(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 or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Guaranteed Energy Production.** The quantity of Product that Seller expects to be able to deliver to Buyer during each Contract Year is set forth on the Cover Sheet ("**Expected Energy**"). During the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of Product, as measured in MWh, equal to one-hundred forty percent (140%) of the average of the Expected Energy amounts for the two (2) Contract Years constituting such 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, Buyer Default, 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 the Product in the amount equal to the sum of: (a) Adjusted Energy Production during such Performance Measurement Period; plus (b) the amount of Energy during such Performance Measurement Period with respect to which Seller has already paid liquidated damages in accordance with Exhibit G. 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) that is (i) delivered to Buyer at NP 15 EZ Gen Hub, (ii) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion

of the applicable Performance Measurement Period and within the same calendar year in the event Seller fails to deliver the Guaranteed Energy Production during any Performance Measurement Period, (iii) delivered upon a schedule reasonably acceptable to Buyer, and (iv) delivered to Buyer without imposing additional costs upon Buyer; provided further that Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 4.7 at the Contract Price.

4.8 **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 Metered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(a) 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 amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Metered 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 4.8. 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 Metered Energy for the same calendar month (“**Deficient Month**”). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Metered Energy in the Deficient Month shall be reduced by three times 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 Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that Seller either (i) provides Replacement Product (as defined in Exhibit G) that is (A) delivered to Buyer at NP 15 EZ Gen Hub, (B) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Deficient Month, (C) delivered upon a schedule reasonably acceptable to Buyer, and (D) delivered to Buyer without imposing additional costs upon Buyer; or (ii) provides replacement WREGIS Certificates from the Facility within ninety (90) days after the conclusion of the applicable Deficient Month and such WREGIS Certificates qualify for the same RPS compliance periods during which the WREGIS Certificate Deficit occurred.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties shall promptly modify this Section 4.8 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 Metered Energy in the same calendar month.

(g) 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 the Agreement.

4.9 **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. In any event, Buyer shall, until Buyer obtains a credit rating reasonably satisfactory to Seller, make its annual audited financial statements available on its website no more than 180 days following the date of its fiscal year end and provide to Seller its unaudited quarterly financial statements. Seller further agrees to periodically update its Integrated Resource Plan and update its Implementation Plan describing the Buyer’s operations as required by the California Public Utilities Code.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to 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 from the Delivery Point (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes

that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

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 Buyer's emergency contact identified on Exhibit O Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Interconnection Facilities (and the Facility transformer and/or related 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 pursuant to which certain Interconnection Facilities (and the Facility transformer and/or related facilities) may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7 METERING

7.1 **Metering**. Seller shall measure the amount of Metered Energy produced by the Facility using a CAISO Approved Meter, using a CAISO-approved methodology. Subject to meeting any applicable CAISO requirements, including programming such meter to reflect

Electrical Losses associated with low-voltage side metering, the CAISO Approved Meter may be installed on the low voltage side or high voltage side of the Seller's transformer and will be maintained at Seller's sole cost and risk, and Seller agrees to reimburse and hold Buyer harmless from any charges, penalties or claims, incurred by Buyer, including from the CAISO, arising from Seller's low voltage metering configuration. The CAISO Approved 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 that 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 applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) 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 test the CAISO Approved 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 the CAISO Approved Meter is inaccurate it shall be promptly repaired or replaced. If the CAISO Approved Meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the lesser of (i) the period of time since the last meter test, or (ii) twelve (12) months, shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 Invoicing.

(a) Seller shall make good faith efforts to deliver an invoice to Buyer for Product and Deemed Delivered Energy no sooner than fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh produced by the Facility as read by the CAISO Approved Meter, the amount of Replacement RA and Replacement Product delivered to Buyer, the calculation of Deemed Delivered Energy and Adjusted Energy Production, and the Contract Price applicable to such Product and Deemed Delivered Energy Price applicable to all Deemed Delivered Energy; (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 specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

(b) Buyer, as Scheduling Coordinator, shall provide Seller with all necessary CAISO settlement data and the CAISO Charges Invoice no later than five (5) Business Days following

receipt of the T+12 settlement statements from CAISO in a form mutually agreed upon by Buyer and Seller.

8.2 **Payment**. Buyer shall make payment to Seller for Product and Deemed Delivered Energy by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Either Party, upon fifteen (15) days written Notice to the other 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.

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, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's 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 non-erring Party received Notice thereof. Except for adjustments required due to a correction of data by the CAISO, any adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within twelve (12) months after the invoice is rendered or subsequently adjusted.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the

Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product and Deemed Delivered Energy 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 G, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security by an amount equal to the amount collected or drawn down by Buyer for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment within ten (10) Business Days. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its Credit Rating, (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 five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit M. Seller shall maintain the Performance Security in full force and effect 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 its Credit Rating, (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 five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

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

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

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

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

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit O or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as

follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 Definition.

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell Energy generated by the Facility at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (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) a strike, work stoppage or labor

dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) 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; 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 with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

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.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming 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, the neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(c).

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 five (5) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof or such longer period necessary to effect such remedy not to exceed ninety (90) days after Notice (A) if such remedy is feasible through the use of commercially reasonable efforts during such period and (B) so long as the Defaulting Party is diligently and continuously pursuing such remedy;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as appropriate; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated by the Facility;

(ii) the failure by Seller to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to demonstrate to Buyer’s reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, 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, if such failure is not remedied within fifteen (15) Business Days after Notice thereof;

(v) 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 five (5) 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

(vi) 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 five (5) 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 BBB+ by S&P or Baa1 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 ninety (90) 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 termination by Buyer under Section 11.1(b)(ii) (failure by Seller to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date) 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; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, 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 any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party 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; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this Section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this Section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the 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 liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 **Mitigation.** Any Non-Defaulting Party shall be obligated 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, 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, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

12.2 **Waiver and Exclusion of Other Damages.** 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 BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.5, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, 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 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) As of the Effective Date, Seller has not received a USFWS communication that the Facility is likely to result in a level of eagle take that exceeds levels for which USFWS is willing to grant an applicable Facility permit.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below, 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. Any direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the Seller. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer. 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, 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.

