Empowering Our Clean Energy Future

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PITTSBURG | PLEASANT HILL | RICHMOND | SAN PABLO | SAN RAMON | WALNUT CREEK

MCE Board of Directors Meeting
Thursday, January 15, 2026
6:30 p.m.

2300 Clayton Road, Suite 1500, Concord, CA 94520
108 Gull Drive, Anna Maria, FL 34216 **(City of Belvedere)**
955 School Street, Napa, CA 94559, City Hall Committee Room **(City of Napa)**

Public comments may be made in person or remotely via the details below.
Remote Public Meeting Participation

Video Conference: https://t.ly/wI8WB
Phone: Dial (669) 900-9128, Meeting ID: 843 8350 8058, Passcode: 207246

Materials related to this agenda are available for physical inspection at MCE's offices in San Rafael at 1125 Tamalpais Avenue, San Rafael, CA 94901 and in Concord at 2300 Clayton Road, Suite 1500, Concord, CA 94520.

DISABLED ACCOMMODATION: If you are a person with a disability who requires an accommodation or an alternative format, please contact MCE at (888) 632-3674 or ada-coordinator@mceCleanEnergy.org at least 72 hours before the meeting start time to ensure arrangements are made.

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)

   C.1. Approval of 11.20.25 Meeting Minutes

   C.2. Approved Contracts for Energy Update

C.3 Addition of Board Members to Committees

C.4 Ensuring Accuracy in Local Information

C.5 Policy Update of Legislative and Regulatory Items

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2).
One Case.

6. Roll Call/Quorum
7. Election of Chair and Vice Chair (Discussion/Action)
8. MCE Governance Assessment (Discussion/Action)
9. Finance Committee Scope (Discussion/Action)
10. Corby Battery Energy Storage Project (Discussion)
11. Customer Programs Update (Discussion)
12. Voting Process (Discussion)
13. Board & Staff Matters (Discussion)
14. Adjourn

The Board of Directors may discuss and/or take action on any or all of the items listed on the agenda irrespective of how the items are described.

Outlook

Re: MCE Board Member letter to the editor

From: Nakamura, Laura <Laura.Nakamura@cityofconcord.org>
Sent: Friday, January 2, 2026 2:26 PM
To: Dawn Weisz <dweisz@mcecleanenergy.org>
Cc: shanellescalespreston@gmail.com
Subject: Fw: MCE Board Member letter to the editor

Dawn,
Please have this added to the packet(s) for our next meeting(s).

Thank you,

Laura

Laura Nakamura (She/her/hers)

Mayor / City Councilmember, District 5

Mobile 925-338-1259

Web https://www.lauranakamura.net/

Sign up for my newsletter:
https://www.lauranakamura.net/newsletter

From: Nakamura, Laura <Laura.Nakamura@cityofconcord.org>
Sent: Tuesday, December 23, 2025 8:28 PM
To: Dave Allen <dallen@marinij.com>
Subject: Re: MCE Board Member letter to the editor

Hello Dave,
I'm circling back on this as I have not heard from the news department. I'd like to resubmit this letter to the editor.

Thank you for the consideration.

Laura

Laura Nakamura (She/her/hers)
Mayor / City Councilmember, District 5

Mobile 925-338-1259
Web https://www.lauranakamura.net/
Sign up for my newsletter:
https://www.lauranakamura.net/newsletter

From: Dave Allen <dallen@marinij.com>
Sent: Monday, December 15, 2025 4:37 PM
To: Nakamura, Laura <Laura.Nakamura@cityofconcord.org>
Subject: Re: MCE Board Member letter to the editor

Hi Laura,

Thanks for reaching out. I forwarded this to the news department as a news tip.

Dave

On Fri, Dec 12, 2025 at 9:22 AM Nakamura, Laura <Laura.Nakamura@cityofconcord.org> wrote:

> Dear Marin IJ Editorial Team,
>
> I am submitting the attached Letter to the Editor for your consideration (below signature line). The letter responds to recent coverage related to MCE.
>
> As Mayor of Concord and an MCE Board Director, I believe it is important for the public to have access to verified information—especially when it concerns the governance of a regional public agency that serves hundreds of thousands of residents. My letter focuses on the importance of ethical conduct and maintaining integrity.
>
> Please let me know if you need any additional information or clarification. I appreciate your time and consideration.
>
> Sincerely,
>
> Laura
>
> **Laura Nakamura** (She/her/hers)
>
> Mayor / City Councilmember, District 5

Mobile 925-285-0781

Letter to the Editor:

The IJ's Silence on the truth at MCE Isn't Neutral—It's Complicity

The Marin IJ has devoted significant coverage to recent board-level tensions at MCE. So your silence on a pivotal fact is troubling: the public claim that MCE's CEO, Dawn Weisz, made inappropriate comments on a "hot mic" has been proven false; the IJ has not yet reported this. When a news organization withholds verified information that corrects a distortion, that silence becomes a form of complicity.

The claim originated from an MCE board member representing the City of Larkspur. Her claim was not a question or a misunderstanding; it was presented as fact without verification. As MCE staff later documented, the false claim triggered alarm and confusion among members of the public - entirely preventable harm had basic care been taken to verify the facts. Instead, the false statement is disrupting essential agency work, damaging morale, and eroding trust in an organization that earnestly serves its customers.

What is most concerning are the ethical breaches. MCE directors have a duty of care and loyalty that should preclude their making misleading statements. They should uphold the truth to foster the agency's credibility. And because every MCE director also serves as an elected official, the obligation to model integrity, accuracy, and responsible conduct is even higher. Incidents like this underscore how essential it is for MCE directors to exemplify ethical public service. Likewise, journalists have a duty to seek the truth and report it.

MCE - like many energy agencies - faces substantial challenges in 2026. Rate pressures, regulatory shifts, and complex planning decisions demand focused, collaborative, and ethical leadership. False "bombshell" disruptions do nothing but undermine MCE's focus on serving its customers.

The public deserves full, factual reporting. And MCE directors must recommit to fact-based, responsible stewardship of the agency they are entrusted to lead.

Sincerely,
Laura Nakamura
Mayor, City of Concord
MCE Director

DRAFT

MCE BOARD MEETING MINUTES[1]
Thursday, November 20, 2025
6:30 P.M.

Present:

Liz Alessio, County of Napa and Four Napa Cities/Town (American Canyon, Calistoga, St. Helena, and Yountville), joined at 7:03pm
Stephanie Andre, City of Larkspur
Dion Bailey, City of Hercules
Eli Beckman, Town of Corte Madera
Mark Belotz, Town of Danville
Kari Birdseye, City of Benicia
Monica Brown, County of Solano, left at 9:30pm
Brian Colbert, Alternate, County of Marin
Barbara Coler, Town of Fairfax
Cindy Darling, City of Walnut Creek
Jill Hoffman, City of Sausalito
Kevin Jacobs, City of Novato
C. William Kircher, Jr., Town of Ross
Arlene Kobata, City of Pittsburg, joined at 7:34pm
William Ktsanes, Alternate, City of El Cerrito
Tarrell Kullaway, Town of San Anselmo
Maika Llorens Gulati, City of San Rafael, joined at 8:23pm
Satinder S. Malhi, Alternate, City of Martinez
Eduardo Martinez, Alternate, City of Richmond
John McCormick, City of Lafayette
Laura Nakamura, City of Concord
Beth Painter, City of Napa
Charles Palmares, City of Vallejo
Max Perrey, City of Mill Valley
Shanelle Scales-Preston, County of Contra Costa, Chair
Shannon Shaw, Alternate, City of Oakley
Amanda Szakats, City of Pleasant Hill
Maureen Toms, Alternate, City of Pinole
Graham Thiel, Town of Moraga
Sridhar Verose, City of San Ramon, joined at 6:54pm
Sally Wilkinson, City of Belvedere

Absent:

Elizabeth Pabon-Alvarado, City of San Pablo
Manveer Sandhu, City of Fairfield
Holli Their, Town of Tiburon

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[1] This item is a general administrative matter. Action requires a majority vote of board members present for a motion to carry.

DRAFT

Staff & Others:

Jared Blanton, VP of Public Affairs
Jesica Brooks, Lead Board Clerk and Executive Assistant
John Dalessi, Pacific Energy Advisors
CB Hall, Principal Power Procurement Manager
Alice Havenar-Daughton, VP of Customer Programs
Vicken Kasarjian, Chief Operating Officer
Caroline Lavenue, Legal Counsel II
Tanya Lomas, Board Clerk Associate
Linda Lye, Senior Legal Counsel
Catalina Murphy, General Counsel
Ashley Muth, Internal Operations Associate
Justine Parmelee, VP of Internal Operations
Mike Rodriguez-Vargas, Internal Operations Assistant
Enyonam Senyo-Mensah, Internal Operations Manager
Dan Settlemyer, Internal Operations Associate
Sabrinna Soldavini, Vice President of Policy
Maíra Strauss, VP of Finance
Jamie Tuckey, Chief Customer Office
Dawn Weisz, Chief Executive Officer

1. Roll Call

Chair Scales-Preston called the regular meeting to order at 6:30 p.m. with quorum established by roll call.

2. Board Announcements (Discussion)

Chair Scales-Preston opened the meeting and removed item 9, MCE Public Officials Code of Ethics. Director Kullaway made a motion to move items 8 & 11 to after consent. Chair Scales-Preston opened the floor to a vote.

Action: It was M/S/D (Kullaway/Beckman) **to move items 8 & 11 to after consent.** Motion did not carry. 12-Yays 14-Nos 1-Abstain. (Nos: Bailey, Belotz, Birdseye, Brown, Coler, Darling, Malhi, McCormick, Nakamura, Scales-Preston, Shaw, Szakats, Thiel, Toms. Abstain: Ktsanes. Absent: Alessio, Kobata, Pabon-Alvarado, Sandhu, Their, and Verose).

3. Public Open Time (Discussion)

Chair Scales-Preston opened the public comment period and there were comments made by members of the public Mitch Mashburn, Wendy Brekken, Alicia Minyen, Robin Sackey, Heidi Wood, Michael Gellar, Carmen Martinez, Mary Stompe, Mimi Willard and Alternate Board Director Mathew Salter, Town of Ross.

4. Report from Chief Executive Officer (Discussion)

CEO Weisz introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were comments made by member of the public, Alicia Minyen.

5. Consent Calendar (Discussion/Action)

C.1 Approval of 9.18.25 Meeting Minutes
C.2 Approval of 10.16.25 Meeting Minutes
C.3 Approved Contracts for Energy Update
C.4 Resolution No. 2025-07 Appointing Chief Financial Officer as Treasurer
C.5 Marketing and Communications Quarterly Executive Report
C.6 Proposed Amended and Restated MCE Policy No. 003 – Records Retention
C.7 Legislative and Regulatory Update

Director Andre requested that item C.3 be pulled from the consent calendar for discussion. The Chair accepted the request and opened the floor for questions and comments from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Perrey/Beckman) **to approve Consent Calendar items C.1, C.2, C.4, C.5, C.6, and C,7.** Motion carries by unanimous roll call vote. (Absent: Brown, Pabon-Alvarado, Sandhu and Thier).

6. MCE Fiscal Year 2025/26 Energy Pro Forma Update (Discussion)

John Dalessi, President & CEO, Pacific Energy Advisors, introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were comments made by members of the public Alicia Minyen, Wendy Brekken, Dan Segedin, Robert Miller and Alternate Board Director Mathew Salter, Town of Ross.

Action: No action required.

7. Strategic Alignment and Update on Regulatory Advocacy (Discussion)

Sabrinna Soldavinni, VP of Policy, introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: No action required.

8. <u>Placement of Finance Functions for Board Engagement (Discussion/Action)</u>

Justine Parmelee, VP of Internal Operations, introduced this item.

Chair Scales-Preston opened the public comment period and there were comments made by members of the public Dan Segedin, Alicia Minyen, Wendy Brekken, Edi Birsan, Robert Archer and Alternate Board Director Mathew Salter, Town of Ross.

Action 1: Chair Scales-Preston opened the floor for Board members to choose between options:

A. Change Executive Committee name to "Executive and Finance Committee" and add a standing quarterly finance review to agendas, to supplement existing finance topics already covered.
B. Separate the finance scope out of the Executive Committee and form a new, standing "Finance Committee".

Option B. Separate the finance scope out of the Executive Committee and form a new, standing "Finance Committee" passes with 20 votes and 54.1 percent of voting weight present. Option A-13; Option B-20: Abstain-1. (Option A: Bailey, Birdseye, Coler, Darling, Kobata, Malhi, Nakamura, Scales-Preston, Shaw, Szakats, Thiel, Toms, and Verose. Option B: Alessio, Andre, Beckman, Belotz, Hoffman, Jacobs, Kircher Jr., Kullaway, Llorens-Gulati, Martinez, McCormick, Painter, Palmares, Perrey, Sackett and Wilkinson voted for option B. Abstain: Ktsanes. Absent: Brown, Pabon-Alvarado, Sandhu and Thier).

Action 2: It was M/S/C (Nakamura/Scales-Preston) **for the Executive Committee to draft the scope of the Finance Committee to bring to the full board for approval.** Motion carried by unanimous roll call vote. (Absent: Brown, Pabon-Alvarado, Sandhu and Thier).

9. <u>MCE Public Officials Code of Ethics (Discussion/Action)</u>

Chair Scales-Preston removed this item.

Action: No action required.

10. Customer Programs Update (Discussion)

Chair Scales-Preston deferred this item to a future Board of Directors Meeting.

Action: No action required.

11. Board & Staff Matters (Discussion)

Comments were made by Directors Kullaway, Wilkinson, and Andre

12. Adjournment

Chair Scales-Preston adjourned the meeting at 11:23 p.m. to the next scheduled Board Meeting on December 18, 2025.

_____

Shanelle Scales-Preston, Chair

Attest:

_____

Dawn Weisz, Secretary

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January 15, 2026

TO:	MCE Board of Directors
FROM:	Bill Pascoe, Senior Power Procurement Manager
RE:	Approved Contracts for Energy Update (Agenda Item #05 C.2)

Dear MCE Board Members:

Summary:
This report summarizes contracts for energy procurement entered into by the Chief Executive Officer or her delegate and, if applicable, the Chair of the Technical Committee, since the last report was prepared for the regular Board meeting in November 2025. This summary is provided to your Board for information purposes only and no action is needed.

Review of Procurement Authorities:
In November 2020, your Board adopted Resolution 2020-04 which included the following provisions:

> *The CEO and Technical Committee Chair, jointly, are hereby authorized, after consultation with the appropriate Committee of the Board of Directors, to approve and execute contracts for Energy Procurement for terms of less than or equal to five years. The CEO shall timely report to the Board of Directors all such executed contracts.*
>
> *The CEO is authorized to approve and execute contracts for Energy Procurement for terms of less than or equal to 12 months, which the CEO shall timely report to the Board of Directors.*

The CEO is required to report all such contracts and agreements to the MCE Board of Directors on a regular basis.

Item #	Month of Execution	Purpose	Average Annual Contract Amount	Contract Term
1	November 2025	Sale of Resource Adequacy	-$783,750	1 Year or less
2	December 2025	Purchase of Renewable Energy	$1,837,388	1 Year or less
3	December 2025	Purchase of CAISO Energy (Hedge)	$26,188,035	1 Year or less
4	December 2025	Allocation of Carbon Free Energy	$0.00	1 Year or less
5	December 2025	Purchase of CAISO Energy (Hedge)	$12,553,994	1 Year or less
6	December 2025	Purchase of CAISO Energy (Hedge)	$9,200,989	1 Year or less

Contract Approval Process:
Energy procurement is governed by MCE's Energy Risk Management Policy as well as Board Resolutions 2020-04 and 2018-08. The Energy Risk Management Policy (Policy) has been developed to help ensure that MCE achieves its mission and adheres to its procurement policies established by the MCE Board of Directors (Board), power supply and related contract commitments, good utility practice, and all applicable laws and regulations. The Board Resolutions direct the CEO to sign energy contracts up to and including 12 months in length.

The evaluation of every new energy contract is based upon an assessment of how to best fill MCE's open position. Factors such as volume, notional value, type of product, price, term, collateral threshold and posting, and payment are all considered before execution of the agreement.

After evaluation and prior to finalizing any energy contract for execution, an approval matrix is implemented whereby the draft contract is routed to key support staff and consultants for review, input, and approval. Typically, contracts are routed for commercial, technical, legal, and financial approval, and are then typically routed through the Chief Operating Officer for approval prior to execution. The table below is an example of MCE staff and consultants who may be assigned to review and consider approval prior to the execution of a new energy contract or agreement.

Review Owner	**Review Category**
Vidhi Chawla (MCE, Vice President of Power Resources)	Procurement/Commercial
John Dalessi (Pacific Energy Advisors)	Technical Review
Steve Hall (Hall Energy Law)	Legal
Nathaniel Malcolm (MCE, Senior Commercial Counsel)	Legal/CPUC Compliance
Maira Strauss (MCE, Chief Financial Officer)	Credit/Financial
Vicken Kasarjian (MCE, Chief Operating Officer)	Executive

Fiscal Impacts:
Expenses and revenue associated with these Contracts and Agreements that are expected to occur during FY 2025/26 are within the FY 2025/26 Operating Fund Budget. Expenses and revenue associated with future years will be incorporated into budget planning as appropriate.

Recommendation:
Information only. No action required.

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January 15, 2026

TO:	MCE Board of Directors
FROM:	Jesica Brooks, Executive Assistant and Lead Board Clerk
RE:	Addition of Board Members to Committees (Agenda Item #05 C.3)[1]
ATTACHMENTS:	A. 2026 MCE Board Offices and Committee Rosters B. Executive Committee Overview

Dear MCE Board Members:

Summary:
MCE Board Director and City of Napa Councilmember, Beth Painter, and MCE Board Director and City of Benicia Councilmember, Kari Birdseye, are interested in joining the Executive Committee. Director Eli Beckman and Director Gabe Quinto are interested in rotating off of the Executive Committee.

MCE Board Director and Town of Fairfax Councilmember, Barbara Coler, and MCE Board Director and City of Pinole Councilmember, Devin Murphy, are interested in joining the Ad Hoc Contracts Committee for 2026.

The proposed scope of the Finance Committee has been provided for your Board to consider on January 15, 2026. Members interested in serving on the Finance Committee can express interest in advance of the meeting, during the meeting, or may contact MCE's clerk to be added at a future Board meeting. MCE Board Director and City of Belvedere Councilmember, Sally Wilkinson, MCE Board Director and City of Larkspur Councilmember, Stephanie Andre, and MCE Board Director and City of Lafayette Councilmember, John McCormick are interested in joining the Finance Committee.

Fiscal Impacts:
None.

Recommendation:
Approve the 2026 committee membership as reflected in Attachment A, 2026 MCE Board Offices and Committee Rosters.

[1] This item is a general administrative matter. Action requires a majority vote of board members present for a motion to carry.

2026 MCE Board Offices and Committee Rosters

BOARD OFFICES

Chair:	Shanelle Scales-Preston, County of Contra Costa
Vice Chair:	Gabe Quinto, City of El Cerrito
Treasurer:	Maira Strauss, MCE Chief Financial Officer
Secretary:	Dawn Weisz, MCE Chief Executive Officer

BOARD OFFICES SELECTION PROCESS

The Chair and Vice Chair offices are held for 1 year and there are no limits on the number of terms held by either Chair or Vice Chair.[1] The selection of these offices shall take place in or near December of each year.[2] The office of Treasurer is appointed by the Board via an approved resolution and may be a non-board member. The Treasurer appointment, along with the delegated authority, is held for 1 year and there are no limits on the number of terms held.[3] Deputy Treasurers are appointed directly by the Treasurer each year. Once appointed by the Board, the Secretary shall continue to hold the office each year until the Secretary chooses to resign from the role or the Board decides to remove the individual from the Secretary position.[4] The Secretary does not need to be a member of the Board. All officer appointments/selections by the Board require a majority vote of the full membership of the Board.[5]

EXECUTIVE COMMITTEE *(Updated 9.18.25)*

1. Max Perrey, Chair	City of Mill Valley
2. Stephanie Andre	City of Larkspur
3. Eli Beckman, *outgoing*	Town of Corte Madera
4. Barbara Coler	Town of Fairfax
5. Cindy Darling	City of Walnut Creek
6. Maika Llorens Gulati	City of San Rafael
7. Devin Murphy	City of Pinole
8. Laura Nakamura	City of Concord
9. Gabe Quinto, *outgoing*	City of El Cerrito
10. Shanelle Scales-Preston	County of Contra Costa
11. Sally Wilkinson	City of Belvedere

[1] Section 4.13.1 of MCE Joint Powers Agreement.

[2] Article V, Section 1 of MCE's Operating Rules and Regulations.

[3] Article V, Section 1 of MCE's Operating Rules and Regulations; California Government Code § 53607.

[4] Article IV, Section 1(c) of MCE's Operating Rules and Regulations.

[5] Article VI, Section 2 of MCE's Operating Rules and Regulations. At MCE's current membership of 38 communities with appointed Directors, the vote needed is 20.

12. Beth Painter, *interested* — City of Napa
13. Kari Birdseye, *interested* — City of Benicia

FINANCE COMMITTEE

1. Stephanie Andre, *interested* — City of Larkspur
2. John McCormick, *interested* — City of Lafayette
3. Sally Wilkinson, *interested* — City of Belvedere

TECHNICAL COMMITTEE *(Updated 9.18.25)*

1. Devin Murphy, Chair — City of Pinole
2. Stephanie Andre, Vice Chair — City of Larkspur
3. Dion Bailey — City of Hercules
4. John McCormick — City of Lafayette
5. Charles Palmares — City of Vallejo
6. Gabe Quinto — City of El Cerrito
7. Amanda Szakats — City of Pleasant Hill
8. Cesar Zepeda — City of Richmond

2026 AD HOC CONTRACTS COMMITTEE

1. Barbara Coler, *interested* — Town of Fairfax
2. Devin Murphy, *interested* — City of Pinole

MCE Executive Committee Overview

Scope

The scope of the MCE Executive Committee is to explore, discuss and provide direction or approval on general issues related to MCE including legislation, regulatory compliance, strategic planning, outreach and marketing, contracts with vendors, human resources, finance and budgeting, debt, rate setting, and agenda setting for the regular MCE Board meetings and annual Board retreat.

Authority

Executive Committee is authorized to make decisions regarding:

- Legislative positions outside of the Board-approved legislative plan
- Procurement pursuant to Resolution 2018-04 or its successor
- Compensation and evaluation of the CEO
- Ad hoc committees
- Honorary awards

The Executive Committee also serves to make recommendations to the Board regarding:

- The annual budget and budget adjustments
- Rate setting
- Entering into debt
- MCE Policies (such as Policy 013: Reserve Policy and Policy 014: Investment Policy)

Committee Member Selection Process

MCE strives to assemble an Executive Committee comprised of at least one county representative and one city/town representative from each county in the MCE service area. Available seats on the Executive Committee are therefore first offered to any interested and applicable Board member whose county is not yet represented by one county and one city/town member. Interested members can be added at a meeting of the Board of Directors when it is included in the agenda. Any member interested in joining the Executive Committee is required to be a representative on the Board for six (6) months prior to serving on the Executive Committee.

Additionally, a member must be serving on the Executive Committee for one (1) year to be eligible for the Executive Committee Chair position.

The Executive Committee selects its own chair for a term of one year. The Executive Committee Chair is limited to two one-year terms.

Current Meeting Schedule

First Monday of each month at 12:00 pm. Two meetings per year will be designated as “in-person” only.

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January 15, 2026

TO:	MCE Board of Directors
FROM:	Jared Blanton, Vice President of Public Affairs
RE:	Ensuring Accuracy in Local Information (Agenda Item #05 C.4)
ATTACHMENTS:	A. Ensuring Accuracy in Local Information B. MCE: Fact or Fiction

Dear MCE Board Members:

Summary:
Beginning in October 2025, a series of news articles and opinion pieces were published in the Marin Independent Journal that consistently contained factual inaccuracies, a lack of context, and incomplete information about MCE, its operations, financial performance, staff, and governance. Subsequent public comment at MCE meetings and letters to the editor have repeated this incomplete information. Despite multiple attempts to correct the record, including with the news editor and publisher, the false and incomplete information contained in this series remains in the public sphere.

The dissemination of false or incomplete information in the news media has the potential for adverse impacts on the communities that MCE serves including customer confusion, and reputational risk that, if left unaddressed, could complicate MCE's external relationships, including with financial and regulatory stakeholders.

To ensure the Board, public, and interested parties have accurate information, MCE staff has compiled corrections and clarifications to provide a more accurate and complete picture of MCE (Attachment A). Additionally, as many of the points levied against the agency in this series are variations of recurring themes that periodically surface in public discourse about CCAs, an "MCE: Fact or Fiction" document is also included (Attachment B). This document addresses common talking points used by critics of MCE, and the broader CCA movement, going back to the agency's founding in 2010. The Executive Committee reviewed these materials in detail on January 5, 2026, provided substantial feedback, and expressed concurrence with the information presented.

Fiscal Impacts:
None.

Recommendation:
Information only.

Local news articles and opinion pieces about MCE published in recent months, as well as public comment and letters to the editor in response, contain factual inaccuracies and incomplete information that may cause misinformed views about MCE with its customers and other stakeholders. Below are corrections and clarifications.

MCE's Track Record:

- Fifteen years of reliable service and 100% fossil-free power since 2018.[1]
- $80 million in customer rate savings since inception in 2010 to June 2025.
- More than 1,000 MW of renewable energy built or contracted across California.
- Dozens of local community programs — from school battery storage to small-business EV charging.
- Stable rates for customers despite statewide volatility in energy markets.
- Investment-grade credit rating and strong reserves to protect ratepayers.

Rates/Costs:

- MCE has not had a general rate increase since January 1, 2023. However, there have been two small rate segments, impacting 6.95% of MCE customers, that have changed since that time:
    - For a small subset of approximately 3,000 large commercial customers, demand charges increased by 4.4% in early 2025 to align with actual cost of service.
    - After 15 years, the 1 cent premium that had been charged to Deep Green 100% renewable customers since 2010 increased for the first time to 1.25 cents in mid-2025 to account for the increased cost of service and to avoid having Light Green customers subsidize Deep Green customers.
- Since its launch in 2010 through 2025, MCE's generation rates have been lower than PG&E's.
- As of December 2025, compared to all CCAs, PG&E, SDG&E, and SCE, (27 other electricity providers state-wide), MCE's generation rates fall squarely in the middle, though customer's total costs are skewed higher due to PG&E fees and delivery charges.
- As of December 2025, MCE customers' total bill costs are 4% above the average of other service providers in California. Much of this variance comes from the PCIA (Power Charge Indifference Adjustment), a fee that PG&E charges to customers that receive electricity generation service from CCAs.

[1] In the early years of MCE's operations, specifically in 2015, 2016, and 2017, our Light Green product included a limited amount of natural gas, ranging from 5% to 12%, as reflected in the Power Content Labels published by the California Energy Commission.

- MCE experiences some of the highest delivery charges and PCIA fees in the state, which are the major drivers of our total bill costs to customers. The high delivery charges are due in part to the geography and topography of MCE's service area.
- While PG&E customers' total bill costs are currently less expensive than MCE's, PG&E is projecting rate increases in 2027, 2028, 2029, and 2030.
- PG&E has executed more than 10 rate changes over the last 3 years while MCE has had three, two of which only impacted small subsets of customers as described above.

Power Procurement & Content

- Unbundled RECs (i.e. RECs purchased separately from the corresponding renewable energy electrons) do not factor into the power mix or greenhouse gas intensity reported in the California Energy Commission's annual Power Content Label.
- MCE's power supply practices are in accordance with state regulations and focus on high-quality, in-state bundled renewable energy.
- The Board has adopted a resolution (Resolution 2020-04) delegating authority for certain energy contracts. The resolution creates a tiered approach with three categories of contracts.
- The Board has designated the authority to sign contracts less than one year in length to the CEO.
- Contracts 12 months+ to 5 years in length, the Board delegated authority to the CEO and the chair of the Technical Committee, with prior consultation to the Technical Committee. Historically, staff has approached consultation that considers MCE's transparency obligations as a public entity subject to the Brown Act while also protecting its ratepayers by limiting disclosure of market-sensitive information that could adversely affect MCE's negotiating position in the market. Consultation has occurred as follows:
    - At the beginning of each year, the CEO reports to the Technical Committee what is to come for the year regarding power supply needs. The CEO shares the *types of products* MCE will be soliciting for and securing, including the need for hedges, Resource Adequacy, and short-term renewable energy to fill any needed shortfall in planned or delivered volumes. These specific contracts are not provided to the Technical Committee in advance of signature for two important reasons both related to protecting MCE's position in the market. First, the short turnaround needs of the market from when the product is available and when it needs to be executed are generally not compatible with Brown Act meeting notice requirements. Additionally, disclosing MCE's real-time open position, as would be necessary if the full contract terms are disclosed to the Technical Committee, can adversely affect MCE's ratepayers, signaling to the market what type of product MCE needs and what it will pay,

potentially increasing the per volume cost.
    - The other mechanism for consultation with the Technical Committee is through MCE's Operational Integrated Resources Plan, which is posted on MCE's website and has a planning period of 2022 through 2031, which was approved unanimously by the Technical Committee on November 4, 2021. MCE's Integrated Resource Plan is approved by Technical Committee and/or Board according to cycle set by the California Public Utilities Commission and outlines the resource needs of the agency based on Board-set targets.
    - MCE has had some instances where the Technical Committee Chair has been unavailable to execute agreements that have been previously consulted with Technical Committee as outlined above, and MCE has had the Board Chair step in to prevent MCE from losing the deal in the market.
    - The Board receives a report of all contracts approved under this delegated authority typically at the next meeting after execution occurs.
- Finally, MCE's long-term contracts (more than five years in length) are reviewed in depth and approved by the Technical Committee and/or Board.
    - Price and other market-sensitive terms are redacted from the contracts, however, to preserve MCE's market position.
- In short, the Board has taken a tiered approach to the delegations for energy contracts. MCE is in a somewhat unique position as a market participant in a highly competitive market. Unlike our private counterparts, MCE is a public entity, subject to the Brown Act and is therefore required to make public all information presented to its Board and Standing Committees. Unlike our private competitors, we are not able to conduct private meetings with the Board or its Standing Committees to discuss market-sensitive information. MCE has historically balanced the goals of transparency, Board oversight, and protecting ratepayers by consulting with the Board and Standing Committees on broad policy goals and objectives while delegating to staff authority to implement broad Board direction through negotiation and execution of specific contract terms.
- In addition to providing MCE staff with oversight and policy direction through the mechanisms described above, MCE's Board has established Policy 015: Energy Risk Management Policy that has been updated over time and was last approved in 2019. This Policy 015 addresses diversifying exposure to market conditions and reducing the risk of concentrating purchases in any one year for long-term power purchase agreements, 12months+ to 5-year power agreements, and 1 year or less power agreements.
- MCE's short-term PCC1 contracts are sourced from 100% bundled renewable energy and are purchased as available from a variety of entities, typically for a term of 1-5 years. When MCE contracts for these resources, the renewable energy they produce is 'retired' and removed from the market, creating more demand for renewable supply.
- MCE's long-term contracts (typically 10- to 20-year terms) are sourced from new 100% renewable energy resources that typically create jobs along with new statewide

renewable capacity.

- MCE's power procurement policies are subject to the Board's oversight and may be reviewed and amended from time to time to respond to changed market conditions or organizational needs.
- MCE's power is not 'mostly produced' by PG&E, as claimed in the Marin Independent Journal. MCE procures power from more than two dozen project developers, along with some energy deliveries from PG&E generating assets. (*Source: Marin IJ – Dick Spotswood: Aspects of MCE's operation need closer look*)

Finance:

- MCE takes financial transparency seriously and regularly provides financial, operational, and governance updates in public meetings and through monthly reports. The agency has consistently complied with all requests for financial information within the scope of board policy and state law. Regular monthly and quarterly financial reports are on our website: https://mcecleanenergy.org/key- documents/
- MCE produced an increase in net position of $13 million in Fiscal Year 2024/25, not a net loss. (*Source: 2025 Audited Financial Statement*)
    - MCE's 2024 audited financial results showed an increase in net position of $159.5 million. (*Source: 2024 Audited Financial Statement*)
    - MCE's 2023 audited financial results showed an increase in net position of $41 million. (*Source: 2023 Audited Financial Statement*)
- MCE's gain in net position in Fiscal Year 2024/25 was a result of its investment strategy, despite market headwinds in 2024 such as lower revenue due to unanticipated mild weather (yielding lower energy usage).
- MCE's annual financial results undergo a professional third-party audit each year. These audited results have never been altered by management, and they are available for review at any time on MCE's website.
- Because of different fiscal years, procurement strategies, resource mix, agency mission, and a host of other variables, comparisons between different CCA's must be approached with caution. In addition, energy expenses and demand can be quite irregular, causing unaudited quarterly results to contain variations which may yield unreliable comparisons. A more reliable comparison between CCA's would consider multiple fiscal years to identify trends and better account for lags in data.
- Like all load-serving entities in California, MCE operates in a highly volatile energy market. Annual energy cost fluctuations reflect statewide conditions and are consistent with industry-wide trends. Additionally, MCE's Board, in furtherance of the agency's mission, has directed staff to procure higher volumes of PCC1 bundled renewables than most other CCA's.

Staffing:

- MCE's CFO was promoted into her position following the same steps as her predecessor who started as Director of Finance before he earned the CFO title.
- As is standard practice with most public agencies delegating to the Managing Director, MCE's Board has directed the CEO to oversee agency operations, hiring, and employment decisions.
- Dawn's base salary is the highest of all 25 CCAs, while her total compensation ranks third. At 17 years, Dawn is the longest tenured CCA CEO by several years.

Board & Finance Committee:

- Staff did not provide a recommendation for or against the formation of a Finance Committee in any of the October, November or December meetings. The December 1st Executive Committee draft document that outlined a potential structure for the newly created Finance Committee was provided by Dawn Weisz at the request of members of the Executive Committee seeking a discussion starting point for what the Finance Committee's scope might include. It was not drafted as, nor intended to be, a complete proposal for the Finance Committee's scope.
- The Ad Hoc Audit Committee was not 'shut down'. Instead, it concluded its work after the completion of the fiscal year 2024 audit. In response to requests from the Board for more transparency, its functions were integrated into the Executive Committee to streamline oversight and transparency, ensure meetings were held in public, and to avoid duplication of responsibilities.
- A letter to Executive Committee written by MCE's Chair and Vice Chair was referenced as being drafted by MCE's VP of Internal Operations, Justine Parmelee. Justine did not write the letter referred to in the media. (*Source: Marin IJ - Friction at MCE, Part 4: Management, allies block governance reforms*)

General Background:

- MCE staff are obligated to follow guidance and policy set by the full board, rather than spending agency resources following requests from a minority of or individual board member requests.
- MCE's structure as a Joint Powers Authority ensures that all policy direction comes from its 34-member Board of Directors, representing 38 communities. Management implements board-approved policy and does not create or alter it.
- MCE's board has set strong policies to build new renewable energy under long-term contracts with over 48 MW of new renewables built in MCE's service area, and over 1,000 MW of new renewables built statewide to serve MCE's customer needs.