In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer (such agreement not to be unreasonably withheld), Seller and Lender, and must include, among others, the following provisions; provided Buyer's consent (not to be unreasonably withheld) shall be required for any additional terms or conditions beyond those set forth below:

(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 Buyer 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 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 on the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

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

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

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), or enters into a replacement agreement pursuant to Section 14.2(h) below, Lender must assume all of Seller's obligations thereafter 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 for failure to pay amounts due under this Agreement or any non-payment default that is not personal to Seller and is reasonably capable of cure, existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then 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 thereafter 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;

(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, 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, 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 shall be approved by Buyer, not to be unreasonably withheld; and

(i) All costs incurred by Buyer in connection with review, negotiation and execution of any such Collateral Assignment Agreement, including reasonable attorneys' fees, will be promptly reimbursed by Seller.

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, Seller satisfies all of the following requirements:

- (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.

If Buyer, in good faith, does not agree that Seller's assignee meets the definition of a Permitted Transferee, then such transfer or assignment shall be void unless either Seller agrees in writing to remain financially responsible under this Agreement, or Seller's assignee provides payment security in an amount and form reasonably acceptable to Buyer. Except as provided in the

preceding sentence, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law**. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 **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, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys' Fees**. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 **Indemnification**.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) 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.

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims**. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the

indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars (\$5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) 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 prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) 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. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

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) proposals and negotiations until this Agreement is approved and executed by the Buyer, 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 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. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Records Act (Government Code Section 6250 et seq.).

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any potential Lender or any of its Affiliates, 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 **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 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 service provider and energy service recipient, 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).

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes

to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Facsimile or Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer**. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 **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, or constitute, or form the basis of, a Force Majeure Event, 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.

SELLER

By: _____

Name: _____

Title: _____

BUYER

By: _____

Name: _____

Title: _____

BUYER

By: _____

Name: _____

Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Sand Hill C

Site includes all or some of the following APNs: 99B-7750-6-00, 99B-6325-1-04, 99B-6325-1-03, 99B-7375-1-07, 99B-7400-1-5, 99B-7300-1-05, 99B-7350-2-05, 99B-7600-1-01, 99B-7500-3-01, 99B-7500-3-02, 99B-7350-2-15, 99B-7350-2-1, 99B-7050-4-1, 99B-7050-4-5, 99B-7050-4-06, 99B-7050-1-09, 99B-7825-2-1, 99B-7875-1-2, 99B-7875-1-3, 99B-7825-1-1, 99B-6275-2-05, 99B-6500-1-00

County: Alameda

Technology: Wind turbine generators, with certain shared facilities including transformer

Guaranteed Capacity: 80 MW AC

Delivery Point: AML Substation 230kV [37.747231°, -121.598446°]

PNode: To be created by CAISO (AML 230 kV expected)

Participating Transmission Owner: PG&E

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. “**Construction Start**” will occur following Seller’s execution of an EPC Contract related to the Facility and issuance of a Full Notice to Proceed for the construction of the Facility. The date of Construction Start will be evidenced by Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and Buyer’s acceptance and written acknowledgement thereof, and the date certified therein 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 (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment upon exercise of Buyer’s termination right following an Event of Default under Section 11.1(b)(ii).

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and (ii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be the later of (x) ninety (90) days before the Expected Commercial Operation Date or (y) the date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least sixty (60) days before 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. Seller shall include the request for refund of the Daily Delay Damages 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 the Facility has not been completed and is not ready to produce and deliver Energy generated by the Facility to Buyer as of the Guaranteed Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment upon exercise of Buyer's termination right following an Event of Default under Section 11.1(b)(ii).
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement under Section 11.1(b)(ii), which termination shall be effective upon Notice to Seller.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the following delays:
 - a. Seller has not acquired all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to construct, interconnect, operate or permit the Seller and Facility to make available and sell Product by the Expected Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller;
 - b. a Force Majeure Event occurs;
 - c. the Interconnection Facilities are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Expected Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - d. Buyer has not made all necessary arrangements to receive the Metered Energy at the Delivery Point by the Expected Commercial Operation Date (it being acknowledged that an extension under this paragraph (d) shall not limit other rights and remedies Seller may have for the default by Seller in obtaining necessary metering arrangements).

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and no extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its

requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required 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 commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
6. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof and Seller shall replenish the Development Security to its full amount within three (3) Business Days after such draw.
7. **Damage Payment.** Except for Buyer's termination right in connection with Section 11.1(b)(ii) with respect to the Guaranteed Commercial Operation Date, Buyer's sole remedy and Seller's sole liability for the failure of Seller to meet the Guaranteed Construction Start Date and/or the Guaranteed Commercial Operation Date, or for Seller's failure to reach the Guaranteed Capacity shall be the payment by Seller of Daily Delay Damages, Commercial Operation Delay Damages, or Capacity Damages, as applicable, up to a total aggregate payment no more than the Damage Payment.

EXHIBIT C
COMPENSATION

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

(a) Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Metered Energy, and the Deemed Delivered Energy Price for all Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for each Contract Year.

(b) If, at any point in any Contract Year, the amount of Metered Energy plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, then, for each additional MWh of Product, as measured by the amount of Metered Energy plus Deemed Delivered Energy, if any, delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Contract Price (or Deemed Delivered Energy Price, as applicable) or (ii) the Day-Ahead Market price for the applicable Settlement Interval.

(c) If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Metered Energy, in excess of the product of the Installed Capacity and the duration of the Settlement Interval, expressed in hours, then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), 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 ("**Negative LMP Costs**").

(d) Seller shall receive no compensation from Buyer for Metered Energy or Deemed Delivered Energy during any Curtailment Period, except to the extent such Metered Energy or Deemed Delivery Energy was not subject to a Curtailment Order.

(e) If (i) Buyer fails or is unable to take Product made available at the Delivery Point during any period and such failure to take is not excused by a Default by Seller, a Force Majeure Event, or Buyer Bid Curtailment, or (ii) Seller is not able to make available Product due to such Buyer failure or inability, Buyer shall pay Seller, as Seller's sole remedy, an amount equal to the product of (1) the Deemed Delivered Energy for such period and (2) the Deemed Delivered Energy Price applicable during such period.

EXHIBIT D

[Intentionally Omitted]

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

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

EXHIBIT F

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN	12.73	12.42	7.87	8.29	8.21	6.30	6.80	10.90	9.27	10.57	9.97	11.45	8.69	7.79	7.21	3.37	1.27	3.49	7.59	7.27	9.68	11.47	16.16	13.42
FEB	23.90	22.72	20.97	17.22	13.76	13.98	12.66	10.61	10.59	8.66	11.62	11.01	9.67	11.05	11.33	13.06	12.96	13.54	14.86	17.14	16.85	20.66	23.69	23.05
MAR	30.81	29.63	28.28	22.69	21.21	16.95	16.36	15.92	15.62	17.88	15.72	10.40	11.26	9.82	12.69	13.50	15.83	19.68	21.24	25.97	28.73	29.26	33.68	34.54
APR	44.78	44.55	40.35	33.26	30.05	28.07	25.77	25.45	23.01	20.52	19.76	18.39	20.64	22.35	26.85	29.72	33.95	37.94	41.35	43.53	45.74	46.43	46.59	46.99
MAY	55.99	57.10	57.90	55.89	54.00	49.58	46.08	41.55	36.51	32.56	29.95	26.66	28.07	31.73	38.80	43.12	47.85	48.15	51.96	56.88	56.86	54.65	54.10	56.54
JUN	64.85	65.36	60.54	53.71	54.79	53.01	50.24	44.13	39.00	31.43	30.18	28.95	30.97	34.97	40.19	46.91	54.95	59.33	64.19	65.59	66.53	66.92	67.35	67.22
JUL	68.96	61.82	60.43	61.59	59.70	55.68	54.50	51.75	39.97	33.32	27.98	26.17	27.30	33.91	40.84	48.77	57.97	66.31	69.55	70.01	70.73	72.07	69.13	71.40
AUG	67.96	66.72	63.52	62.38	61.77	63.83	60.91	55.86	48.43	35.35	25.20	21.57	23.14	25.19	28.77	34.97	41.82	49.06	54.44	60.07	63.54	67.41	70.91	69.97
SEP	50.02	46.04	49.49	49.99	48.35	44.15	40.87	36.56	31.40	21.78	16.07	13.37	13.31	16.11	17.44	23.40	29.59	36.71	41.78	48.89	53.76	53.09	53.27	52.03
OCT	30.39	31.86	27.42	22.93	21.70	19.07	17.09	19.71	18.75	17.62	15.05	12.89	12.72	13.62	13.11	13.50	15.74	21.58	28.52	28.30	27.10	30.35	31.48	31.60
NOV	18.25	17.13	15.60	13.28	10.16	8.04	8.32	10.66	10.20	10.58	13.89	11.93	10.99	9.35	9.98	9.28	8.01	7.97	10.54	15.43	18.37	17.91	14.62	16.42
DEC	7.99	6.95	6.63	6.97	11.26	8.47	8.38	10.14	15.34	15.21	16.23	16.52	17.51	17.66	14.78	13.58	10.60	10.91	10.98	10.65	8.64	10.63	9.75	9.65

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

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment (as a sole remedy) 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

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

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (x) \$50/MWh and (y) the market value of Replacement Green Attributes.

D = the Contract Price for the Performance Measurement Period, in \$/MWh

“**Adjusted Energy Production**” shall mean the sum of the following: Metered Energy + Deemed Delivered Energy + Lost Output + Replacement Energy.

“**Integrated Forward Market**” shall mean has the meaning set forth in the CAISO Tariff.

“**Lost Output**” means the sum of electric energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event or Curtailment Order. The additional MWh shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

“**Replacement Green Attributes**” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

“**Replacement Capacity Attributes**” means Capacity Attributes, if any, equivalent to those that would have been provided by the Facility during the Performance Measurement Period for which the Replacement Product is being provided.

“**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 have the same or comparable value, 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 Performance Measurement Period for which the Replacement Energy is being provided.

“**Replacement Product**” means (a) Replacement Energy, (b) Replacement Capacity Attributes, and (c) all 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 Performance Measurement Period, 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 Marin Clean Energy (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Engineer hereby certifies and represents to Buyer the following:

- (1) Seller has installed equipment with a nameplate capacity of no less than ninety percent (90%) of the Guaranteed Capacity.
- (2) The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety (90%) of the Guaranteed Capacity at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].
- (3) Authorization to parallel the Facility was obtained by the Participating Transmission Owner, [Name of Participating Transmission Owner as appropriate] on _____ [DATE]_____
- (4) The Participating Transmission Owner or distribution operator has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _____ [DATE]_____.
- (5) 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 Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

The Facility performance test for the Facility demonstrated peak Facility electrical output of ___MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**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 ENTITY] (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this 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) the EPC Contract related to the Facility was executed on _____ ;
- (2) the Full Notice to Proceed for the construction of the Facility was issued on _____ (attached) (the “**Construction Start Date**”);
- (3) the Construction Start Date has occurred;
- (4) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

(such description shall amend the description of the Site in Exhibit A).

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

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

Acknowledged and agreed:

[BUYER]

By: _____

Its: _____

Date: _____

EXHIBIT K

BUYER BID CURTAILMENT AND BUYER CURTAILMENT ORDERS

Operational characteristics of the Facility for Buyer Bid Curtailment and Buyer Curtailment Orders, which in each case must be equal to or greater than the resource flexibility reflected in the resource Master File, as such term is defined in the CAISO Tariff. Buyer, as Scheduling Coordinator, may request (with Seller’s approval pursuant to Section 4.3(g)) that CAISO modify the Master File for the Facility to reflect the findings of a CAISO audit of the Facility and to ensure that the information provided by Seller is true and accurate. Seller agrees to coordinate with Buyer or Third-Party SC, as applicable, to ensure all information provided to CAISO regarding the operational and technical constraints in the Master File for the Facility are accurate and are actually based on physical characteristics of the resource.