- While the energy industry is extremely volatile with large swings in annual costs, MCE's board has not wavered in renewable supply purchases and has established a rate stabilization fund to protect our budget and customers.
- The MCE board has approved $400 million in community reinvestment including $70 million in direct customer cost savings. Over $233 million in grant funding has been awarded to MCE for programs including energy efficiency for affordable housing, EV chargers for small businesses, battery storage for schools and medical centers, and electrification for water heaters and AC.
- MCE's board members are not selected by MCE to serve on the board; they are appointed by their jurisdictions. There is no prerequisite for experience, and there is frequent turnover.
- MCE's board of 34 members representing 38 communities had 14 new members join in 2025, replacing board members who rotated off the board in 2024.

FACT OR fiction

FACT OR FICTION	STATEMENT	EXPLANATION
FICTION	MCE is an additional cost.	MCE is not an additional cost. MCE's cost replaces PG&E's generation costs.
FACT	MCE's Board of Directors does not receive any salary, payment, or benefits for being on the Board.	MCE does not pay Directors. The Board of Directors is composed of elected city, town, and county officials who represent each of the communities that MCE serves.
FICTION	CCAs are for-profit entities.	CCAs are not-for-profit public agencies.
FACT	MCE experiences some of the highest delivery charges and PCIA fees in the state, which are the major drivers of total bill costs to customers.	MCE's generation rates fall squarely in the middle across all 24 CCAs and the three investor-owned utilities. The largest factors impacting MCE customer bills are PG&E charges, such as PCIA fees, which are higher for MCE than most other providers.
FICTION	MCE changes its rates every few months to ensure the prices are consistent with the cost of energy.	MCE typically changes rates once per year or less. MCE can only change rates through Board approval which is typically considered once a year at the end of the fiscal year or budget setting time. MCE has not changed its Light Green rates since 2023. For a small subset of commercial customers, demand charges increased 4.4% in early 2025 to align with cost of service. The Board approved a $0.25 increase to the Deep Green premium in mid-2025, from $.01/kWh to $.0125/kWh, the first rate increase for Deep Green in MCE's 15 years of service.
FACT	MCE's budget reports, audited financials, and unaudited financial statements will not always match.	MCE's budget reports divide MCE's finances into four separate budgets while the financial statements show consolidated activity across all of them. MCE has four budgets including: the Operating Fund, the Energy Efficiency Fund, the Program Development Fund, and the Resiliency Virtual Power Plant Fund.
FICTION	MCE is funded through tax dollars.	MCE is financed by the revenues received from our customers based on the electricity they consume. As a self-funded, not-for-profit public agency that does not use any tax dollars, we also ensure that any financial benefits directly serve the community.
FACT	MCE does not provide all contract terms publicly.	Revealing the terms of MCE's prior or existing contracts would allow counterparties to see what MCE has agreed to, limiting flexibility and negotiating power in future supply agreements. Contract terms remain confidential until at least three years after contract execution.
FICTION	Unaudited quarterly financials and audited annual financials are essentially the same thing.	Unaudited quarterly financial statements are interim updates which rely on the best available data including preliminary estimates and accruals pending invoices. They offer an indicative, but incomplete picture of MCE's finances. Audited annual financial statements go through a comprehensive external review process by professional independent auditors. This ensures that all figures are verified and fully reconciled. While unaudited quarterly statements can be useful for monitoring recent trends, the audited annual financial statements provide the definitive financial results.
FACT	MCE publishes all unaudited quarterly financial statements, audited annual financial statements, and annual budgets on its website under "Key Documents".	All of MCE's financial statements can be found online at mceCleanEnergy.org/key-documents.

FACT OR FICTION	STATEMENT	EXPLANATION
FICTION	MCE is able to post financial results immediately after a quarter closes.	Three months are needed to provide accurate data due to time lags inherent in the electricity sector. Settlement data from the California Independent System Operator (CAISO) is for load, and generation is typically finalized and billed approximately 70 business days after the trade date. This delay, combined with the complexity of the multitude of customer programs MCE has and lags with certain energy supplier invoices, creates the need for roughly a three-month window before unaudited financials can be finalized.
FACT	MCE's Board of Directors are responsible for policy decisions that impact MCE's rates, power purchasing, and governance.	MCE staff operate under the purview of MCE's Board of Directors, which determines policies, provides guidance on long-term agency priorities, and sets rates. MCE staff implement policy, make recommendations to the Board based on their expertise and industry standards, and support customer engagement.
FICTION	MCE can just buy less power if demand goes down.	MCE purchases most of its power in advance under fixed-price agreements and must pay for the power regardless of customer usage. Therefore, lower sales do not translate to lower energy costs. If MCE were to reduce power supply hedging, short-term savings could occur when sales or spot prices are low. However, if market prices exceed projections due to extreme weather events or unusual market dynamics, MCE would be exposed to extremely high real-time market prices for all unhedged loads.
FACT	MCE's Board of 34 members had 14 new members join in 2025, replacing Board members who rotated off the Board.	MCE's Board members are not selected by MCE to serve on the Board; they are appointed by their city or town councils or county Board of supervisors. There is no prerequisite for experience, and there is frequent turnover.
FICTION	MCE can provide all cost and sales information publicly.	Disclosing specific prices and quantities for power purchases could create a new "floor" in the market, reducing MCE's negotiating leverage in future contracts with power suppliers or buyers.
FACT	MCE energy does not go directly to customers' homes or businesses.	MCE buys electricity that goes into the grid. MCE customers receive their electricity from the distribution system. The flow of individual electrons cannot be controlled or tracked on the grid. That is why energy providers within the CAISO forecast customer usage and schedule how much electricity is put on the grid.
FICTION	MCE Board members are appointed by MCE's CEO.	The Board of Directors is composed of elected city, town, and county officials who represent each of the communities that MCE serves and are appointed by each jurisdiction to represent them on MCE's Board.
FACT	MCE provides 60% renewable energy while PG&E provides 23% renewable energy.	MCE has more than double the amount of renewable energy sources in its energy compared to PG&E.
FICTION	MCE is not as green as it claims; it purchases unbundled RECs as a cheap way to reduce the carbon intensity of its portfolio.	Unbundled RECs (i.e. RECs purchased separately from the corresponding renewable energy electrons) do not factor into the power mix or greenhouse gas intensity reported in the California Energy Commission's annual Power Content Label.
FICTION	MCE's greenhouse gas accounting methodology misrepresents the carbon intensity of its resources.	MCE accounts for greenhouse gas emissions in compliance with state regulations. When the state transitions to 24x7 renewable energy accounting MCE will also transition.
FICTION	MCE replaces PG&E for your entire energy service.	MCE replaces PG&E for your energy generation service only. All MCE customers are also PG&E customers, because PG&E is responsible for transmission, delivery, and billing of electricity.
FICTION	Monopoly markets are more capable of delivering reliable energy supply.	Competition drives prices down, creates more choice for customers and decreases risk of blackouts.

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January 15, 2026

TO:	MCE Board of Directors
FROM:	Sabrinna Soldavini, Vice President of Policy
RE:	Policy Update of Legislative and Regulatory Items (Agenda Item #05 C.5)
ATTACHMENT:	Regulatory Packet with Filings since the November Board Meeting

Dear MCE Board Members:

Summary:
Below is a summary of the key activities at the state and federal legislatures and the California Public Utilities Commission (CPUC), California Energy Commission (CEC), and the California Independent System Operator (CAISO) impacting Community Choice Aggregation (CCA) and MCE.

I. California Public Utilities Commission (CPUC)

a. 2026 PG&E Energy Resource Recovery Account (ERRA) Forecast Proceeding

MCE is engaged in PG&E's 2026 Energy Resource Recovery Account (ERRA) Forecast Proceeding with CalCCA. This ERRA proceeding determines PG&E's generation and PCIA rates for 2026.

In this application, PG&E advocated for two proposals to value the resources in the PCIA portfolio (resources whose costs CCA customers are partially responsible for) that would decrease their value and significantly increase the PCIA costs for CCA customers. In late November, the Commission issued a Proposed Decision (PD) authorizing PG&E's proposals. CalCCA filed Opening and Reply comments urging the Commission not to adopt PG&E's proposals given their impact on the PCIA charge. CalCCA re-emphasized the large cost shifts resulting from the proposals that would unfairly disadvantage CCA competitiveness and customers. MCE also worked with other CCAs on a public comment letter that highlighted the real affordability impact of the Commission's decision on different communities. The Commission voted out a final Decision in December with no changes from the PD and authorized PG&E's generation rate decreases for 2026.

Fiscal Impacts: PCIA rates for MCE customers across all vintages increased on January 1, 2026. MCE's Finance and Executive teams are currently evaluating ways to mitigate these rate impacts.

a. Demand Response

In September, the CPUC issued an Order Instituting Rulemaking (OIR) to enhance demand response (DR) in California. The proceeding will address a variety of DR topics including dynamic rate systems and processes, dual participation, valuation methodologies, and CAISO market integration. The CPUC also issued a Guiding Principles Staff Report, which proposes to update DR principles to ensure DR is predictable, reliable, consistent, cost-effective, and supports California's energy and environmental goals. CalCCA filed opening and reply comments on the OIR in November, supporting the scope of the proceeding, and the guiding principles, with some suggested modifications. CalCCA also commented on issue prioritization, and recommended a list of other proceedings that the Commission should aim to coordinate with. A Prehearing Conference was held on December 16, 2025 with over 25 parties in attendance, including MCE and CalCCA. Parties now await a Scoping Ruling.

Fiscal Impacts: There are no immediate fiscal impacts to MCE.

b. Disconnections

In October, the CPUC issued a ruling requesting comments on the future of the Arrearage Management Plan (AMP) Program and the Percentage of Income Payment Plan (PIPP) Pilot. The ruling requests feedback on whether the programs should continue, and whether any recommendations from the respective evaluations should be incorporated. CalCCA filed opening comments in November recommending that the CPUC establish both AMP and PIPP as permanent programs. CalCCA also filed reply comments in December, opposing the IOUs' recommendation to end the AMP and PIPP programs and opposing PG&E's recommendation to remove disconnection rate caps. Parties now await a Proposed Decision.

Fiscal Impacts: There are no immediate fiscal impacts to MCE.

c. Affordability

In November, the CPUC issued a Proposed Decision (PD) closing the Affordability proceeding and narrowing the existing affordability metric requirements to only general rate cases (GRCs) that increase revenue requirements by more than one percent, rather than in all applications. The PD also proposed eliminating the annual Affordability Report and moving relevant updates to the CPUC's affordability page, and continuing the requirement for IOUs to publicly release Cost and Rate Trackers. CalCCA filed comments in December, recommending the CPUC reject the PD's narrower requirement for IOUs to submit affordability metrics only in GRCs, and to instead expand the criteria

for submission of the affordability metrics to any CPUC proceeding. The Final Decision did not incorporate these recommendations, and was approved at the December 18, 2025 Voting Meeting. The proceeding is now closed.

Fiscal Impacts: There are no immediate fiscal impacts to MCE.

d. Energy Efficiency (EE)

i. EE Application Extension Granted

In December, Southern California Gas Company (SoCalGas), San Diego Gas and Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) submitted a request for an extension on the 2028-2031 EE portfolio Applications. Previously, the Commission required submission of Applications for the next cycle of EE program funding in February 2026. MCE currently administers a host of EE programs under the Commission's 2024-2027 EE portfolios and plans to submit an Application for 2028-2031 EE program funding. The Commission granted the joint IOU extension and EE Applications are now due to the Commission in March 2026. MCE will submit an EE program funding Application to the Commission in March 2026.

Fiscal Impacts: There is no direct fiscal impact to MCE at this time.

e. Self Generation Incentive Program (SGIP)

In December, the Commission adopted the proposed decision for SGIP closeout issues and an exemption to the qualified demand response program enrollment requirement for certain low-income customers. The qualified demand response program enrollment requirement effectively barred most CCA customers from participation in SGIP statewide. MCE and Joint CCAs conducted significant engagement with Commission staff on the qualified demand response program enrollment since its adoption in March 2024 and prior to the final Decision. MCE and Joint CCAs submitted opening and reply comments on the PD that supported the qualified demand response program enrollment exemption for low-income customers. The Commission issued a redlined PD that clarified more low-income customers are eligible for the exemption from the qualified DR program enrollment requirement and that the program administrators are responsible for the reporting requirements in alignment with Joint CCA comments.

Fiscal Impacts: There is no direct fiscal impact to MCE at this time.

f. Long-term Gas Planning - Zonal Decarbonization

In November, the Commission issued a proposed decision (PD) designating an initial list of priority neighborhood decarbonization zones in compliance with Senate Bill 1221 (Min, 2024). MCE supported Senate Bill 1221 in the legislature as it authorizes 30 cost-effective zonal decarbonization pilot projects. MCE submitted comments throughout the proceeding supporting beneficial and community-led pilot projects in its service area. MCE stated that it's equipped to leverage its complementary energy efficiency and decarbonization programs in pilot projects within its service area, when appropriate. The PD proposed designating 13 census tracts within MCE's service area as priority decarbonization zones. MCE supported the designation of the 13 sites within its service area, restated its ability to leverage complementary programs and recommended additional community engagement requirements for final pilot site selection, program design and implementation. In December, the Commission adopted the PD and formally designated 13 sites within MCE's service area as priority neighborhood decarbonization zones and eligible for pilot project selection. The Commission additionally strengthened the community engagement requirements for the next steps in the pilot program. The Commission will conduct additional site selection and project design tasks in 2026.

Fiscal Impacts: There is no direct fiscal impact to MCE at this time.

I. California Independent System Operator (CAISO)

a. Interconnection Process Enhancements (IPE) 5.0

In July, CalCCA submitted comments on the CAISO's IPE 5.0 initiative. This initiative continues to identify and evaluate ways to improve the efficiency and effectiveness of the CAISO's interconnection process to ensure that sufficient new capacity can be studied, granted deliverability, and interconnected to the grid to support the state's reliability needs and climate goals. In an effort to maximize the amount of new deliverable capacity (i.e. capacity capable meeting RA requirements), CalCCA has advocated for resources that are already online and generating, but without deliverability, to have the opportunity to apply to be re-studied by the CAISO and be allocated for deliverability. Currently, on-line energy-only resources do not have the opportunity to get re-studied for deliverability.

Fiscal Impacts: There is no direct fiscal impact to MCE at this time.

b. Demand and Distributed Energy Market Integration (DDEMI)

In November, the CAISO issued a Final Discussion Paper summarizing the working group meetings and the identified problem statements for DR/DER market integration, thereby concluding the working group phase of the initiative. Problem statements will now be translated into action items for developing policy proposals in the next phase of the stakeholder process. The CAISO sought feedback on the Final Discussion Paper, including asking stakeholders to prioritize their top 5 problem statements and to identify whether they should be addressed in the short, medium, and long-term. CalCCA and MCE filed respective comments on the Final Discussion Paper, recommending that the CAISO prioritize enhancing the proxy demand response (PDR) model and performance evaluation methodologies.

Fiscal Impacts:
There is no direct fiscal impact to MCE at this time.

Recommendation:
Read only.

2026 MCE Board Offices

BOARD OFFICES

Chair:	Shanelle Scales-Preston, County of Contra Costa, *interested*
Vice Chair:	Gabe Quinto, City of El Cerrito, *outgoing*
	Cindy Darling, City of Walnut Creek, *interested*
Treasurer:	Maira Strauss, MCE Chief Financial Officer
Secretary:	Dawn Weisz, MCE Chief Executive Officer

BOARD OFFICES SELECTION PROCESS

The Chair and Vice Chair offices are held for 1 year and there are no limits on the number of terms held by either Chair or Vice Chair.[1] The selection of these offices shall take place in or near December of each year.[2] The office of Treasurer is appointed by the Board via an approved resolution and may be a non-board member. The Treasurer appointment, along with the delegated authority, is held for 1 year and there are no limits on the number of terms held.[3] Deputy Treasurers are appointed directly by the Treasurer each year. Once appointed by the Board, the Secretary shall continue to hold the office each year until the Secretary chooses to resign from the role or the Board decides to remove the individual from the Secretary position.[4] The Secretary does not need to be a member of the Board. All officer appointments/selections by the Board require a majority vote of the full membership of the Board.[5]

[1] Section 4.13.1 of MCE Joint Powers Agreement.

[2] Article V, Section 1 of MCE's Operating Rules and Regulations.

[3] Article V, Section 1 of MCE's Operating Rules and Regulations; California Government Code § 53607.

[4] Article IV, Section 1(c) of MCE's Operating Rules and Regulations.

[5] Article VI, Section 2 of MCE's Operating Rules and Regulations. At MCE's current membership of 37 communities with appointed Directors, the vote needed is 19.

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January 15, 2026

TO: MCE Board of Directors

FROM: Supervisor Scales-Preston, MCE Board Chair, Representing Contra Costa County
Supervisor Alessio, MCE Board Director, Representing the County of Napa
Supervisor Sackett, MCE Board Director, Representing the County of Marin

RE: MCE Governance Assessment (Agenda Item #08)[1]

Dear Fellow Board Members:

In October 2025, our Board participated in the annual MCE Retreat marking our 15th year of operation and provided feedback in person and via a survey regarding our service on the MCE Board and general agency operations. Input was provided on a range of topics including board size and functioning, as well as meeting topics, length, and substance. There have been recent discussions among board members regarding general agency operations, the appropriate roles of staff and board members, best practices for public agencies, board functioning and policy oversight, and strategies to increase efficiency and effectiveness as we pass our 15-year milestone.

As a result of the input received so far, we are requesting that our board authorize the launch of a Governance Assessment to identify opportunities to strengthen the Board Governance for the benefit of the agency, the ratepayers, and the advancement of clean energy. We propose using a professional firm with experience in the public sector, and experience with large boards. Feedback from the board retreat, feedback from individual board members, and the key themes from recent board and committee meetings have been the reference point in developing areas of focus for the Board Governance Assessment including those listed below:

- Benchmark against best practices at similar boards (community choice aggregators and utility JPAs).
- Strengthen internal and external lines of communication and establish roles and responsibilities for the board and staff.
- Improve efficiency of meetings, operations and decision-making.
- Define governance principles and work with the board to establish guiding principles for evaluation.