- Nameplate capacity of the Facility: 80 MW AC as defined in the Cover Sheet
- Minimum operating capacity: 0 MW
- Maximum number of hours annually for Buyer Curtailment Periods: 8760 hours
- The Facility will be capable of receiving and responding to all Dispatch Instruction in accordance with Section 4.5.
- Advance notification required for a Buyer Bid Curtailment or Buyer Curtailment Order: 5 minutes
- Maximum number of Start-ups per calendar day (if any such operational limitations exist): 20
- Maximum number of Buyer Bid Curtailment and Buyer Curtailment Orders per calendar day (if any such operational limitations exist): 21
- Minimum hold time between successive Buyer Bid Curtailment or Buyer Curtailment Orders: 5 minutes
- Ramp Rate: 5 MW/minute
- Increments of Contract Capacity that can be curtailed: Three point six three (3.63) MW

Illustrative Example:

	Time	Buyer’s Order	Seller’s Action
	10:00	Curtailment Order (Curtail to 0 MW at 10:10)	Seller implementing order and ramping down from ___ MW (10 minutes)
	10:10		At 0 MW

10:10 – 10:15		At 0 MW (minimum down time of 5 min)
10:15	Seller to return to Schedule (__ MW per the Schedule, at 10:23)	Seller implementing order and ramping up
10:23		At Schedule (__ MW, per the Schedule)

EXHIBIT L
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

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

Beneficiary:
Marin Clean Energy, a California joint powers authority
1125 Tamalpais Avenue
San Rafael, CA 94901

Ladies and Gentlemen:

On behalf of [XXXXXXXX] (“Applicant”), we, **[insert bank name and address]** (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Marin Clean Energy, a California joint powers authority (“Beneficiary”), 1125 Tamalpais Avenue, San Rafael, CA 94901, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXXXX] and 00/100), pursuant to that certain **[AGREEMENT]** dated as of , 201- (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall have an initial expiry date of , 201_ subject to the automatic extension provisions herein.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. [XXXXXXXX] accompanied by your 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.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee in person, by courier or by fax at **[insert bank address]**. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds.

The document(s) required may also be presented by fax at facsimile no. **(xxx) xxx-xxx** on or before the expiry date on this Letter of Credit in accordance with the terms and conditions of this Letter of Credit. Beneficiary may contact the Issuer at **(xxx) xxx-xxxx** to confirm receipt of the transmission. Beneficiary’s failure to seek such a telephone confirmation does not affect the

Bank's obligation to honor such a presentation. No mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.

Partial draws are permitted under this Letter of Credit.

If presented in person or by mail or courier the original of this Letter of Credit must be presented together with the above documents in order to endorse the amount of each drawing on the reverse side and will be returned to the Beneficiary unless it is fully utilized.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to permit this Letter of Credit to be so extended, in which case it will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

This Letter of Credit shall not extend past and shall finally expire on **XXX XX, XXXX** if it has not previously expired in accordance with the preceding paragraph.

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from Beneficiary (to the extent required herein), to examine the documents and determine whether to accept or reject the documents and to inform Beneficiary accordingly. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at **[insert bank address information]**, referring specifically to Issuer's Letter of Credit No. **[XXXXXXXX]**. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at **[XXX-XXX-XXXX]** and have this Letter of Credit available.

[Bank Name]

[Insert officer name]

[Insert officer title]

DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Marin Clean Energy, a California joint powers authority, 1125 Tamalpais Avenue, San Rafael, CA 94901, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") issued by **[insert bank name]** (the "Bank") by order of [XXXXXXXX] (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain **[AGREEMENT]** dated as of [XXXXXXXX] (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____.
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 Marin Clean Energy, 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 Marin Clean Energy, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Marin Clean Energy, a California joint powers authority

[Name and Title of Authorized Representative]

Date_____

EXHIBIT M

FORM OF GUARANTY

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

Recitals

- A. Buyer and [SELLER ENTITY], a _____ ("Seller"), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "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 full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the "Guaranteed Amount"), 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 performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the 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, statute 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 (except for such defenses,

setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 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 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 the City and County of San Francisco, 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.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A “CLAIM”) AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.
- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).
- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[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 N

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

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

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

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

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT O**NOTICES**

[SELLER'S NAME] ("Seller")	MARIN CLEAN ENERGY ("MCE")
All Notices: Street: 2180 South 1300 East, Suite 600 City: Salt Lake City, UT 84106 Attn: Legal Phone: 801-679-3500 Facsimile: 801-679-3501 Email: legal@spower.com	All Notices: Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Executive Officer Phone: 415-464-6010 Facsimile: (415) 459-8095 Email: procurement@mcecleanenergy.org
Reference Numbers: Duns: Federal Tax ID Number:	Reference Numbers: Duns: ██████████ Federal Tax ID Number: ██████████
Invoices: Attn: Accounts Payable Phone: 801-679-3500 ext. 2 Facsimile: 801-679-3501 E-mail: accountspayable@spower.com	Invoices: Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Settlements Phone: 888-632-3674 Facsimile: 415-459-8095 Email: settlements@mcecleanenergy.org
Scheduling: Attn: Control Room Phone: 855.679.3553 Facsimile: E-mail: lroot@spower.com	Scheduling: Prescheduler: (916) 458-4080 Email: dascheduler@zglobal.biz Real-Time: (760) 483-5000 Email: 24hrdesk@zglobal.biz Mid-office Agreement: (888) 632-3674 E-mail: settlements@mcecleanenergy.org
Confirmations: Attn: Phone: Facsimile: Email:	Confirmations: Attn: Greg Brehm, Director of Power Resources Phone: 415-464-6037 Facsimile: 415-459-8095 Email: gbrehm@mcecleanenergy.org

<p><i>[SELLER'S NAME]</i> ("Seller")</p>	<p>MARIN CLEAN ENERGY ("MCE")</p>
<p>Payments: Attn: Accounts Payable Phone: 801-679-3500 ext. 2 Facsimile: 801-679-3501 E-mail: accountspayable@spower.com</p>	<p>Payments: Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Settlements Phone: 888-632-3674 Facsimile: 415-459-8095</p>
<p>Wire Transfer: BNK: Zions First National Bank ABA: [REDACTED] ACCT: [REDACTED]</p>	<p>Wire Transfer: BNK: River City Bank ABA: [REDACTED] ACCT: [REDACTED]</p>
<p>Credit and Collections: Attn: Eva Gjoliugu Phone: 801-679-3558 Facsimile: 801-679-3501 E-mail: egjoligu@spower.com</p>	<p>Credit and Collections: Attn: David McNeil, Finance Manager Phone: 415-464-6025 Facsimile: 415-459-8095 Email: dmcneil@mcecleanenergy.org</p>
<p>With additional Notices of an Event of Default to: Orrick, Herrington, & Sutcliffe, LLP Attn: Les Sherman Phone: 415-773-5570 Facsimile: E-mail: lsherman@orrick.com</p>	<p>With additional Notices of an Event of Default to: Troutman Sanders LLP Attn: Stephen Hall 100 SW Main, Suite 1000 Portland, Oregon 97204 Facsimile: (503) 290-2405 Phone: (503) 290-2336 Email: stephen.hall@troutmansanders.com</p>
<p>Emergency Contact Information: Attn: Control Room Phone: 855.679.3553 Facsimile: E-mail: root@spower.com</p>	<p>Emergency Contact Information: Attn: Phone: Facsimile: E-mail:</p>



sPower PPA Proposal

Sand Hill C, LLC

MCE Technical Committee – December 7, 2017

Overview: sPower

- 150+ solar & wind projects
- More than 1.3 GW in operating assets
- Customers include:
 - MCE
 - Lancaster Choice Energy
 - City of Palo Alto
 - S. CA Public Power Authority
(Riverside, Azusa, Pasadena, Vernon & Colton)
 - LADWP

Overview:



- RE generation, development, and operation company
 - Headquarters: Salt Lake City, UT; 100+ employees
- \$2.5 billion portfolio of solar and wind facilities worldwide
- Significant experience with CCA and muni customers
 - Owns both MCE Solar One and Antelope Expansion
- Wholly owned subsidiary of AES and AIMCO
 - AES - Global 200 Power Co. \$14B in revenue
 - AIMCo – Canadian Institutional Investment Manager. \$100B in assets under management

Overview: sPower PPA

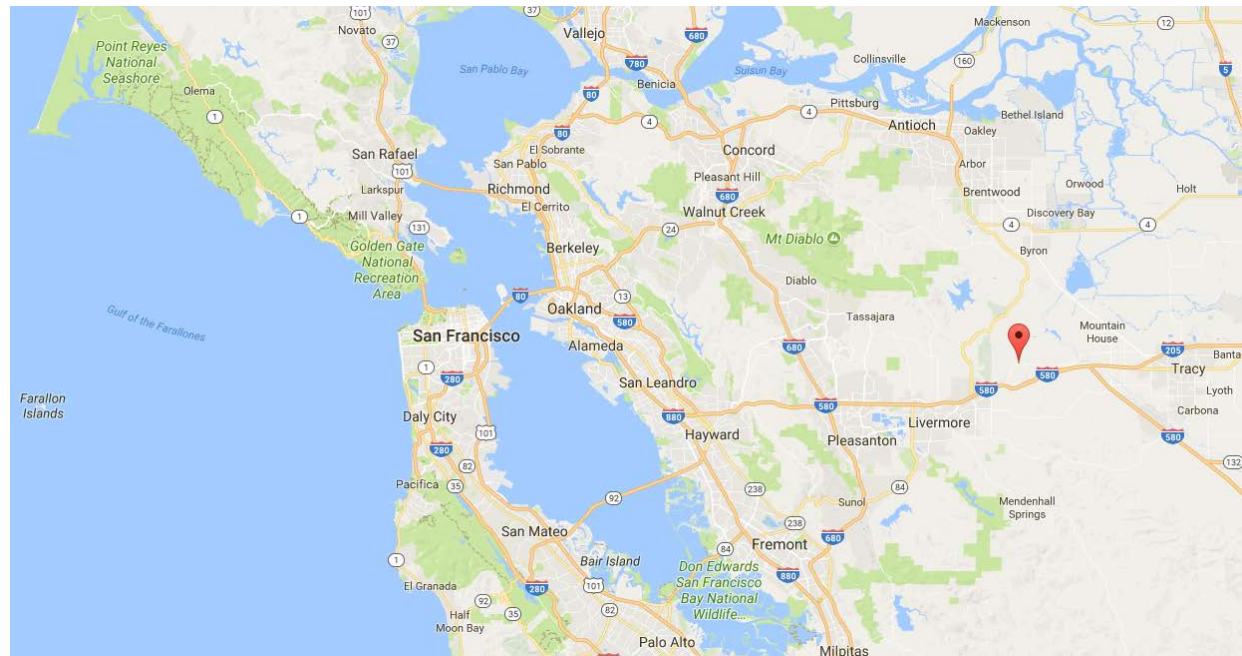
Sand Hill C, LLC

- 80 MW, partial repower in Altamont Pass
- #1 offer out of 14 projects evaluated
- Best price and value



Sand Hill C, LLC

- 241,000 MWhs / year 1
~ 40,000 customers
- On-line date:
12/31/2020
- Term: 20 years
- Includes Resource
Adequacy
- No MCE Collateral