[1] This item is a general administrative matter. Action requires a simple majority of board members present for a motion to carry.

Consultant will be expected to:

- **Gather input** from board members, board committees, staff, key stakeholders, and relevant external benchmarks.
- **Evaluate governance components**, including board structure, processes, people, resources, and operating culture.
- **Develop findings and recommendations** by identifying strengths, gaps, and actionable opportunities for improvement.
- **Engage the board** in reviewing preliminary findings and shaping recommendations prior to presentation to the full board.
- **Deliver a final report** that includes a comprehensive evaluation, implementation considerations, and a clear action plan.

A common practice in governance assessments is to identify a small subset of the governing board (2-4 members) to provide guidance, direction and feedback, and to serve as primary points of contact for the firm. In our discussions about this assessment, we would like to form and serve as the representatives on an "Ad hoc Governance Assessment Committee" to provide guidance and feedback throughout the process on behalf of, and in partnership with the full board. There will be many opportunities built in for feedback from individual board members, committees of the board, and in full Board meetings as appropriate.

Here are eight examples of consulting firms that offer Government Assessments: Catalyst Group; Culture Partners; DeLizia Consulting; Korn Ferry; Raftelis; KPMG; Lyceum Leadership Consulting; The Centre for Organization Effectiveness.

Fiscal Impact:
Fiscal impact to be determined upon the selection of a consultant.

Recommended next steps:

A. Approve the creation of an "Ad hoc Governance Assessment Committee" to guide the assessment process, consisting of Chair Scales-Preston, Director Sackett, and Director Alessio.
B. Provide feedback to the Ad hoc Governance Assessment Committee on next steps including parameters for firm selection and contract finalization.

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January 15, 2026

TO:	MCE Board of Directors
FROM:	Justine Parmelee, VP of Internal Operations
RE:	Proposed Finance Committee Scope (Agenda Item #09)[1]
ATTACHMENT:	Draft Finance Committee Overview

Dear MCE Board Members:

Summary:
MCE's Executive Committee convened in December 2025 and January 2026 to develop, review, and revise the attached Draft Finance Committee Overview for your board's consideration. A motion was made by Director Llorens Gulati and seconded by Board Chair Scales-Preston to recommend the MCE Board of Directors approve the Draft Finance Committee Overview as amended. The motion carried by unanimous roll call vote at the January 9, 2026 continuance from the January 5, 2026 regular meeting of the committee.

Fiscal Impacts:
None at this time.

Recommendation:
MCE's Executive Committee recommends to the MCE Board of Directors approval of the Draft Finance Committee Overview.

[1] This item follows the voting shares method. Action requires (1) a majority vote of all Directors and (2) the Directors voting in the affirmative have more than 50% of voting shares based on MCE's total energy usage.

[Draft] MCE Finance Committee Overview

Scope

The scope of the MCE Finance Committee is to explore, discuss, and provide input to the Board of Directors on general issues related to MCE's finances.

Finance Committee will:

- Receive, review, and discuss monthly investment reports from the Treasurer
- Receive, review, and discuss quarterly reports from the Treasurer
- Receive, review, and discuss annual Audit
- Evaluate rate proposals
- Consider budget-setting proposals
- Consider high-level risk analysis and forward-looking financial forecasts
- Regularly review contracts for financial vendors (investment advisors, auditors, banking)

The Finance Committee may also choose to make recommendations to the Board of Directors regarding:

- Rate setting proposals
- Annual budget and budget adjustments
- Entering into debt
- MCE Policies related to finance such as Policy 013: Reserve Policy and Policy 014: Investment Policy
- Financial controls
- Contracts for financial vendors

Committee Size and Member Selection Process

The Finance Committee will consist of 5-7 MCE Board representatives. MCE strives to assemble a Finance Committee comprised of at least one representative from each county in the MCE service area. Available seats on the Finance Committee are therefore first offered to any interested Board member whose county is not yet represented. The Board may evaluate skills and abilities relative to finance, budget, risk management, and investments. Interested members can be added at a meeting of the Board of Directors when it is included in the agenda. Any member interested in joining is required to be a representative on the Board for six (6) months prior to serving on the Finance Committee.

The Finance Committee selects its own chair for a term of one year. The Finance Committee Chair is limited to two one-year terms.

Meeting Schedule

Every other month, or as needed. Meetings may be held in-person at MCE's San Rafael and/or Concord offices. Participation via teleconferencing can be accommodated upon request if the address is provided to MCE's Board clerk a minimum of 10 days before the meeting (for public noticing purposes) and the location and committee members follow applicable requirements for public access.

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January 15, 2026

TO: MCE Board of Directors

FROM: Vicken Kasarjian, Chief Operating Officer

RE: Corby Battery Energy Storage Project (Agenda Item #10)

ATTACHMENTS:

A. Staff Report - Energy Storage Agreement with Corby Energy Storage, LLC (October 19, 2023)
B. Energy Storage Agreement with Corby Energy Storage, LLC
C. Board Presentation on Energy Storage Agreement with Corby Energy Storage, LLC (October 19, 2023)
D. Approved Minutes from MCE Board of Directors Meeting on October 19, 2023

Dear MCE Board Members:

Summary

This staff report has been prepared in response to requests by members of the public and MCE's Board of Directors. It is intended to be informational only and to provide an overview of MCE's procurement process with respect to the contract with the Corby Energy Storage project in Solano County, as well as a timeline of relevant events related to the project that did not directly involve MCE.

Background on MCE's Procurement Process

At least once a year, MCE opens a solicitation for resources that help meet the agency's forecasted needs and compliance obligations in key procurement categories. Over the last few years, these needs and obligations have fallen under three primary categories:

- MCE's Integrated Resource Planning (IRP) targets for renewable energy and energy storage. The IRP ensures that MCE will have resources under long term contract to serve our customers' load while meeting MCE's renewable goals and exceeding the state's renewable goals.
- Generation capacity, also known as Resource Adequacy (RA), which supports reliability particularly on hot summer days.
- Mid Term Reliability (MTR) requirements as set forth by the California Public Utilities Commission (CPUC) in 2021 and again in 2023. MTR requirements were discrete

procurement orders issued by the CPUC in response to concerns about statewide reliability.

Falling short on any of these procurement requirements would subject MCE to monetary penalties. Falling short on RA requirements could also prevent MCE from enrolling new communities for some amount of time after the shortfall, which would be determined by the CPUC.

When MCE issues a solicitation for new resources, project developers are expected to demonstrate pathways to, or ability to achieve, certain critical milestones in order for their bid to be considered by MCE's Power Resources team. This requirement provides MCE with some certainty that projects are reasonably likely to be built, interconnected, and come online in a manner that meets MCE's portfolio needs and expectations.

Corby Energy Storage Timeline

September 2022 - *California Adopts Assembly Bill (AB) 205*

In relevant part and as originally adopted, AB 205[1] grants the California Energy Commission (CEC) authority to certify sites and related environmental impact reports for new renewable and storage facilities via an opt-in application process initiated by a developer. AB 205 requires the CEC to consult with local governments and community stakeholders in the area where the project is proposed to be located. If the CEC makes all findings required by AB 205 and certifies a project, the project can be built without additional certification by a local government agency.

October 2023 - *MCE Board Approves Corby Energy Storage Agreement (ESA)*

During its October 2023 meeting, your Board approved the attached ESA with Corby Energy Storage, LLC, a subsidiary of NextEra Energy, Inc. The 2023 staff report discussing the item is also attached. The project, as proposed, will offer 300 MW of storage capacity, and MCE has contracted for a 100 MW portion.

As noted in the 2023 staff report, the Corby project would satisfy MCE's MTR obligations for 2027, the year the project was anticipated to come online. The vote to approve was unanimous among the Board members in attendance at the time, with the County of Solano Board Member being absent. As noted in the attached ESA, the developer anticipated that the project's permitting would be finalized by December 1, 2024, and the project would begin construction by June 1, 2026. At the time, the developer had applied to the County of Solano for certification of the Corby project, and the project was in compliance with the County's zoning and other relevant ordinances at the time the application was filed.

All permitting processes and requirements are the responsibility of developers with which MCE contracts. MCE does not participate in any permitting or certification processes, whether at the

[1] Available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB205

local, state, or federal level. MCE's contracts require all projects to be fully compliant with all applicable law. Under MCE's Joint Powers Agreement (JPA), MCE cannot "cause to be constructed" any facility that does not comply with local zoning ordinances, a local General Plan, and local building codes.[2]

January 2024 - *Solano County Adopts a 45-Day Battery Energy Storage Interim Prohibition*

At its January 23, 2024 meeting, the Solano County Board of Supervisors adopted a temporary ordinance prohibiting the approval of any battery energy storage projects in unincorporated areas of the county for 45 days.[3] The ordinance was responding to concerns about the safety of large battery storage projects, and stated the County's intention to conduct additional study and consideration of its policies on land use and safety standards for such projects during the temporary moratorium. The ordinance specifically cited the Corby project, which was proposed for land designated as an Exclusive Agriculture (A-40) zone, and noted that if constructed it would become one of the largest battery storage projects in the state.

February 2024 - *Solano County Extends its Battery Energy Storage Interim Prohibition for an Additional 22.5 Months*

At its February 27, 2024 meeting, the Board of Supervisors adopted a subsequent ordinance that extended the interim prohibition for up to an additional 22 months and 15 days.[4] The Board of Supervisors determined that more time was needed to develop a permanent ordinance to revise the county's zoning regulations to address health, safety, and land use concerns with respect to battery storage projects.

November 2024 - *NextEra Applies to CEC for Certification of the Corby Project Under AB 205*

On November 1, 2024, NextEra applied to the CEC for certification of the Corby project under the AB 205 permitting process noted above. The CEC's review process is underway and can take up to 270 days for review.

August 2025 - *Solano County Amends its Ordinance Regarding Battery Storage Projects*

At its August 26, 2025 meeting, the Solano County Board of Supervisors adopted a new section of the County Code regarding battery storage projects.[5] The new code section sets forth several requirements for battery storage projects located in unincorporated Solano County, and permits such projects only on land zoned for Industrial or Manufacturing uses.

September 2025 - *California Adopts Senate Bill (SB) 254*

SB 254 contains multiple provisions on multiple topics, including but not limited to the AB 205 opt-in permitting process. Among those provisions, SB 254 repealed the requirement that a

[2] MCE JPA Section 2.7

[3] Available for download at https://solano.legistar.com/gateway.aspx?M=F&ID=01a8b490-52a7-4cd9-b8ad-a794e33f5456.pdf

[4] Available for download at https://solano.legistar.com/View.ashx?M=F&ID=12861449&GUID=027B6AE0-D675-488B-981A-D67F75EE73E0

[5] Available at https://www.codepublishing.com/CA/SolanoCounty/html/ords/1864.pdf

project must comply with all local laws, ordinance and regulations in order to be certified by the CEC.

November 2025 - *CEC Informational and Environmental Scoping Meeting*

On November 6, 2025, the CEC held a public Informational and Environmental Scoping Meeting on the Corby project in Vacaville.

December 2025 – *CEC Business Meeting Denied a Project under AB 205*

On December 19, 2025, the CEC held a public business meeting where it denied certifying the Fountain Wind Project's application under AB 205, which was for a proposed 205 MW wind energy generation facility in unincorporated Shasta County.

Fiscal Impacts:
This staff report serves to provide information only as it relates to the approval of the Corby project and outline MCE's process for vetting projects. Expenses related to the delivery of energy under the Corby project have already been contemplated and will be included in applicable fiscal year budgets if and when the project comes online. With the AB 205 process still underway at the CEC, no further financial impacts have been assessed.

Recommendation:
Discussion only.

October 19, 2023

TO: MCE Board of Directors

FROM: David Potovsky, Manager of Power Resources

RE: Energy Storage Agreement with Corby Energy Storage, LLC (Agenda Item #08)

ATTACHMENT: Energy Storage Agreement with Corby Energy Storage, LLC

Dear Board Members:

Background:

MCE's Open Season procurement process had three primary goals:

1. Meet Integrated Resource Planning (IRP) targets for renewable energy and energy storage.
2. Add Resource Adequacy (RA) supply to MCE's portfolio.
3. Add resources to fulfill the Mid Term Reliability (MTR) obligations as outlined in the California Public Utilities Commission (CPUC) decisions D.21-06-035 and D.23-02-040.

As a result of the solicitation, staff received an offer from Corby Energy Storage, LLC (Corby) for a new stand-alone battery energy storage system (BESS) that will be coming online in 2027. The proposed facility would satisfy MCE's MTR procurement obligation for 2027.

Summary:

The Corby project is being developed by NextEra Energy, and will be sited in Solano County. The project is at a mature stage in the development process with an executed interconnection agreement, full site control and a well-defined plan to acquire all relevant permits.

Staff negotiated the attached draft Energy Storage Agreement (ESA) for the purchase of all resources associated with the Corby project including energy, RA, and Ancillary Services. The agreement outlines the terms for the guaranteed delivery of 100 megawatts (MW) from the installation. In addition to contributing to MCE's MTR compliance obligation, the contract would make a valuable addition to MCE's RA portfolio.

Rationale:

The ESA is a good fit for MCE's resource portfolio based on the following considerations:

- RA capacity produced by the facility would complement MCE's existing portfolio of resources.
- The project type, size, specifications, and commercial operation date fit the requirements detailed in the CPUC MTR mandated procurement order.
- The project is being developed and will be operated by an experienced team. NextEra has a long track record of successfully delivering projects to load serving entities including MCE, Clean Power Alliance, Clean Power SF, East Bay Community Energy, PG&E and SCE.

Additional Information:

NextEra Energy

- Headquartered in Juno Beach, Florida with 15,000 full-time employees.
- Incorporated in 1984, NextEra energy is the world's largest generator of renewable energy from wind and solar as well as a leader in battery storage.
- NextEra Energy owns and operates 230 renewable energy and energy storage facilities across the US and Canadian with an aggregate capacity of 33,000 MW (enough to power approximately 12 million homes).
- NextEra Energy is a Fortune 200 company (NYSE: NEE) with a market cap of $150 billion. They have an A- credit rating from S&P and Fitch.

Contract Overview

- Project: 100 MW, 4-hour duration lithium-ion battery energy storage system
- Contracted resources: Energy, RA and Ancillary Services
- Price: Fixed with no escalation for the Delivery Term
- Project location: Solano County, California
- Guaranteed commercial operation date: April 1, 2027
- Contract term: 15 contract years
- Credit: No credit or collateral obligations for MCE
- Union labor requirement: Union contractors would be required for all on-site construction trades
- Community Benefit Package: Seller would make a cash contribution of $100,000. MCE and Seller would identify community benefits initiatives that are of mutual interest such as apprenticeships, scholarships, food programs, open space preservation, parks, etc.

Fiscal Impacts:

There would be no impact on the Fiscal Year 2023/24 budget. Incremental costs would be accounted for starting in FY 2027/28.

Recommendation:

Authorize execution of the Energy Storage Agreement with Corby Energy Storage, LLC. for the purchase of all resources associated with the project including energy, RA, and Ancillary Services.

CONFIDENTIAL
NEXTERA (CORBY) PROJECT
6 OCTOBER 2023
FINAL DRAFT

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

Seller: Corby Energy Storage, LLC ("**Seller**")

Buyer: Marin Clean Energy, a California joint powers authority ("**Buyer**")

Description of Facility: A 100 MW/ 400 MWh battery energy storage facility as further described below (the "**Facility**"), located in Solano County, in the State of California, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	Completed
Executed Interconnection Agreement	Completed
Obtain Federal and State Discretionary Permits	12/1/2024
Procure Major Equipment	6/1/2026
Expected Construction Start Date	6/1/2026
Expected Commercial Operation Date	4/1/2027
Full Capacity Deliverability Status Obtained	Completed

Delivery Term: The period for Product delivery will be for fifteen (15) Contract Years plus two months.

Storage Contract Capacity: 100 MW

Storage Contract Output: 400 MWh

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	[redacted]
2	[redacted]
3	[redacted]
4	[redacted]
5	[redacted]
6	[redacted]

7		[redacted]
8		
9		
10		
11		
12		
13		
14		
15		

Contract Price

The Contract Price shall be:

Contract Year	Contract Price
1 – 15, plus two months	[redacted]

Delivery Point: Facility Pnode

Product:

- ☑ Discharging Energy
- ☑ Storage Capacity
- ☑ Capacity Attributes (select options below as applicable)
  - ☐ Energy Only Status
  - ☑ Full Capacity Deliverability Status
- ☑ Ancillary Services

Scheduling Coordinator: Buyer or Buyer's agent

Development Security and Performance Security

Development Security: [redacted]

Performance Security: [redacted]

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Exhibits:

ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement ("**Agreement**") is entered into as of [_____], 2023 (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1
DEFINITIONS

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

"**AC**" means alternating current.

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.5.

"**AD/CVD**" means antidumping and/or countervailing duty.

"**Actual Monthly NQC**" means the amount of Net Qualifying Capacity from the Facility that is eligible to count toward meeting Resource Adequacy Requirements by both the CPUC and CAISO.

"**Additional Cycles Payment Amount**" has the meaning set forth in Exhibit Q.

"**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 Transfer" and "Permitted Transferee", "control", "controlled by", and "under common control with", as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include any investment funds or publicly-traded vehicles for the ownership of operating power generation, storage, or transmission assets (such

as a "yield co") controlled by Seller, NextEra Energy, Inc. or an Affiliate of NextEra Energy, Inc., NEP, NEOP, NEER, NEECH, and NEE and their respective direct or indirect Affiliate subsidiaries.

"**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.

"**Ancillary Services**" means all ancillary services, ancillary services-related products and other ancillary services-related attributes, if any, associated with the Facility. For the avoidance of doubt, Black Start is excluded from Ancillary Services.

"Annual Availability" means, for each Contract Year, a simple average of the Monthly Storage Availability values in the Contract Year as calculated in accordance with Exhibit P.

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

"**Available Charge Capacity**" means the level at which the Facility may be charged, expressed in MW_{AC}.

"**Available Discharge Capacity**" means the level at which the Facility may be discharged, expressed in MW_{AC}.

"**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.

"**BESS Equipment**" means batteries, battery modules, onboard sensors, control components, inverters, sub-inverters, or any of their components.

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

"**Buyer**" means Marin Clean Energy, a California joint powers authority.

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

"**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, metering scheme, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time Charging Energy and Discharging Energy.

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

"**CAISO Metered Entity**" has the meaning set forth in the CAISO Tariff.

"**CAISO Operating Order**" means the Operating Instruction or Dispatch Instruction as defined in the CAISO Tariff.

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures (as such term in defined in Appendix A to the CAISO Tariff), including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC; provided that if there is a conflict between the BPMs, the CAISO Operating Agreement or the Operating Procedures (as such term in defined in Appendix A to the CAISO Tariff), on the one hand, and the CAISO Tariff, on the other hand, the CAISO Tariff will control.

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

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

"**Change in Law**" means the occurrence, after the Effective Date, of any of the following: (a) the adoption or implementation of any Law; (b) any change in any Law or in the administration, interpretation or application of any Law by any Governmental Authority; (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; (d) any change to a Resource Adequacy Ruling; (e) any order, decision, resolution, rule, regulation, guidance document, or other determination of the CEC or the CPUC or its Energy Division, (f) any change in the CAISO Tariff or any document included in the definition thereof whether or not approved by FERC; or (g) any reduction or impairment of Capacity Attributes under the CPUC's "slice of day" framework including without limitation Decision 23-04-010.

"**Change of Control**" means, except in connection with public market transactions of equity interests or capital stock of Seller's Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, either (i) directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller or (ii) otherwise ceases to retain the ability to control the decision making of; 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;

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

(c) a Change of Control shall not be deemed to include any Permitted Transfer.

"**Charging Energy**" means the energy delivered to the Facility pursuant to a Charging Notice as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices, as such meter readings are adjusted pursuant to CAISO requirements for any applicable Electrical Losses.

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by Buyer or CAISO to Seller, directing the Facility to charge with Charging Energy at a specific MW rate, for a specific period of time or to a specified Stored Energy Level, provided that any such operating instruction shall be in accordance with the Operating Restrictions. For the avoidance of doubt, any Seller Initiated Test shall not be considered a Charging Notice. Any Buyer Initiated Test shall be considered a Charging Notice.

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

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

"**COD Certificate**" has the meaning set forth in Section 2.2(a)(i).

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

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

"**Compliance Actions**" has the meaning set forth in Section 3.5.

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.5.

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

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

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

"**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 and the last Contract Year shall end at midnight at the end of the day prior to 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 Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged or financed its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating this Agreement.

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

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

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

"**Credit Rating**" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations, 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, Fitch or Moody's. If ratings by Fitch, S&P and Moody's are not equivalent, the two (2) lowest ratings shall apply.

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

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

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

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

(d) a curtailment in accordance with the obligations applicable to the Facility under the Interconnection Agreement with the Participating Transmission Owner or distribution operator.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces Product from the Facility or there is a reduction of the delivery of Charging Energy pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"**Damage Payment**" means the dollar amount equal to the amount of the Development Security set forth on the Cover Sheet.

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

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

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

"**Dedicated Interconnection Capacity**" has the meaning set forth in Section 4.10.

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

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

"**Delivery Term**" has the meaning set forth on the Cover Sheet.

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

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

"**Discharging Energy**" means all energy delivered to the Delivery Point from the Facility, as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices, adjusted pursuant to CAISO requirements for any applicable Electrical Losses. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Facility as Charging Energy.

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer or CAISO to Seller, directing the Facility to discharge Discharging Energy at a specific MW rate, for a specific period of time or to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Restrictions. For the avoidance of doubt, any Discharging Notice shall not constitute a Curtailment Order.

"**DOC**" means the U.S. Department of Commerce.

"**Early Termination Date**" has the meaning set forth in Section 11.2(a) and Section 11.9, as applicable.

"**Efficiency Rate**" means the measured round-trip efficiency rate of the Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test in accordance with Exhibit O.

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

"**Electrical Losses**" means all transmission or transformation losses between the Facility Meter and the Delivery Point for the receipt of Charging Energy and delivery of Discharging Energy, calculated in accordance with CAISO approved methodologies applicable to revenue metering.

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

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

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

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

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

"**Facility**" means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities).

"**Facility Meter**" means the CAISO-approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class) as shown in Exhibit R, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy and Discharging Energy.

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

"**Fitch**" means Fitch Ratings Ltd., or its successor.

"**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 receiving Charging Energy or making Discharging Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

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

"**Gains**" means, with respect to any Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable

manner. Factors used in determining the economic benefit to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes.

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

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

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

"**Guaranteed RA Amount**" means at any point in time on or after the RA Guarantee Date, the lesser of [redacted] pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings, the CPUC's "slice of day" framework including Decision 23-04-010, and the CAISO Tariff applicable to Resource Adequacy Resources.

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

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

"**Guarantor**" means, with respect to Seller, (a) an Affiliate of Seller with an Investment Grade Credit Rating, or (b) any Person reasonably acceptable to Buyer, that (i) has an Investment Grade Credit Rating, (ii) has a tangible net worth of at least [redacted] (iii) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (iv) executes and delivers a Guaranty for the benefit of Buyer.

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

"**Imbalance Energy**" means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amounts of Charging Energy or Discharging Energy

deviates from the amount of Scheduled Energy.

"**Incentives**" means, as applicable to the Facility: (a) all Tax Credits and other federal, state, or local Tax credits or other Tax benefits associated with the construction, operation, investment in, ownership, or storage of electricity by the Facility (including Production Tax Credits, ITCs, and other credits under Sections 38, 45, 45Y, 46, 48, and 48E of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits; and (c) any other form of incentive that is not any (a) Capacity Attribute, (b) Ancillary Services, or (c) future environmental attributes.

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

"**Initial Synchronization**" means the commencement of "Trial Operation" as defined in the CAISO Tariff.

"**Installed Battery Capacity**" means the maximum dependable operating capability of the Facility to discharge electric energy, not to exceed the Storage Contract Capacity, as measured in MW_{AC} at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

"**Interconnection Agreement**" means that certain Large Generator Interconnection Agreement dated as of June 9, 2021 associated with CAISO Queue position Q1270 among Seller or Seller's Affiliate, the CAISO, and the Participating Transmission Owner (as such agreement has been or may be further amended), pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which the Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"**Interconnection Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

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

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

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

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

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

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

"**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 (including back-leverage debt), equity (including tax equity) public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility, or (iv) acting as issuing bank for any Letter(s) of Credit issued pursuant hereto or in connection with 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, having assets of at least $10 Billion, and with such bank having a Credit Rating of at least A- from S&P or A3 from Moody's in a form substantially similar to the letter of credit set forth in Exhibit K.

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

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

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

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

trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, as applicable, and must include the value of Capacity Attributes and Incentives.

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

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

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

"**Non-Merchant Agreement**" means any agreement to sell any Product from the Facility, each as applicable, for a delivery term that is longer than one (1) year.

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

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

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

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

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

"**NEE**" means NextEra Energy, Inc.

"**NEER**" means NextEra Energy Resources, LLC.

"**NEECH**" means NextEra Energy Capital Holdings, Inc.

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

"**NEOP**" means NextEra Energy Operating Partners, LP.

"**NEP**" means NextEra Energy Partners, LP.

"**NEPA**" means the National Environmental Policy Act.

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

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

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

"**New Trade Measure Event**" means any of the following events, during the period while the applicable ruling request, inquiry, rulemaking, or other filing or proceeding remains pending or subject to appeal before the DOC or other applicable Governmental Authority:

(a) Filing of any anti-circumvention ruling request alleging that manufacturers or importers are circumventing any AD/CVD orders on BESS Equipment;

(b) Initiation of any anti-circumvention inquiry into whether manufacturers or importers are circumventing any AD/CVD orders on BESS Equipment or issuance in any such inquiry of any finding or ruling that manufacturers or importers are circumventing any AD/CVD orders on BESS Equipment; or

(c) Filing or initiation of any rulemakings, adjudications, or other proceedings to increase, extend, or expand application of, or impose any new, tariffs, including but not limited to AD/CVD, or other trade measures on BESS Equipment.

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

"**Notice**" shall, unless otherwise specified in this Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, next Business Day courier service, or electronic messaging (email).

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

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

"**Off-Peak Hour**" means any hour that is not an On-Peak Hour.

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

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

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

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

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

"**Permitted Transfer**" means each of the following transactions:

(a) Transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates; *provided*, that: (i) Ultimate Parent retains the authority, directly or indirectly, to control Seller (or if applicable, the surviving entity), or (ii) a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility;

(b) A Change of Control of Ultimate Parent, NEECH, NEP, NEOP, or NEER;

(c) Any change of economic and voting rights triggered in Seller's organization documents arising from the financing of the Facility and that does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;

(d) The direct or indirect transfer of shares of, or equity interests in, Seller to a Lender; or

(e) A transfer of the Facility (or the direct or indirect ownership of equity interests in Seller) in connection with any of the following: (i) all or substantially all of the assets of NEER, NEECH, or Ultimate Parent; (ii) all or substantially all of NEER's or Ultimate Parent's renewable energy generation portfolio; or (iii) all or substantially all of NEER's or Ultimate Parent's solar generation and/or energy storage portfolio; or (iv) the direct or indirect transfer of shares of, or equity interests in, Seller to a person in which, following the transfer, an Affiliate of NEER continues to hold an economic interest in the Facility; provided, that in the case of each of (i) through (iv) above: (A) the transferee (1) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller's duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (2) meets the Seller credit security requirements; and (B) the entity that operates the Facility following such transfer is (or contracts with) a Qualified Operator.

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

(a) A tangible net worth of [redacted] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) Has at least [redacted] of experience in the ownership and operations of storage facilities similar to the Facility, or has retained a third-party with such operations experience to operate the Facility.

Notwithstanding the foregoing, with respect to Seller, Permitted Transferee shall include its Ultimate Parent [redacted]

"**Person**" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust,

incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

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

"**Planned Outage**" has the meaning set forth in Section 4.6(a).

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

"**Production Tax Credits**" or "**PTCs**" means production tax credit under Section 45 or 45Y of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to storage of energy resources for which Seller, as the owner of the Facility, is eligible.

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

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

"**Qualified Operator**" means Seller or an operator of battery storage facilities that has sufficient experience and technical capability to perform for Seller's benefit the obligations of Seller under this Agreement related to the operation and maintenance of the Facility in accordance with the applicable requirements of this Agreement, as evidenced by such operator having operated two (2) or more battery storage facilities, each having a nameplate capacity rating of ten (10) MW or more, for not less than two (2) years.

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

"**RA Change in Law**" has the meaning set forth in Section 3.3(c).

"**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 3.3(b).

"**RA Guarantee Date**" means the first day of the month that is two calendar months following the Commercial Operation Date. For illustrative purposes, if the Commercial Operation Date is June 30, the RA Guarantee Date shall be September 1.

"**RA Shortfall**" has the meaning set forth in Section 3.3(b).

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.3(b), any month during the Delivery Term during which there is an RA Shortfall.

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

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

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

"**Reduced MNQC**" has the meaning set forth in Section 3.3(c).

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

"**Replacement RA**" means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month, including, as applicable, Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, and any Local RAR; provided that any Replacement RA capacity must be communicated by Seller to Buyer with Replacement RA product information in a Notice to Buyer no later than the date set forth in Section 3.3(b).

"**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 any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

"**Resource Adequacy Rulings**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings or Laws may be amended or modified from time-to-time throughout the Delivery Term.

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

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

"**Scheduled Energy**" means the Charging Energy and Discharging Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

"**Scheduling Coordinator**" or "**SC**" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

"**Security Interest**" has the meaning set forth in Section 8.8.

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

"**Seller Initiated Test**" has the meaning provided in Section 4.9.

"**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; *provided*, that the Parties agree that the value of Capacity Attributes and Incentives are direct damages to be accounted for as specified in the definitions of Losses and Gains.

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

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

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

"**Showing Month**" means the calendar month of the Delivery Term that is the subject of the Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

"**Site**" means the real property on which the Facility is or will be located, as further described in Exhibit A.

"**Site Control**" means that, for the Delivery Term, Seller or a Seller Affiliate: (a) owns or has the option to purchase the Site, including through an ownership interest in an Affiliate that owns 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.

"**SQMD Plan**" has the meaning set forth in the CAISO Tariff.

"**Station Use**" means energy that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility except during periods in which the Facility is charging or discharging pursuant to a Seller Initiated Test, Buyer Initiated Test, Charging Notice or Discharging Notice.

"**Storage Capacity**" means the maximum operating capability of the Facility to discharge electric energy that can be sustained for four (4) consecutive hours.

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

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

"**Storage Contract Output**" means the total output (in MWh-$_{AC}$) of the Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(a) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

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

"**System Emergency**" means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

"**Tax**" or "**Taxes**" means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

"**Tax Credits**" means, as applicable to the Facility, the PTC, ITC, and any other state, local and/or federal tax benefit or incentive, including energy credits determined under Sections 38 45, 45Y, 46, 48 and 48E of the Internal Revenue Code of 1986, as amended, investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the storage of energy and/or the operation, construction, investments in or ownership of, the Facility (including any cash payment or grant).

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

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

"**Test Product**" means Product delivered (i) commencing on the later of (a) the first date that the CAISO informs Seller in writing that Seller may deliver any Product to the CAISO and (b) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (ii) ending upon the occurrence of the Commercial Operation Date.

"**Transformer Failure**" means a failure preventing delivery of Product, excluding a failure caused by the acts or omissions of Seller, with respect to all or part of the transformer, the circuit breakers, and any and all other switchgear, line, and associated equipment; *provided, however*, Seller shall be limited to one such failure during the Contract Term for Force Majeure Event purposes.

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

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

"**Ultimate Parent**" means [redacted] and includes any combination thereof.

"**WRO Restraint**" means any withhold release order or other import restraint issued by U.S. Customs and Border Protection or other applicable Governmental Authority, including under the Uyghur Forced Labor Prevention Act, that prevents or delays the import or release of any BESS Equipment into the United States and such order, despite the use by Seller of commercially reasonable efforts to avoid procurement or sourcing of BESS Equipment that was reasonably foreseeable to become subject to such restraint, prevents or delays the delivery of such BESS Equipment to Seller for incorporation into the Facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**"); *provided*, *however*, subject to Buyer's obligations in Section 4.13, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

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

2.2 **Conditions Precedent**.

(a) The Delivery Term shall not commence until Seller completes each of the following conditions and delivers to Buyer a notice that such conditions have been satisfied, which notice Buyer shall review and either confirm or provide notice to Seller of any deficiencies with four (4) Business Days of Seller's notice; provided, Buyer shall be deemed to confirm that such conditions have been satisfied if Buyer does not provide notice to Seller of any deficiencies within such four (4) Business Day period; and further provided for clarification purposes to the extent no such deficiencies are found to have existed, the confirmation shall be deemed to have occurred on the date that Seller delivered to Buyer Seller's notice that such conditions have been satisfied:

(i) Seller has delivered to Buyer (i) a completed certificate from a Licensed Professional Engineer substantially in the form of Exhibit H (the "**COD Certificate**") and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Battery Capacity on the Commercial Operation Date;

(ii) 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;

(iii) An Interconnection Agreement between Seller (or Seller's Affiliate) 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;

(iv) Copies of executed agreements demonstrating Site Control shall have been delivered to Buyer; provided Seller will be permitted to redact any confidential information contained therein;

(v) Insurance requirements for the Facility pursuant to Article 17 have been met, with evidence provided in writing to Buyer;

(vi) All applicable regulatory authorizations, approvals and permits required for operation of the Facility have been obtained and all conditions thereof that are required to be satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(vii) Seller has certified in writing to Buyer that Seller has complied with the prevailing wage and project labor agreement requirements as set forth in Section 13.4;

(viii) Seller has certified in writing to Buyer that Seller has satisfied the other Seller commitments set forth in Exhibit S, and provided reasonably requested documentation demonstrating such compliance;

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

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

2.3 **Development; Construction; Progress Reports**. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (ii) each month thereafter, Seller shall provide a Progress Report until the Commercial Operation Date to Buyer that (a) describes the progress towards meeting the Milestones; (b) identifies any missed Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date. The form of the Progress Report is set forth in Exhibit E. Seller agrees to regularly scheduled meetings between representatives of Buyer and Seller to review the Progress Reports and discuss Seller's construction progress. 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 from Buyer. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan**. If Seller (a) misses the Guaranteed Construction Start Date, (b) misses three (3) or more Milestones (other than the Guaranteed Construction Start Date), or (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date) by more than ninety (90) days, 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, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3
PURCHASE AND SALE

3.1 **Purchase and Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all of the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term resell or use for another purpose all or a portion of the Product, provided that no such resale or use shall relieve Buyer of any obligations hereunder or modify any of Seller's obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues.