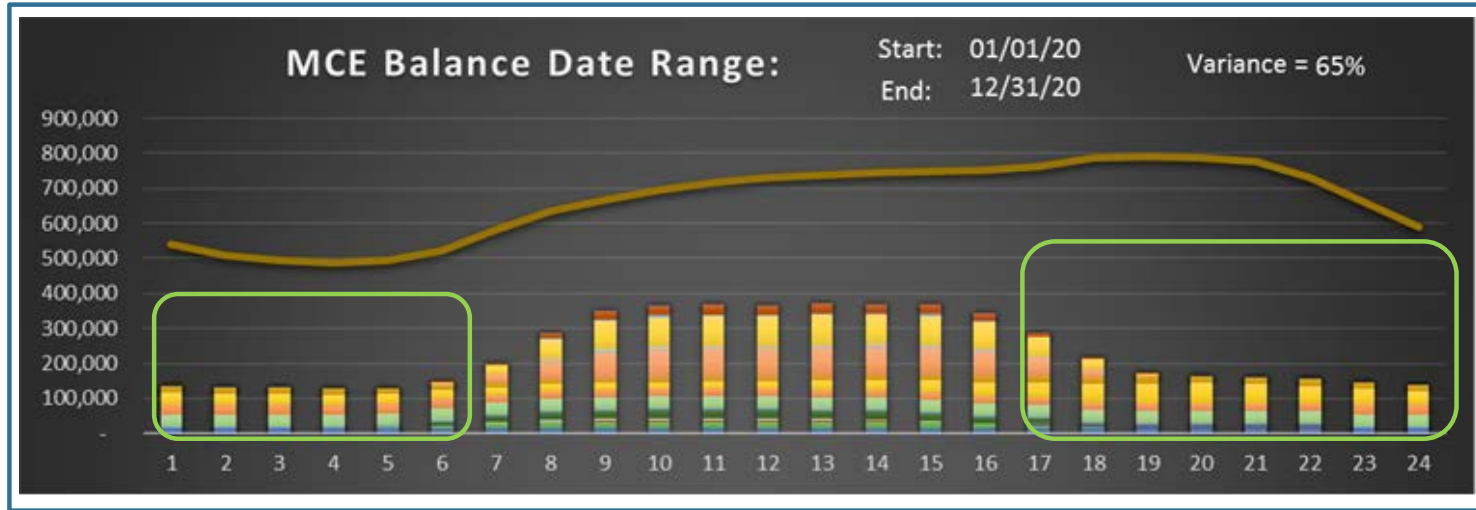
Alameda County

MCE Open Position – Renewable Energy

	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>
IV. Open Positions (without Sand Hill)										
Renewables Open Position (GWh)										
Portfolio Content Category 1	453	814	962	699	873	1,053	1,267	1,462	1,591	1,742
Portfolio Content Category 2	111	448	852	901	951	1,002	1,056	1,111	1,125	1,142
Portfolio Content Category 3	146	169	169	170	171	172	174	175	178	180
Total Renewables Open Position (GWh)	711	1,431	1,983	1,769	1,995	2,227	2,497	2,749	2,894	3,063
sPower - Short-term PCC1	241	241								
sPower - Sand Hill Wind (PCC1)			241	241	241	241	241	241	241	241
Total sPower	241	241	241	241	241	241	241	241	241	241
	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>
IV. Open Positions (with Sand Hill)										
Renewables Open Position (GWh)										
Portfolio Content Category 1	212	573	721	458	632	812	1,026	1,221	1,350	1,501
Portfolio Content Category 2	111	448	852	901	951	1,002	1,056	1,111	1,125	1,142
Portfolio Content Category 3	146	169	169	170	171	172	174	175	178	180
Total Renewables Open Position (GWh)	470	1,190	1,742	1,528	1,754	1,986	2,256	2,508	2,653	2,822

The proposed sPower PPA will help MCE meet its future Renewable Energy targets by reducing open positions that currently exist in 2020 and beyond.

MCE Load vs Supply - 2020



The proposed sPower PPA will help MCE meet future renewable energy targets by reducing open positions forecast during shoulder and off-peak hours.



Recommendation

Approve PPA between MCE and Sand Hill C, LLC, which will:

- Be developed by an experienced team
- Support MCE's future renewable goals
- Provide competitively-priced, CA portfolio content category 1 renewable energy
- Contribute valuable resource and delivery profile diversity to MCE's portfolio

Thank You

David Potovsky
Power Supply Contracts Manager
dpotovsky@mceCleanEnergy.org





December 7, 2017

TO: MCE Technical Committee
FROM: Justin Kudo, Deputy Director of Account Services
RE: MCE Revised Net Energy Metering Tariff (Agenda Item #08)
ATTACHMENT: Draft Amended Electric Schedule NEM – Net Energy Metering Service

Dear Technical Committee Members:

Overview:

MCE's Net Energy Metering (NEM) tariff provides the billing mechanism that enables customers to accumulate credits for surplus on-site renewable energy production, like rooftop solar. First established by your Board in June 2010, the NEM tariff serves approximately 11,000 MCE accounts. With service beginning in nine new Contra Costa member communities in April 2018, the NEM tariff is expected to grow to serve more than 25,000 accounts.

Under the existing NEM tariff, in April each year customers with a credit balance of more than \$100 may elect to "cash out" and receive direct payment by check from MCE for the balance (NEM Cash-Out). This program does not currently have a cap on accruals or payments, such as the limits set by other Community Choice Aggregation (CCA) programs.

Proposed Cash-Out Amendments:

NEM Cap

Staff recommends adopting a cap of \$5,000, similar to those used by other CCAs. This cap would impact a very small number of accounts which currently receive Cash-Out payments above \$5,000 annually. Staff recommends providing advance notice to customers with eligible balances above this cap. Adoption of a cap would result in a small increase in MCE's net position, which could be used to increase funding for customer programs, including solar installations for low-income customers.

PG&E currently operates a program called RES-BCT (Bill Credit Transfer), a tariff which allows municipal accounts to transfer surplus generation credits from one account to another, similar to the arrangement offered by the Cash-Out program. Staff recommends that an exception be included in MCE's NEM tariff to allow customers which could otherwise qualify for RES-BCT to be excluded from the cap.

Contribution of Cash-Out Credit

In addition to the option of credit Cash-Out or rollover, staff recommends allowing customers the option to contribute their credits towards MCE programs that serve disadvantaged communities such as MCE's low-income solar program. This could be provided as an option on NEM Cash-Out offerings starting in April 2018.

Aggregated Net Energy Metering

The California Public Utilities Code Sec. 2827 (h)(4)(B) requires that “aggregated NEM” (NEMA/NEMAG) customers¹ be permanently ineligible for net surplus compensation, which includes compensation methods such as MCE’s NEM Cash-Out. An amendment to our NEM tariff can exclude these accounts from future Cash-Out eligibility.

Staff recommends the following amendments, which would limit financial uncertainty and allow MCE to direct revenue to other community benefit programs, such as those supporting disadvantaged populations, and comply with CPUC regulations regarding NEMA/NEMAG accounts.

Following the completion of the 2018 Cash-Out process:

- Implement a cap of \$5,000 to the Cash-Out provision
- Remove credits accrued beyond \$5,000 at the end of each April
- Staff shall determine an exception methodology for municipal agencies which may otherwise be eligible for RES-BCT to not be impacted by the NEM Cap

Effective immediately:

- Exclude NEMA/NEMAG accounts from MCE Cash-Out eligibility
- During annual Cash-Out period, allow NEM customers that have accrued between \$100-\$5,000 the option of contributing credits to MCE’s programs that support disadvantaged communities.

Fiscal Impact:

There would be no cost to the Fiscal Year 2017-18 budget. The cap and voluntary option to contribute credits would result in additional funds being available in Fiscal Year 2018-19 for programs that support disadvantaged customers.

Recommendation: Approve proposed revisions to the Electric Schedule NEM – Net Energy Metering Service.

¹ Aggregated NEM (NEMA) refers to a single customer with multiple meters on the same property, or on adjacent or contiguous properties.



ELECTRIC SCHEDULE NEM - NET ENERGY METERING SERVICE

APPLICABILITY: This net energy metering (NEM) schedule is applicable to a customer who uses an eligible Renewable Electrical Generation Facility, as defined in PG&E’s Electric Schedule NEM (<http://www.pge.com/tariffs/ERS.SHTML#ERS>), within the capacity limits described in PG&E’s Electric Schedule NEM that is located on the customer’s owned, leased, or rented premises, is interconnected and operates in parallel with PG&E’s transmission and distribution systems, and is intended primarily to offset part or all of the customer’s own electrical requirements (hereinafter “eligible customer-generator” or “customer”).