3.2 **Capacity Attributes**. Seller shall have obtained either Interim Deliverability Status or Full Capacity Deliverability Status by the Commercial Operation Date. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

Throughout the Delivery Term, Seller grants, pledges, assigns, and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(a) 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 Buyer. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(b) For the duration of the Delivery Term, Seller shall take all commercially reasonable administrative actions, including complying with all applicable registration and reporting requirements, and executing all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.3 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole and exclusive remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to [redacted] (such difference, the "**RA Shortfall**"), multiplied by the Replacement Price, provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall,

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 M at least seventy-five (75) days before the applicable CPUC Showing Month. In addition, if the CPUC requires Replacement RA to be provided by an incremental resource for purposes of CPUC Decision 21-06-035 in order for Buyer's purchase of the Product to comply with the requirements of CPUC Decision 21-06-035, then the Replacement RA must also be provided by an incremental resource, including any sub-category attributes of D.21-06-035, to the extent required, if such sub-categories are contracted for under this Agreement. "**Replacement Price**" means (a) the price at which Buyer, acting in a commercially reasonable manner, purchases a replacement for the Resource Adequacy Benefits not delivered by Seller, plus costs reasonably incurred by Buyer in purchasing such replacement Resource Adequacy Benefits, or at Buyer's option, (b) the market price for such replacement Resource Adequacy Benefits not delivered as determined by Buyer in a commercially reasonable manner; provided, however, Buyer shall not be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. Upon request from Seller, Buyer shall provide reasonable documentation demonstrating the Replacement Price amounts sought by Buyer from Seller were incurred or determined, as applicable, by Buyer in a commercially reasonable manner consistent with the components set forth in the immediately preceding sentence. Notwithstanding anything to the contrary herein, [redacted]

(c) RA Change in Law. Notwithstanding anything in this Agreement to the contrary, if, in any given month, following the Effective Date, a change in Law occurs that reduces the maximum Resource Adequacy Capacity that resources of the same type and operational characteristics as the Facility are eligible to provide, (including, without limitation, due to effective load carrying capability (ELCC) adjustments) (an "**RA Change in Law**"), thereby reducing the maximum achievable Net Qualifying Capacity of the Facility, then the RA Shortfall for such month shall be equal to [redacted] For the purposes of this subsection (c), (i) the "**CIL Adjustment Factor**" means the Guaranteed RA Amount divided by the Reduced MNQC, and (ii) the "**Reduced MNQC**" means the new maximum achievable Net Qualifying Capacity of the Facility, where such Reduced MNQC shall be calculated by disregarding any Planned Outages that are otherwise permitted by the terms of this Agreement to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Facility. For the avoidance of doubt, the Reduced MNQC shall take into account any CAISO or CPUC adjustments to the Net Qualifying Capacity that are generally applicable to all resources of the same type as the Facility.

3.4 **CPUC Mid-Term Reliability Requirements**.

(a) The Parties acknowledge that Buyer is entering into this Agreement to satisfy a portion of its obligations to procure capacity to meet mid-term reliability requirements specified by the CPUC in CPUC Decisions D.21-06-035 and D.23-02-040. Seller represents and warrants to Buyer that:

(i) The Facility shall be incremental to the CPUC baseline list identified in CPUC Decision 21-06-035, provided that Seller shall be deemed to have satisfied this requirement by the absence of the Facility (i.e., the Facility not having been listed) on the CPUC

baseline list identified in CPUC Decision 21-06-035;

(ii) The Product shall include the exclusive right to claim the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035 and D.23-02-040;

(iii) Seller has not and will not sell, assign or transfer the right to claim procurement of the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035 and D.23-02-040 during the Delivery Term to any other person or entity; and

(iv) Upon reasonable request of Buyer, Seller will provide additional information and documentation to assist Buyer with compliance with CPUC requests for additional information for the Facility to meet the procurement mandates set forth in CPUC Decision 21-06-035 and D.23-02-040, and Seller will cooperate with Buyer to identify, gather and provide the requested information to the CPUC.

(b) Buyer as of the Effective Date is required to demonstrate procurement progress to the CPUC through the Commercial Operation Date, and in connection with such obligation, Buyer is obligated to provide certain documentation to the CPUC for this Facility, including copies of the execution version of this Agreement, the execution version of the Interconnection Agreement, land leases, title deed or other documentation demonstrating Site Control, information regarding Facility development timelines, copies of notices to proceed with construction and similar evidence of Construction Start and Commercial Operation. Notwithstanding Article 18 (Confidentiality), except to the extent that the CPUC no longer requires submission of such documentation, Seller hereby authorizes Buyer to submit this and similar documentation to the CPUC as may be required by the CPUC in connection with satisfying Buyer's compliance obligations for the Facility under this Agreement; provided that Buyer shall use reasonable efforts to obtain from the CPUC confidential treatment for all information that qualifies as Confidential Information under this Agreement and is eligible for confidential or protective treatment under the CPUC's rules, orders, and decisions on confidential or protected information. Buyer's reasonable efforts shall include the following: designating such Confidential Information as "confidential" and "protected materials" (or similar designations) under the CPUC's orders and decisions governing the protection of confidential information submitted by load serving entities including as set forth in CPUC D.20-12-044 page 13; and either filing motion(s) to file under seal or submitting supporting declarations attesting to such designations when required by such orders and decisions.

3.5 **Compliance Expenditure Cap**.

(a) If a Change in Law, including, but not limited, to an RA Change in Law, occurs after the Effective Date that affects the Product's eligibility to qualify for or maintain Resource Adequacy, then Seller shall use commercially reasonable efforts to comply with such Change in Law as necessary to maintain the Product eligibility described above, subject to the following sentence. Notwithstanding anything to the contrary, the Parties agree that the maximum out-of-pocket costs and expenses ("**Compliance Costs**") Seller shall be required to bear during the term of this Agreement to comply with all of such obligations shall be capped at [redacted]

[redacted] (the "**Compliance Expenditure Cap**"); provided, for avoidance of doubt, Seller shall not be liable for any Compliance Costs to the extent such changes are already contemplated in this Agreement including the defined term "Guaranteed RA Amount" and in Section 3.3(c). Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating, Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

(b) Any actions required for Seller to comply with its obligations set forth in the immediately preceding paragraph, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

(c) If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated Compliance Costs and the anticipated date to complete such actions. Seller shall have no obligation to take any actions that cannot be implemented in accordance with Accepted Electrical Practices.

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

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

(f) If Buyer does not pay the Compliance Costs in excess of the Compliance Expenditure Cap, or if it is not possible for Seller to achieve compliance with a Change in Law through the payment or incurrence of costs, then in each case (i) Seller shall be excused from the corresponding Compliance Actions under this Agreement, and (ii) Buyer shall continue to pay Seller under this Agreement without any reduction in revenues that otherwise would result from the Change in Law, and (iii) with respect to Resource Adequacy, the Guaranteed RA Amount shall be adjusted downward to reflect the effect of the Change in Law.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**. Subject to the provisions of this Agreement, commencing on the first day of the Delivery Term through the end of the Contract Term, Seller shall supply and deliver Discharging Energy to Buyer at the Delivery Point, and Buyer shall take delivery of Discharging Energy at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Discharging Energy to the Delivery Point, including without limitation, Station Use,

Electrical Losses, any costs associated with delivering the Charging Energy from the Delivery Point to the Facility, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Charging Energy to the Delivery Point (including the cost of the Charging Energy itself) and the delivery of Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Charging Energy and Discharging Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

4.2 **Title and Risk of Loss**. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

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

(a) [Reserved].

(b) Monthly Forecast of Storage Capacity. No less than thirty (30) days before the Commercial Operation Date, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Storage Capacity in MW and Storage Contract Output in MWh for each day of the following month in a form reasonably acceptable to Buyer.

(c) Day-Ahead Forecast. During the Delivery Term, Seller shall notify Buyer and the SC (if applicable) of any changes from the Monthly Forecast of one (1) MW or more in either Available Discharge Capacity or Available Charge Capacity or changes in Storage Contract Output by one (1) MWh or more no later than 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice. If Seller fails to provide a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer and the SC (if applicable) shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer and the SC (if applicable) of any changes from the Day-Ahead Forecast of one (1) MW or more in either Available Discharge Capacity or Available Charge Capacity, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If either the Available Discharge Capacity or Available Charge Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify

Buyer as soon as reasonably possible. Such Real-Time Forecasts shall contain information regarding the beginning date and time of the event resulting in the change in Storage Capacity, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer and the SC (if applicable); *provided* that Buyer or its SC specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by email to Buyer and the Buyer's SC (if applicable).

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall notify the SC of Forced Facility Outages promptly but no later than the time periods required by the CAISO Tariff and the CAISO's outage management rules and Seller shall keep the SC informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Failure to provide Real-Time Forecast. Unless excused by a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller's failure to provide such forecast, Seller shall be responsible for such losses and penalties in accordance with Exhibit D.

(g) CAISO Tariff Requirements. Seller shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as necessary for Buyer to submit Bids for the electric energy charged and discharged by the Facility.

4.4 **Dispatch Down/Curtailment**.

(a) General. Seller agrees to reduce the amount of Discharging Energy delivered from the Facility, by the amount and for the period set forth in any Curtailment Order; *provided* that Seller is not required to reduce such amount to the extent such reduction or any such Curtailment Order is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Reserved.

(c) Failure to Comply. If Seller fails to comply with a Curtailment Order, then, for each MWh of Discharging Energy that is delivered by the Facility to the Delivery Point in contradiction of the Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal [redacted]

(d) Seller Equipment Required for Instruction Communications. Subject to the last sentence of this Section, 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 reasonably directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Curtailment Order during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If Seller is reasonably directed by Buyer to install or implement facilities, communications links, or other equipment, protocols, or practices pursuant to this Section 4.4(d) that are not otherwise required for the Facility pursuant to the CAISO Tariff or other applicable Law, then the installation and implementation of such facilities, communications links, or other equipment, protocols, or practices facilities will be at Buyer's sole expense, and Buyer shall prepay or reimburse Seller at Seller's discretion for any such amounts.

4.5 **Charging Energy Management**.

(a) Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Facility in order to deliver the Product in accordance with the terms of this Agreement (including the Operating Restrictions), including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Facility.

(b) Buyer will have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided, that Buyer's right to issue Charging Notices is subject to Prudent Operating Practice and the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) Seller shall not charge the Facility during the Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (a) charges the Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (b) charges the Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all energy costs associated with such charging of the Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Product) associated with such discharge.

(d) Buyer will have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement,

including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

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

(f) The Facility shall be capable of receiving Charging Energy from the CAISO Grid; *provided*, Buyer shall be responsible for all Charging Energy costs related to charging of the Facility.

(g) The Facility will be able to provide the full suite of ancillary services in CAISO markets to the extent any such services are available in the CAISO markets as of the Effective Date, or after the Effective Date, provided that with respect to any such Ancillary Service the Facility is, at the relevant time, is actually physically capable of providing such service in accordance with the limitations set forth in the Operating Restrictions and without modification of the Facility or its operations, and Buyer has agreed to reimburse Seller for any costs Seller incurs in connection therewith including in connection with conducting any such additional CAISO approval. The Ancillary Services include Regulation Up, Regulation Down, Spinning Reserve and Non-Spinning Reserve. Notwithstanding anything to the contrary herein, and for the avoidance of doubt, Black Start is excluded from Ancillary Services.

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

(a) Facility Maintenance. Between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the storage capability of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing (each scheduled maintenance permitted under this clause (a) and each of the foregoing outages described in foregoing clauses (a)(i) – (a)(iv), a "**Planned Outage**"). To the extent notice is not already required under the terms hereof, Seller shall notify Buyer as soon as practicable of any extensions to scheduled maintenance and expected end dates thereof. Seller shall not replace existing batteries unless for critical maintenance purposes or increase the capacity of the Storage Facility without the prior consent of Buyer which shall not be unreasonably withheld, conditioned or delayed; provided, however, that Seller may add or replace batteries in order to maintain the Storage Contract Capacity available to Buyer at the Interconnection Point.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage, to the extent reasonably required by (i.e., to the extent Seller is not reasonably able to deliver Product due to) such 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 to the extent reasonably required (i.e., to the extent Seller is not reasonably able to deliver 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) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event to the extent Seller is not reasonably able to deliver Product during such Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product to the extent necessary to maintain health and safety pursuant to Section 6.2.

4.7 **[Reserved]**.

4.8 **Storage Availability**.

(a) During the Delivery Term, the Facility shall maintain a Monthly Availability of no less than [redacted] (the "**Guaranteed Storage Availability**"). Monthly Storage Availability shall be calculated in accordance with Exhibit P.

(b) If the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Seller shall pay to Buyer an Availability Adjustment payment calculated in accordance with Exhibit C and Exhibit P.

4.9 **Storage Capacity Tests**.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. After the Commercial Operation Date, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Alternatively, to the extent that any Storage Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. Except as otherwise specified in Exhibit O, all other costs or revenues associated with any Storage Capacity Test shall be borne by, or accrue to, Seller. Any such representative(s) of Buyer shall adhere to the safety and security procedures of Seller. Buyer shall indemnify and hold Seller harmless for any losses or claims for personal injury, death or property damage to the Facility or Site to the extent caused by Buyer, its authorized agents, employees, and inspectors, during any such access. For any Storage Capacity Tests, or other operational tests during Off-

Peak Flexible Ramp Hours as defined by CAISO, initiated by Seller ("**Seller Initiated Test**") including all tests conducted prior to Storage Facility Commercial Operation, any Storage Facility Commercial Operation Storage Capacity Test, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is [redacted] of the Installed Battery Capacity, any test required by CAISO, and other Seller-requested discretionary tests or dispatches, Seller shall (i) be liable for all CAISO costs and charges for associated Charging Energy, and (ii) be entitled to any CAISO revenues associated with Discharging Energy and Ancillary Services.

(c) No dispatch notices shall be issued during any Seller Initiated Test. The Facility shall be deemed unavailable during any Seller Initiated Test. For any Seller Initiated Test other than a Storage Capacity Test required by Exhibit O, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices); *provided*, *however*, when these requests occur during off-peak hours, notice by Seller to Buyer is reduced to seventy-five (75) minutes and Buyer's cooperation for Seller to perform such tests shall not be unreasonably withheld.

(d) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. The Storage Contract Capacity and Efficiency Rate determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity and/or Efficiency Rate, at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

4.10 **Interconnection Capacity**. Seller shall ensure that throughout the Delivery Term (a) the Facility will have an Interconnection Agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Storage Contract Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such Interconnection Agreement to interconnect the Facility with the CAISO-Controlled Grid, to fulfill Seller's obligations under the Agreement, including with respect to Resource Adequacy Benefits, and to allow Buyer's dispatch rights of the Facility to be fully reflected in the CAISO's market optimization and not result in CAISO market awards that are not physically feasible (collectively, the "**Dedicated Interconnection Capacity**"). For avoidance of doubt, the Dedicated Interconnection Capacity shall not exceed the Installed Battery Capacity. Seller shall hold Buyer harmless from any penalties, Imbalance Energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide, or any third-party use of, the Dedicated Interconnection Capacity.

4.11 **Station Use**. Seller shall be responsible for providing all energy to serve Station Use (including paying the cost of any Energy procured to serve Station Use) and all Station Use will be provided in accordance with applicable law, including in accordance with the applicable tariff of the local utility providing retail service to the Site. Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

4.12 **Facility Operations and Maintenance**. Buyer shall at all times during the Delivery Term retain dispatch control of the Facility and be responsible for dispatching and coordinating charging of the Facility, in each case through the issuance of Charging Notices and Discharging Notices. Seller shall at all times during the Delivery Term retain all other aspects of operation and maintenance of the Facility in accordance with Prudent Operating Practice and applicable Law and adhering to all operational data, interconnection and telemetry requirements applicable to the Facility.

4.13 **Pre-Commercial Operation Date Period.** Prior to Commercial Operation, (i) Buyer and Buyer's SC shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices except pursuant to Seller direction, (ii) Seller shall have exclusive rights to charge and discharge the Facility by providing such direction to Buyer or Buyer's SC (provided, Seller shall only charge and discharge the Facility in connection with installation, commissioning and testing of the Facility), (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Product), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Facility testing including without limitation for the Test Product shall be for Seller's account. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 4.13.

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

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

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of energy or Discharging Energy to Buyer.

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder.

ARTICLE 7
METERING

7.1 **Metering**. Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter; all of which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. If Seller elects to submit a SQMD Plan for the Facility, then the Facility Meter will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, at Seller's cost, throughout the period to which the SQMD Plan applies. Seller shall provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Facility. Seller shall not obtain additional CAISO resource IDs for the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R, as may be revised to be consistent with any CAISO-approved Plan, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a

form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility.

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 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 a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer for Product within ten (10) days after, but not prior to, the end of each month of the Delivery Term. Each invoice for the Delivery Term shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy charged by the Facility and the amount of Discharging Energy delivered from the Facility to the Delivery Point, in each case, as read by the Facility Meter, the amount of Replacement RA delivered to Buyer (if any), the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder; *provided*, *however*, that changes to the invoices, payment, and wire transfer information set forth in Exhibit N must be made in writing and delivered via certified mail or by a regularly scheduled next business day delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any

other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the prime rate published on the date of the invoice in The Wall Street Journal, or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds $10,000.

8.4 **Payment Adjustments; Billing Errors**. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; *provided*, *however*, that there shall be no adjustments to prior invoices based upon meter inaccuracies. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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

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

8.7 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Within ten (10) Business Days following any draw by Buyer on the Development Security, including for payment of Construction Delay Damages or COD Delay Damages, subject to Section 11.7, Seller shall replenish the amount drawn such that the Development Security is restored to the amount specified on the Cover Sheet. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security. For avoidance of doubt, and notwithstanding anything to the contrary in this Section 8.7 or elsewhere in this Agreement, Seller shall have no replenishment obligation with respect to the Development Security if such replenishment would exceed the liability limits set forth in Section 11.7.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Except as otherwise set forth in this Section 8.8, Seller shall maintain the Performance Security in full force and effect until the following have occurred: (i) the Delivery Term has expired or terminated early; and (ii) 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). Within ten (10) Business Days after any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn from the Performance Security so that such Performance Security is restored to the amount specified on the Cover Sheet; provided, that Seller's obligation to replenish the Performance Security after the initial posting is limited to an amount equal to [redacted] provided, further, that notwithstanding any provision herein to the contrary, such limitation on replenishment is not intended to and shall not be deemed to limit Seller's liability for a Termination Payment. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (A) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (C) fails to honor Buyer's properly documented request to draw on such Letter

of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable, as well as change the issuer of Letter of Credit for any such Development Security or Performance Security, subject to the issuer and the replacement Letter of Credit meeting the requirements of this Agreement.