This rate schedule is available on a first-come, first-served basis to customers that provide PG&E with a completed PG&E NEM Application and comply with all PG&E NEM requirements as described in PG&E Electric Schedule NEM. This includes customers served by NEMV (Virtual Net Energy Metering), NEMVMASH (Virtual Net Energy Metering for Multifamily Affordable Housing), NEMA (NEM Aggregation) and Multiple Tariff facilities as described by PG&E Electric Schedule NEM.

TERRITORY: The entire MCE service area.

RATES: All rates charged under this schedule will be in accordance with the eligible customer-generator’s otherwise-applicable MCE rate schedule (OAS). An eligible customer-generator served under this schedule is responsible for all charges from its OAS including monthly minimum charges, customer charges, meter charges, facilities charges, demand charges and surcharges, and all other charges owed to MCE or PG&E. Charges for energy (kWh) supplied by MCE, will be based on the net metered usage in accordance with this tariff.

BILLING: Customers with NEM service will be billed as follows:

a) For a customer with Non-Time of Use (TOU) Rates:

Any net consumption or production shall be valued monthly as follows:

If the eligible customer-generator is a “Net Consumer,” having overall positive usage over a billing cycle, the eligible customer-generator will be billed in accordance with the eligible customer-generator’s OAS.

If the eligible customer-generator is a “Net Generator,” having overall negative usage over a billing cycle, any net energy production shall be valued at the OAS plus the currently applicable Deep Green Option Energy Charge. The calculated value of any net energy production shall be credited to MCE customers as described in Section (c).

b) For a customer with TOU Rates:

If the eligible customer-generator is a Net Consumer (as defined above) during any discrete TOU period, the net kWh consumed during such period shall be billed in accordance with applicable TOU period-specific rates/charges, as described in the eligible customer-generator's OAS.

If the eligible customer-generator is a Net Generator (as defined above) during any discrete TOU period, the net kWh produced during such period shall be valued in consideration of the applicable TOU period-specific rates/charges, as described in the eligible customer-generator's OAS, plus the Deep Green Option Energy Charge. The calculated value of any net energy production during a specific TOU period shall be credited to MCE customers as described in Section (c).

c) Monthly Settlement of MCE Charges/Credits:

NEM customers will receive a statement in their monthly PG&E bills indicating any accrued charges for their usage during the current billing cycle. Customers who have accrued credits during previous billing cycles will see these credits applied against current charges. Any remaining balance is due and must be paid during each monthly billing cycle.

When a customer's net energy production results in a net bill credit over a billing cycle, the value of any net energy production during the billing cycle shall be noted on the customer's bill and carried over as a bill credit for use in subsequent billing period(s).

d) MCE Annual Cash-Out:

During the April billing cycle of each year, all current MCE NEM customers with a credit balance of more than \$100 will be offered a direct payment by check for this balance, or may choose to contribute their credit balance to support MCE programs that serve disadvantaged communities such as MCE's Low-Income Solar Program. The maximum eligible amount that can be cashed out is \$5,000.

Any credit balance will be determined as of the final date of the customer's March-April billing cycle. Any credit beyond the \$5,000 limit will be removed from the NEM account balance following this billing cycle. Customers who participate in the MCE Cash-Out or donation process will have an equivalent credit removed from their NEM account balance at the time of check issuance. In the event that customers do not elect to receive a check or contribute their accrued NEM credits, such credits will continue to be tracked by MCE and will remain on the customer's account for future use (i.e., reduction of future MCE charges).

Customers who close their electric account through PG&E or move outside of the MCE service area prior to the April billing cycle of each year are also eligible for the annual MCE Cash-Out process. Such Cash-Outs are still subject to the \$5,000 cap, and any additional credit balance will be removed from the account upon Cash-Out.

e) Return to PG&E Bundled Service:

MCE customers with NEM service may opt out and return to PG&E bundled service at any time. Customers should be advised that PG&E will perform a true-up of their account at the time of return to PG&E bundled service, and that PG&E's standard terms for transitional rates apply to

customer returns with less than a six-month advance notice if they have been an MCE customer for 60 days or more.

If an MCE NEM customer opts-out of the MCE program and returns to bundled service, that customer may request to cash-out any remaining generation credits on the account, not to exceed \$5,000, provided that the request is received within 90 calendar days of the return to PG&E service.

f) Customers with Local Sol Service:

If the eligible customer-generator is served by MCE's Local Sol program, all usage and generation shall be billed at the customer's applicable Local Sol rate. The billing and rate descriptions in sections (a) and (b) shall not apply.

Local Sol customers are not eligible for MCE's Annual Cash-Out provisions described in section (d). Excess credit balances during each Annual Cash-Out will automatically be carried over into the next annual period and will not be available for direct payment. Local Sol customers who close their electric account or who move outside of the PG&E service area are not eligible for the MCE Cash-Out process.

In the event that a Local Sol customer returns to Light Green or Deep Green service, any credit balance accrued under the Local Sol tariff will remain ineligible for the MCE Cash-Out process.

g) PG&E NEM Services:

MCE NEM customers are subject to the conditions and billing procedures of PG&E for their non-generation services, as described in PG&E's Electric Schedule NEM and related PG&E tariff options addressing NEM service. Customers should be advised that while MCE settles out balances for generation on a monthly basis, PG&E will continue to assess charges for delivery, transmission and other services. Most NEM customers will receive an annual true-up from PG&E for these non-generation services.

Customers are encouraged to review PG&E's most up-to-date NEM tariffs, which are available from PG&E.

h) Aggregated NEM

Per the California Public Utilities Commission Section 2827(h)(4)(B), aggregated NEM customers are "permanently ineligible to receive net surplus electricity compensation." Therefore, any excess accrued credits over the course of a year under an aggregated NEM account are ineligible for MCE's annual Cash-Out as in section (d). All other NEM rules apply to aggregated NEM accounts.



NEM Cash-Out: Proposed Cap and Eligibility for Aggregated NEM

MCE Technical Committee – December 7, 2017

Net Energy Metering Cap

Cap Background & Proposal

- MCE offers NEM customers the opportunity to receive payment for the full retail value of NEM credits in excess of \$100 annually in April
- MCE offered NEM customers over \$1.3 million in 2017
- MCE is considering a maximum cash-out amount of \$5,000 annually, consistent with other CCAs' implementation of NEM

2017 NEM Cash-Out Summary

Total Cash-Out Offered:	\$1.3 million (\$1.4M total)
Carried over balance from 2016:	\$671,000
2017 (only) NEM credits accrued:	\$773,000
Total NEM Accounts (as of April 2017):	10,952
Accounts Eligible for Cash-Out (>\$100):	1,509 (14%)
Accounts with more than \$5,000 accrued:	23 (0.2%)
Amount accrued in excess \$5,000:	\$301,000 (39% of accruals)

NEM Policies of Other CCAs

- MCE does not currently impose a cap on NEM cash-outs
- Two CCAs have a \$5k cap
- Limits financial risk

	Compensation Amount	NEM Cap
MCE Current	Retail + \$0.01	None
MCE Proposed	Retail + \$0.01	\$5000
SCP	Retail + \$0.01	\$5000 (per acct)
RCEA	Retail + \$0.01	None
CPSF	NSC (i.e. wholesale)	None
SVCE	Retail	\$5000
PCE	Retail + \$0.01	None

Surplus Generation Credits

When a customer generates surplus NEM credits:

	Customer Gets	MCE Gets	Actual Market Value
Surplus Electricity		RA benefits & if kWh surplus, load reduction	4-5 cents/kWh
On-bill Gen Credits	5-34 cents/kWh (Generation rate)		3-4 cents/kWh
Renewable Claims	RECs kept by customer <u>or installer</u>	None – MCE can't claim as renewable	< 1 cent/kWh (seldom used/valued)

Additionally:

- Many NEM cash-out customers get credit surplus only due to time-of-use rates
- Time-of-use historically defines solar production hours as peak (high rates) while consumption hours may be off peak (low rates)
- This is phasing out for residential; commercial changes are still developing

Cash-Out Cap Considerations

Allows MCE to direct revenue to programs supporting disadvantaged populations

Customer Base Changes:

- NEM customers expected to increase by 150% with Phase 6 enrollments
- Excessive cash-outs likely to diminish with phase out of A6 (solar-friendly) rate, likely to occur between 2018 and 2020

Exceptions:

- Setting a cap on Cash-Outs for public agencies could make MCE NEM non-competitive with PG&E's Bill Credit Transfer (BCT) program
- MCE should consider an allowance for municipal agencies to keep Cash-Out credits if they would be eligible for Bill Credit Transfer

Cash-Out Cap Options & Impacts

	Current Program (No Change)	Option 2 \$5k Cash-Out Cap, no exemptions	Option 3 \$5k Cap, with exception for BCT
Fiscal Impact	n/a	\$301k (savings)	\$88k (savings)
Financial Uncertainty	Expanding, as NEM customers increase	Limited	Limited
Customers Impacted	n/a	23 (currently)	8 (currently)
Other	Most accruals due to A6 rate, which could be changed soon	Consistent with other CCAs	Excludes municipal agencies

Contribution of Cash- Out Balances

Contribution of Cash-Outs

MCE would like to allow NEM customers to contribute their Cash-Out towards MCE programs that support disadvantaged communities

- Eligible NEM customers currently receive options to Cash-Out or rollover their credits
- Staff can add an option to contribute credits to our Cash-Out letters
- Initial funding would go towards funding MCE programs for disadvantaged communities such as low-income solar installations
- Staff can reevaluate the program after the 2018 Cash-Out and potentially expand it to other efforts

Aggregated NEM Eligibility

Net Energy Metering Aggregation (NEMA)

Allows a single customer with multiple meters on the same property, or on adjacent or contiguous properties, to use renewable generation (e.g. solar panels) to serve the aggregated load behind all eligible meters and receive the benefits of Net Energy Metering.

California Public Utilities Code requires that NEMA customers be “permanently ineligible” for Net Surplus Compensation.

Aggregated NEM Exclusion Impacts

NEMA accounts eligible for cash-out in 2017: **13**

Total cash-out value: **\$9,911**

Excluding NEMA accounts from MCE's annual cash-out, complies with California Public Utilities Code

Recommended NEM Amendments

- Maximum cash-out of \$5,000 annually
- Credits beyond \$5,000 zero out annually in April
- Direct staff to explore an exception for municipal agencies to avoid NEM-BCT challenges
- Customers can donate their cash-out amount towards low-income solar installations
- NEMA Accounts ineligible for annual cash-out

Implementation Timeline

Dec 2017

Implement changes to Aggregated NEM

July 2018

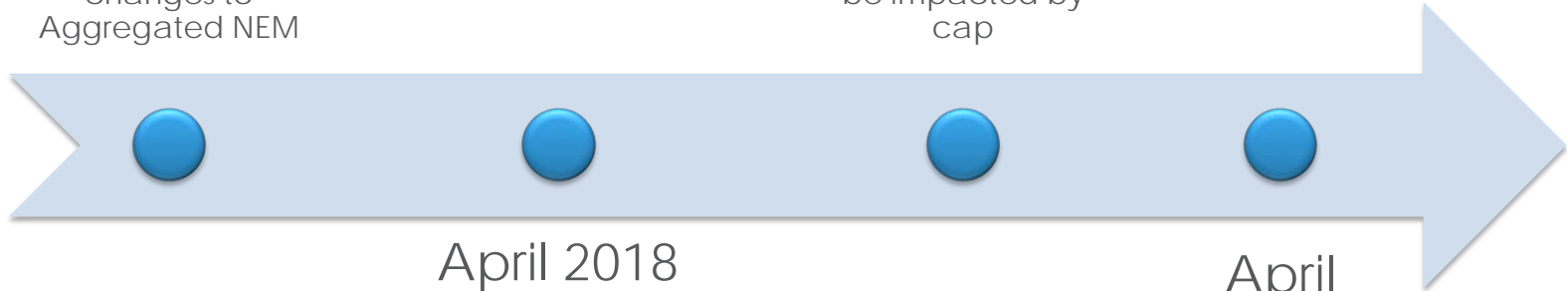
Additional outreach to customers likely to be impacted by cap

April 2018

Advise customers of new NEM cap, allow customers to contribute credit to MCE low-income programs

April 2019

NEM Cap takes effect



Thank You