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

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

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

8.10 **Financial Statements**. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor's ultimate parent (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, and as posted on the website of the Guarantor's ultimate parent or the Securities Exchange

Commission. Upon request of Seller, Buyer shall provide to Seller unaudited quarterly financial statements within ninety (90) days of end of each quarter and audited financial statements within one hundred twenty (120) days after the end of each fiscal year; provided, however, that this requirement shall be satisfied if such financial statements are publicly available on Buyer's website. Buyer's annual financial statements shall have been prepared in accordance with GAAP.

ARTICLE 9
NOTICES

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

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by 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 next Business Day delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery without any bounce back or rejection, and, if after 5 pm prevailing Pacific Time, on the next Business Day, provided that notice by electronic communication will not be deemed effective until confirmed by return electronic communication from the recipient; 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 occurring on or after the Effective Date (provided, that, for clarification purposes, but without limiting a claiming Party's obligations under this Article 10, the Parties agree that the term "occurring" does not exclude events that may have occurred or existed prior to the Effective Date for which there is no known impact as of the Effective Date actually affecting claiming Party's obligations or ability to perform under this Agreement, such as COVID-19 or any Import Restriction Actions, if such events later are discovered to have such impacts on or after the Effective Date) that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement, if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic (including the impacts of the disease designated COVID-19 or the related virus designated SARS-CoV-2 and any mutations thereof); quarantine; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; any temporary restraint or restriction imposed by applicable Law or any directive from a governmental authority, including WRO Restraint and New Trade Measure; landslide; strikes or other labor difficulties caused or suffered by a Party or any third party, except as set forth below; or a Transformer Failure.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs (provided, for clarification purposes, any such exception shall not preclude any schedule relief Seller may be entitled to pursuant to any New BESS Trade Measures Event), Buyer's ability to buy the Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee party; (iv) a Curtailment Order; (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, or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event or a Transformer Failure. For the avoidance of doubt, the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs**. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date, or Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, (c) limit Buyer's right to declare an

Event of Default pursuant to Section 11.1(b)(i) or Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default rights pursuant to Section 11.2.

10.3 **Notice**. Within five (5) Business Days of becoming aware of the commencement and effect of a Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of becoming aware of the commencement and effect of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure of the claiming Party to provide written notice as required in the preceding sentence constitutes a waiver of a Force Majeure claim for all periods prior to other Party's receipt of such written notice to the extent the non-claiming Party is materially adversely affected by the claiming Party's failure to provide timely notice. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to take reasonable actions. The claiming Party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event.

10.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12)-month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party; provided, however, that Seller shall be entitled to up to an additional six (6) months to remedy the Force Majeure Event if (a) Seller has been unable to remedy the Force Majeure Event within the original twelve (12)-month period despite exercising diligent efforts, and (b) Seller provides to Buyer prior to the expiration of the original twelve (12)-month period (i) a detailed plan reasonably acceptable to an independent, professional engineer selected by Buyer, licensed in the State of California, that explains how Seller will restore the Facility; (ii) a certificate from a Licensed Professional Engineer attesting that the Facility could not reasonably have been restored to operational status within the original twelve (12)-month period but is reasonably likely to be restored to operational status within the additional six (6)-month period by Seller's execution of the plan described in this Section 10.4; (iii) detailed monthly reports (due no later than the 15th day of each month) describing the progress of Seller's efforts to remedy the Force Majeure Event during the prior month; and (iv) Seller continues to make reasonable progress in implementing the detailed plan provided to Buyer or in otherwise resolving the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b) and this Section 10.4, and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

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

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1, and except for Resource Adequacy Failure, the exclusive remedies for which are set forth in Section 3.3, failures to comply with Curtailment Orders or charging the Facility, the exclusive remedies for which are set forth in Sections 4.4(c) and 4.5(c), respectively, failures related to the Efficiency Rate that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Exhibit C, Section (b), and failures related to Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14; or

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

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

(i) The failure of Seller to achieve Construction Start [redacted] after the Guaranteed Construction Start Date;

(ii) The failure of Seller to achieve Commercial Operation [redacted] after the Guaranteed Commercial Operation Date;

(iii) if, except to the extent excused by any Force Majeure Event, in any two consecutive Contract Years, the average Annual Availability over the two-year period is [redacted] and Seller fails to deliver to Buyer within thirty (30) days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such [redacted], and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition, [redacted] (unless the cure plan requires: (i) replacement of at least fifty percent (50%) of the battery capacity; (ii) replacement of at least fifty percent (50%) of the inverter capacity or sub-inverter capacity; and/or (iii) replacement of the generator step-up transformer (the GSU), in which case the time to cure shall not exceed three hundred sixty-five (365) days total) (a "**Availability Cure Plan**");

(iv) if, except to the extent excused by any Force Majeure Event, Seller fails to maintain an Efficiency Rate of [redacted] over a rolling 12-month period;

(v) if, except to the extent excused by any Force Majeure Event, Seller fails to maintain a Storage Contract Capacity (as determined pursuant to Exhibit O) equal [redacted] (a "**Capacity Cure Plan**");

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, with respect to 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, as applicable;

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

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material

respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

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

(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

(viii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(ix) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

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

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

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

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

(d) to suspend performance; or

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

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment**. The termination payment ("**Termination Payment**") for the Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with the Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the Terminated Transaction but shall not

otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether, in the case of a Termination Payment, the Termination Payment is due to 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 the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative**. Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement. Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from or arising out of any Event of Default of the other Party under this Agreement.

11.7 **Seller Pre-COD Liability Limitations**. Subject to Seller's compliance with Section 11.8, if this Agreement is terminated pursuant to Section 11.2 prior to the Commercial Operation Date and Seller is the Defaulting Party, Seller's aggregate liability for any Event of Default other than arising due to fraud, misrepresentation, or willful misconduct shall be equal to [redacted]

11.8 **Seller Post-Termination Obligations**. If this Agreement is terminated pursuant to Section 11.2 prior to the Commercial Operation Date and Seller is the Defaulting Party or pursuant to Section 11.9, Seller shall not enter into any Non-Merchant Agreement to sell any Product from the Facility within two (2) years after the effective date of such termination without first having provided Notice to Buyer of an offer to purchase such Product (a "**ROFO Offer**"). Buyer shall have thirty (30) days to consider and respond to such ROFO Offer (the "**ROFO Exercise Period**"). If Buyer provides notice to Seller accepting the ROFO Offer within the ROFO Exercise Period, then the Parties shall negotiate in good faith to enter into a binding agreement (the "**ROFO Agreement**"), within ninety (90) days after Seller's receipt of Buyer's notice of acceptance (the "**ROFO Negotiation Period**"), for purchase and sale of the Product in accordance

with the price and non-price commercial terms of the ROFO Offer and otherwise substantially in the form of this Agreement. If Buyer does not provide notice accepting the ROFO Offer within the ROFO Exercise Period, or if the Parties fail to enter into the ROFO Agreement within the ROFO Negotiation Period, then Seller shall have the right to enter into any Non-Merchant Agreement, within one hundred eighty (180) days after the end of the ROFO Exercise Period or ROFO Negotiation Period, as applicable, to sell such Storage Product to any third parties, so long as the prices under such Non-Merchant Agreement are equal to or greater than the respective prices under the ROFO Offer. If Seller does not enter into such a Non-Merchant Agreement within such one hundred eighty (180) day period, then Seller shall be required again to first provide a ROFO Offer to Buyer, and comply with the related obligations under this provision, with respect to any Non-Merchant Agreement to sell any Product from the Facility that Seller enters into within two (2) years after the termination of this Agreement pursuant to Section 11.2 or Section 11.9.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT, BY CONTRACT, OR OTHERWISE.

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY INCENTIVES, 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 INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.3, 11.2, 11.3, 11.7, 11.9 AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P. THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES

AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

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

(e) Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies

or tribunals, including, without limitation those related to non-discrimination, non-preference, and conflict of interest.

(f) Seller shall maintain Site Control throughout the Delivery Term.

(g) Seller shall obtain any and all applicable permits and approvals, including without limitation, environmental clearance under the California Environmental Quality Act ("**CEQA**") or other environmental law, from the local jurisdiction where the Facility will be constructed. Seller acknowledges that Buyer is purchasing the Product under this Agreement and does not intend to be the lead agency for the Facility.

(h) Seller represents and warrants that it has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily ("**Forced Labor**"). The Parties acknowledge that pursuant to the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

(i) Despite Seller and/or its Affiliates having received notices or advisements from existing or potential suppliers or service providers on or prior to the Effective Date regarding delays in the delivery of materials and/or services due to COVID-19, neither Seller nor its Affiliates are aware of any conditions or circumstances evidenced in any such notice or advisement that are reasonably likely to cause a delay in (i) achieving the Construction Start by the Guaranteed Construction Start Date, or (ii) achieving Commercial Operation by the Guaranteed Commercial Operation Date. Notwithstanding anything to the contrary in this Agreement, Buyer's sole remedy for any breach of this representation by Seller shall be that Seller may not claim relief under Article 10 for a Force Majeure Event or Section 4 of Exhibit B for a Development Cure Period on the basis of any such delays.

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

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

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

of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is limited within a venue permitted in law and under this Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

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

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

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals and permits necessary for the operation of the Facility and for Seller to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Prevailing Wage**. Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. Seller agrees to have its primary EPC contractor enter into one or more project labor agreements for construction of the Facility. As a condition precedent to commencement of the Delivery Term, Seller must certify that it complied with the foregoing requirements. Seller shall provide a Seller's officer's certificate in a form reasonably acceptable to Buyer certifying Seller's compliance with the requirements of the foregoing prevailing wage

and project labor agreement requirements and such certificate shall be deemed documentation reasonably satisfactory to Buyer for purposes of the foregoing sentence. Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws.

13.5 **Other Seller Commitments**. Seller shall perform the additional Seller commitments as set forth in Exhibit S.

13.6 **Diversity Reporting**. Seller shall request that its primary EPC contractor for the Facility to complete the Supplier Diversity and Labor Practices questionnaire available at https://forms.gle/4VahoVD3h7pvE4dF6, as may be non-materially updated from time to time, or a similar questionnaire for the period between the Construction Start Date and the Commercial Operation Date, and Seller shall provide the completed Supplier Diversity and Labor Practices questionnaire to Buyer within forty-five (45) days after the Commercial Operation Date. A current example of the Supplier Diversity and Labor Practices questionnaire is attached as Exhibit T.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any purported assignment made without required written consent, or in violation of the conditions to assignment set out in this Article 14 shall be null and void. Neither Party shall be obligated to provide any consent, or enter into any agreement, that materially and adversely affects that Party's rights, benefits, risks or obligations under this Agreement. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment; Financing Cooperation**. 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 Lenders to agree upon, execute, and deliver to Seller and Lender (i) a consent to collateral assignment of this Agreement in a form substantially similar to the consent to collateral assignment set forth in Exhibit U ("**Collateral Assignment Agreement**") and (ii) an estoppel certificate in a form substantially similar to the estoppel certificate set forth in Exhibit V ("**Estoppel Certificate**").

14.3 **Permitted Assignment By Seller; Change in Control**. Seller may without the prior written consent of Buyer: (a) assign this Agreement to an Affiliate of Seller, including to NEOP, NEP and NEECH; (b) assign, collaterally assign, or pledge its interest hereunder and/or in the Facility to a Lender or any other financing party; or (c) make any Permitted Transfer or otherwise assign this Agreement pursuant to or in connection with any Permitted Transfer. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; provided that, Buyer's consent shall not be

required if: (a) such Change of Control is, or is a result of, a direct or indirect Change of Control of NEOP or NEP; or (b) the entity that is the Seller at the conclusion of the Change of Control is a Permitted Transferee.. For avoidance of doubt, (i) a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer, and no consent is required under this Agreement with respect to a Permitted Transfer, and (ii) Seller may, without the prior written consent of Buyer, finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities utilizing debt financing, equity financing (including tax equity), lease financing, or any other form of financing or any combination thereof, including pursuant to a portfolio financing of multiple energy generation, storage, and transmission facilities and other assets of Seller or Seller's Affiliates (which may include cross-collateralization or similar arrangements).

ARTICLE 15
DISPUTE RESOLUTION

15.1 **Governing Law**. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.2 **Judicial Reference**. Each of the Parties hereto hereby consents to the adjudication of all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be empowered to hear and determine all issues in such reference, whether fact or law. Each of the Parties hereto represents that each has reviewed this waiver and consent and each knowingly and voluntarily waives its jury trial rights and consents to judicial reference following consultation with legal counsel on such matters. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.

15.3 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forth (40) days after Notice of the dispute, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16
INDEMNIFICATION

16.1 **Mutual Indemnity**.

(a) Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and

hold harmless, the other Party, its Affiliates, directors, officers, agents, attorneys, employees and representatives (each an "**Indemnified Party**" and collectively, the "**Indemnified Group**") from and against all claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees, for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the following: (i) the negligent act or omission, recklessness or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, agents, subcontractors, and anyone directly or indirectly employed by either the Indemnifying Party or any of its subcontractors or anyone that they control; (ii) any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the Indemnified Party's sale or use of the Product, deliverables or other items provided by the of the Seller pursuant to the requirements of this Agreement, or (iii) any breach of this Agreement (collectively, "**Indemnifiable Losses**").

(b) The Indemnifying Party's indemnity obligations apply to the maximum extent allowed by Law, subject to limitations on consequential and similar damages set forth in Article 12 herein, and includes defending the Indemnified Party. Upon the Indemnified Party's written request, the Indemnifying Party, at its own expense, must defend any suit or action that is subject to the Indemnifying Party's indemnity obligations.

(c) Nothing in this Article 16 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Notice of Claim**. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly Notify the Indemnifying Party in writing of any damage, claim, loss, liability or expense which Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 ("**Claim**"). The Notice is referred to as a "**Notice of Claim**". A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.

16.3 **Failure to Provide Notice**. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 **Defense of Claims**. If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such

Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.

16.5 **Subrogation of Rights**. Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.6 **Rights and Remedies are Cumulative**. Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17
INSURANCE

17.1 **Insurance**.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including sudden and accidental pollution coverage, products and completed operations and personal injury insurance, with a minimum amount of Two Million Dollars ($2,000,000) per occurrence, and an annual aggregate of not less than Five Million Dollars ($5,000,000), endorsed to provide contractual liability in said amount,

specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller; and (ii) an umbrella insurance policy in a minimum amount of liability of Ten Million Dollars ($10,000,000). Insurance may be evidenced through primary and excess policies.

(b) Employer's Liability Insurance. Employers' Liability insurance shall be 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 California Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of 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 this Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility 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) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars ($2,000,000) per occurrence and in the aggregate, naming the Seller (and Lender if any) as additional named insured. Insurance may be evidenced through primary and excess policies.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry the same levels of insurance as Seller. All subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Prior to the Effective Date and upon annual renewal of required insurance coverage thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. 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.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the pricing and other commercially sensitive terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality**. Upon receiving or learning of Confidential Information, the Receiving Party will: (a) treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as set forth in this Article 18.2; (b) restrict access to such Confidential Information to only those of its Affiliates and its and their employees, officers, directors, advisors (including legal and accounting advisors), agents, contractors, subcontractors, actual and potential lenders, equity investors (including tax equity), and other financing parties (including Lenders), and actual and potential acquirors and assignees, in each case who reasonably need to know it and are bound by confidentiality provisions no less stringent than those in this Article 18.2; and (c) use such Confidential Information solely for purposes of administering this Agreement and, in cases where Seller is the Receiving Party, for the purpose of developing, financing, owning, and operating the Facility. Confidential Information will retain its character as Confidential Information but may be disclosed by the Receiving Party if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the Disclosing Party, Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement, including Confidential Information, may be subject to the California Public Records Act (Government Code Section 7920 et seq.), and Buyer shall incur no liability arising out of any disclosure of such information or documentation provided in connection with this Agreement, including Confidential Information, that is subject to public disclosure (i.e., there are no applicable disclosure exceptions)

under the California Public Records Act.

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 actual or potential Lender or any of its Affiliates, and Seller's actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **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. For the purposes of this section and to the extent the information is not prohibited by law from disclosure, press release does not include records released by Buyer, including annual comprehensive financial reports; memorandums or reports to Buyer's board of directors; documentation submitted to regulatory agencies; disclosures related to public financings; and production of records required by subpoena, court order, or under the California Public Records Act (Government Code Section 7920 et seq.).

ARTICLE 19
MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits**. This Agreement, together with the Cover Sheet and Exhibits attached hereto, constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments**. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver**. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease**. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy storage-related product seller and energy storage-related product purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender) or Indemnified Party.

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

19.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts; Electronic Signatures**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic or scanned signatures as originals.

19.8 **Electronic Delivery**. Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.

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

19.10 **No Recourse to Members of Buyer**. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public

entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract**. The Parties intend that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Change in Electric Market Design**. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

CORBY ENERGY STORAGE, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

MARIN CLEAN ENERGY, a California joint powers authority

By: _____
Name: _____
Title: _____
Date: _____

MARIN CLEAN ENERGY, a California joint powers authority

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Corby Energy Storage (for clarification, the Facility will comprise only a portion of the larger Corby energy complex)

Site includes all or some of the following APNs: Facility will comprise a portion of APN 0141-030-090, which APN will also include one (1) or more other generation and/or storage facilities owned and/or operated by Seller and/or its Affiliates.

County: Solano County

Type of Facility: Lithium-Ion

Energy Management Software: Seller must provide 2-4 second timestamps, data historian (at least 5 years of storage), SCADA/AGC communication and operability with the Facility controller and offtaker, and include the following applications/modes:

- Dynamic Voltage Support
- Shifting
- Regulation
- Flexible Ramp
- Spinning Reserve

To the extent not already provided above, Seller shall use commercially reasonable efforts to provide telemetry and other data to Buyer and Buyer's SC in an electronic format compatible with bid optimization software used by Buyer and Buyer's SC for input into bid optimization software.

Operating Characteristics of Facility:

Maximum Stored Energy Level at COD (MWh): 400 MWh

Maximum Charging Capacity at COD: 100 MW

Maximum Discharging Capacity at COD: 100 MW

Operating Restrictions of Facility: See Exhibit Q

Storage Contract Capacity: See definition in Section 1.1

Maximum Output: 100 MW

Delivery Point: Facility Pnode

Facility Meter Locations: See Exhibit R

Facility Interconnection Point: The Project shall interconnect to Vaca-Dixon 230kV Substation

Facility Pnode: (TBD)

Participating Transmission Owner: Pacific Gas and Electric Company

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Facility Construction**.

(a) "**Construction Start**" will occur following Seller's execution of an engineering, procurement and construction (EPC) contract related to the Facility and issuance of a full notice to proceed with the construction of the Facility under the EPC contract, mobilization to the Site by Seller and/or its designees, and includes the physical movement of soil at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "**Construction Start Date**." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

(b) The "**Guaranteed Construction Start Date**" means the Expected Construction Start Date, subject to extensions on a day-for-day basis for the Development Cure Period.

(c) If Seller fails to achieve Construction Start on or before the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer for each day of delay in achieving Construction Start [redacted] Construction Delay Damages shall be paid to Buyer in arrears on a monthly basis. Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of Construction Delay Damages set forth in such invoice. If Seller fails to pay the Construction Delay Damages within 10 Business Days of receipt of Buyer's invoice, Buyer shall be entitled to deduct such Construction Delay Damages from the Development Security, subject to Section 11.7. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Construction Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Construction Start Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(i) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2(a). The "**Commercial Operation Date**" shall be the later of (x) [redacted] or (y) the date on which Commercial Operation is achieved.

(a) Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

(b) If Seller achieves Commercial Operation for the Facility [redacted] all Construction Delay Damages paid by Seller shall be refunded to Seller.

Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.

(c) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. [redacted] but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation [redacted] after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates**. "**Development Cure Period**" means, collectively, permitted extensions for delays due to:

(a) Force Majeure Events [redacted];

[redacted]

(d) Buyer-caused delays (including any failure by Buyer to make necessary arrangements to receive the Discharging Energy) (no limit).

For clarity, the permitted extensions under the Development Cure Period extend each of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date simultaneously on a day-for-day basis. Seller may only claim one day of extension for each day of delay notwithstanding any overlapping permitted extensions. The total Development Cure Period, excluding any delays under (d) above, shall not exceed [redacted] days on a cumulative basis.

No extension shall be given under the Development Cure Period (1) if the delay was due to Seller's failure to take commercially reasonable actions to meet its requirements and deadlines, or (2) Seller does not provide notice and documentation as required below. Seller shall provide written notice to Buyer of a delay promptly (other than a Force Majeure Event, which notice provisions are set

forth in Section 10.3 of this Agreement), but in no case more than thirty (30) days after Seller became aware of such delay and its effects on the Guaranteed Construction Start Date and/or the Guaranteed COD, 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 ten (10) 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 Storage Contract Capacity**. If, at Commercial Operation, the Installed Battery Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have [redacted] days after the Commercial Operation Date to install additional capacity such that the Installed Battery Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Battery Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [redacted] for each MW that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

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

(a) Contract Price. All Product shall be paid on a monthly basis at the Contract Price [redacted]

(b) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate applicable to such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated [redacted]

(c) Availability Adjustment. If during any month during the Delivery Term the monthly Storage Availability is less than the Guaranteed Storage Availability, then Seller shall pay to Buyer an availability adjustment payment ("**Availability Adjustment**") equal to [redacted]

(d) Tax Credits. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Product, shall be effective regardless of whether the sale of Product is eligible for, or receives Tax Credits during the Contract Term.

(e) Test Product [redacted]

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer shall cause its Scheduling Coordinator to reasonably cooperate with Seller during the testing and commissioning of the Facility. Seller shall provide Buyer or Buyer's SC access to real-time data associated with operating the Facility in a manner reasonably prescribed by Buyer.

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

(c) CAISO Costs and Revenues. Except as otherwise set forth below and in Section 4.13 with respect to Test Product, Buyer (as Scheduling Coordinator for the Facility) shall be financially responsible for such services and shall pay for CAISO costs (including for Charging Energy, penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with Discharging Energy, CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Except due to the actions or omissions of Buyer or Buyer's Scheduling Coordinator, Seller shall assume all liability and reimburse Buyer for any and all costs, charges or sanctions (i) incurred by Buyer because of Seller's failure to perform, including pursuant to Section 4.3(d), (ii) incurred by Buyer because of any outages for which notice has not been provided as required, (iii) associated with delivery of Resource Adequacy Benefits from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff)), if applicable or (iv) to the extent arising as a result of Seller's

failure to comply with a Curtailment Order, Charging Notice or Discharging Notice, if such failure results in incremental costs to Buyer; provided, however, that if any such costs, charges or sanctions are due to the actions or omissions of each of Buyer or its Scheduling Coordinator, on the one hand, and Seller on the other hand, the liability for such amounts shall be allocated proportionally between Buyer and Seller based on the proportion of fault. Any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of 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 energy storage facility operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, including Curtailment Orders, or to perform in accordance with this Agreement, including with respect to the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract

Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards. Buyer (as Scheduling Coordinator) shall be responsible for Buyer's compliance with NERC reliability standards related to Scheduling Coordinators.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any material planned changes to the Facility or the site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar quarter, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter or month as applicable.

8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.

9. List of issues that are likely to potentially affect Seller's Milestones.

10. A 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. The utilization of union labor by Seller's principal EPC contractor.

12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

14. Any other documentation reasonably requested by Buyer.

EXHIBIT F

[RESERVED]

EXHIBIT G

[RESERVED]

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, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between [Entity name, state of formation, type of entity] ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

(a) The Facility is fully operational, and interconnected, fully integrated and synchronized with the Transmission System.

(b) Seller has installed equipment for the Facility with a nameplate capacity of no less than [redacted] of the Storage Contract Capacity.

(c) Seller has commissioned all Facility equipment in accordance with its respective manufacturer's specifications.

(d) Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and the CAISO.

(e) The Facility is fully capable of charging, storing and discharging energy up to no less than [redacted] of the Storage Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.

(f) Authorization to parallel the Facility was obtained from the Participating Transmission Owner.

(g) The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation.

(h) The CAISO has provided notification supporting Commercial Operation of the Facility (which for avoidance of doubt shall not require certification including CAISO certification of ancillary services with respect to the Facility), in accordance with the CAISO Tariff.

(i) Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead Market and Real-Time Market in respect of the Facility.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED BATTERY CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Battery 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 Energy Storage Service Agreement dated [Date] by and between [Entity name, state of formation, type of entity] ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

> The Storage Capacity Test demonstrated a maximum operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of __ MW_{AC} to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "Installed Battery Capacity").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [Entity name, state of formation, type of entity] ("**Seller**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between Seller and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;

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

3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: _____ (such description shall amend the description of the Site in Exhibit A of the Agreement).

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

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

BBVA

IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUANCE:

_____, 2023

BENEFICIARY:
MARIN CLEAN ENERGY
1125 TAMALPAIS AVENUE
SAN RAFAEL, CA 94901
ATTENTION: CHIEF FINANCIAL OFFICER

EMAIL: finance@mceccleanenergy.org

APPLICANT:
NEXTERA ENERGY CAPITAL HOLDINGS, INC.
ON BEHALF OF **CORBY ENERGY STORAGE, LLC**
700 UNIVERSE BLVD
JUNO BEACH, FLORIDA 33408
ATTENTION: TREASURY

Re: **BANCO BILBAO VIZCAYA ARGENTARIA, S.A. NEW YORK BRANCH**
Irrevocable Standby Letter of Credit No. _____

Sirs/Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as "**you**") this Irrevocable Standby Letter of Credit No. _____ (the "**Letter of Credit**") for the account of **NextEra Energy Capital Holdings, Inc.** on behalf of **Corby Energy Storage, LLC**, located at 700 Universe Boulevard, Juno Beach, Florida 33408 ("**Account Parties**"), effective immediately and expiring on the date determined as specified in numbered paragraph 5 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain **Energy Storage Service Agreement dated** _____.

1. **Stated Amount.** The maximum amount available for drawing by you under this Letter of Credit shall be _____ **(US$**_____) (such maximum amount referred to as the "**Stated Amount**").

2. **Drawings.** A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to *[ISSUING BANK]*, at any time during its business hours on such Business Day, at *[bank address]* (or at such other address as may be designated by written notice

delivered to you as contemplated by numbered *paragraph 8* hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of *Attachment A* hereto (the "**Draw Certificate**"), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of *Attachment B* hereto (the "**Draft**"), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by overnight delivery or courier to *[ISSUING BANK]* at our address set forth above, *Attention*: _____ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered *paragraph 8* below), or as a PDF attachment to an email to [*bank email address*]. Transmittal by email shall be deemed delivered when received. The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Draw Certificate and Draft by Beneficiary hereunder in order to receive payment.

3. Time and Method for Payment. We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, (Eastern Standard Time) time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, (Eastern Standard Time) time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

4. Non-Conforming Demands. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice not later than two Business Days that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand and re-submit on or before the then current expiry date.

5. Expiration, Initial Period and Automatic Extension. The initial period of this Letter of Credit shall terminate on **[the date which is one day prior to the first anniversary of this Letter of Credit's Date of Issuance]** (the "**Initial Expiration Date**"). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered *paragraph 8*) that we elect not to consider this Letter of Credit extended for any such additional one year period. Notwithstanding the foregoing extension provision, this Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of *Attachment C* hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any). Upon receipt by you of such notice of non-extension, you may draw hereunder up to the available amount, on or before the then current expiry date, against presentation to us of your draft substantially in the form of *Attachment B* hereto (the "**Draft**"), appropriately completed and signed by your authorized officer (signed as such).

6. Business Day. As used herein, "**Business Day**" shall mean any day on which commercial banks are not authorized or required to close in the State of New York, and inter-bank payments can be effected on the Fedwire system.

7. **Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE "ISP98"), AND AS TO MATTERS NOT ADDRESSED IN ISP98, BY THE LAWS OF THE STATE OF NEW YORK. **WE ARE SUBJECT TO VARIOUS LAWS, REGULATIONS AND EXECUTIVE AND JUDICIAL ORDERS (INCLUDING ECONOMIC SANCTIONS, EMBARGOES, ANTI-BOYCOTT, ANTI-MONEY LAUNDERING, ANTI-TERRORISM, AND ANTI-DRUG TRAFFICKING LAWS AND REGULATIONS) OF THE U.S. AND OTHER COUNTRIES THAT ARE ENFORCEABLE UNDER APPLICABLE LAW. WE WILL NOT BE LIABLE FOR OUR FAILURE TO MAKE, OR OUR DELAY IN MAKING, PAYMENT UNDER THIS LETTER OF CREDIT OR FOR ANY OTHER ACTION WE TAKE OR DO NOT TAKE, OR ANY DISCLOSURE WE MAKE, UNDER OR IN CONNECTION WITH THIS LETTER OF CREDIT THAT IS REQUIRED BY SUCH LAWS, REGULATIONS, OR ORDER.**

8. **Notices.** All notices to Beneficiary shall be via email to Finance@mceecleanenergy.org followed up in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Marin Clean Energy, Attn: Chief Financial Officer, 1125 Tamalpais Avenue, San Rafael, CA 94901. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

9. **Irrevocability.** This Letter of Credit is irrevocable.

10. **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP98 and *Attachment A*, *Attachment B* and *Attachment C* hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

* * *

SINCERELY,

[ISSUING BANK]

_____

By: _____

Title: _____

Address:

ATTACHMENT A

FORM OF DRAW CERTIFICATE

TO: [ISSUING BANK]
[Address]

The undersigned hereby certifies to [*ISSUING BANK*] ("**Issuer**"), with reference to Irrevocable Letter of Credit No. _____ (the "**Letter of Credit**") issued by Issuer in favor of the undersigned ("**Beneficiary**"), as follows:

(1) The undersigned is the _____ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.

(2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary's presentation of the draft accompanying this Certificate, for payment of _____ U.S. dollars (US$_____), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).

(3) The reasons for a drawing by Beneficiary are pursuant to that certain **Energy Storage Service Agreement dated** _____.

(4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

By: _____
Title: _____
Date: _____

(5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

MARIN CLEAN ENERGY

By: _____

Title: _____

Date: _____

ATTACHMENT B

DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO. _____

TO: [ISSUING BANK]
[Address]

Date:

PAY TO: **MARIN CLEAN ENERGY**

U.S.$ _____

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO. _____.

MARIN CLEAN ENERGY

By: _____

Title: _____

Date: _____

ATTACHMENT C

CANCELLATION CERTIFICATE

TO: *[ISSUING BANK]*
[Address]

Irrevocable Letter of Credit No. _____

The undersigned, being authorized by the undersigned ("**Beneficiary**"), hereby certifies on behalf of Beneficiary to [*ISSUING BANK*] ("**Issuer**"), with reference to Irrevocable Letter of Credit No. _____ issued by Issuer to Beneficiary (the "**Letter of Credit**"), that all obligations of **Corby Energy Storage, LLC**, under the **Energy Storage Service Agreement dated** _____ have been fulfilled.

Pursuant to *Section 5* thereof, the Letter of Credit shall expire upon Issuer's receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

MARIN CLEAN ENERGY

By: _____

Title: _____

Date: _____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this "Guaranty") is entered into as of [_____] (the "Effective Date") by and between [Entity name, state of formation, type of entity] ("Guarantor"), and Marin Clean Energy (together with its successors and permitted assigns, "Buyer").

Recitals

A. Buyer and [Entity name, state of formation, type of entity] ("**Seller**"), entered into that certain Energy Storage Service Agreement (as amended, restated or otherwise modified from time to time, the "**ESSA**") dated as of [____], 20___.

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

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the ESSA.

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

Agreement

1. **Guaranty**. For value received and subject to the terms and conditions hereof, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESSA (the "**Obligations**"), including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESSA; provided, that Guarantor's aggregate liability under or arising out of this Guaranty for payment of the Obligations shall not exceed _____ Dollars ($_____) (the "**Guaranteed Amount**"). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESSA, Guarantor shall promptly pay such amount as required herein.

2. **Demand Notice**. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the ESSA. If Seller fails to pay any Guaranteed Amount as required pursuant to the

ESSA for 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), (y) replacement Performance Security is provided in an amount and form required by the terms of the ESSA or (z) the sixteenth anniversary of the Effective Date. 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 ESSA, 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 ESSA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the ESSA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of

the ESSA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the ESSA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that, Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the ESSA, but that are expressly waived under any provision of this Guaranty).

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

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

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

(iii) subject to Section 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. **Subrogation**. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. **Representations and Warranties**. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [***limited liability company][corporate***] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and

other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, which would invalidate or materially impair Guarantor's ability to perform its obligations under this Guaranty, (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, materially 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. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at [____]
Attn: [____]

If delivered to Guarantor, to it at [____]
Attn: [____]

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 New York, 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 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 ESSA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer, which consent shall not be unreasonably withheld. This Guaranty is not assignable by Buyer except (i) with the prior written consent of Guarantor, which consent shall not be unreasonably withheld or (ii) to an assignee of the ESSA in conjunction with an assignment of the ESSA in its entirety accomplished in accordance with the terms thereof. 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**. BUYER (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

[*Signature on next page*]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By:_____

Printed Name:_____
Title:_____

BUYER:

[_____]

By:_____

Printed Name:_____
Title:_____

By:_____

Printed Name:_____
Title:_____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [Entity name, state of formation, type of entity] ("**Seller**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [*Date*] by and between Seller and Buyer ("**Agreement**"). 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 3.3(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information[1]

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

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

[1] To be repeated for each unit if more than one.

[SELLER ENTITY]

By:_____

Its:_____

Date:_____

EXHIBIT N

NOTICES

Corby Energy Storage, LLC	Marin Clean Energy
All Notices: 700 Universe Blvd Juno Beach, FL 33408 Attn: Business Management Phone: (561) 691-3062 Email: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com	**All Notices:** Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: Procurement@mceccleanenergy.org
Reference Numbers: Duns: [redacted] Federal Tax ID Number: [redacted]	**Reference Numbers:** Duns: [redacted] Federal Tax ID Number: [redacted]
Invoices: Attn: Business Management Phone: (561) 691-3062 Facsimile: (561) 304-5161 Email: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com	**Invoices:** Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mceccleanenergy.org
Scheduling: Attn: NextEra Energy Marketing, LLC Phone: (561) 304-5215 Facsimile: (561) 625-7604 Email: DL-NEPM-DAYAHEADDESKWECC@nexteraenergy.com	**Scheduling:** Attn: ZGlobal Phone: (916) 458-4080 Email: dascheduler@zglobal.biz
Confirmations: Attn: Business Management Phone: (561) 691-3062 Facsimile: (561) 304-5161 Email: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com	**Confirmations:** Attn: Director of Power Resources Phone: (415) 464-6685 Email: Procurement@mceccleanenergy.org
Payments: Attn: Business Management Phone: (561) 691-3062 Facsimile: (561) 304-5161 Email: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com	**Payments:** Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mceccleanenergy.org
Wire Transfer: [redacted]	**Wire Transfer:** [redacted]

Corby Energy Storage, LLC	Marin Clean Energy
Credit and Collections: Attn: Brantley Pierce Phone: 561-694-3296 Facsimile: 561-304-5849 Email: CreditMailbox@nee.com	**Credit and Collections:** Attn: Chief Financial Officer Phone: (415) 464-6037 Email: finance@mcecleanenergy.org
With additional Notices of an Event of Default to: Attn: General Counsel Email: NEER-General-Counsel@nexteraenergy.com	**With additional Notices of an Event of Default to:** Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than five (5) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit O and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Facility and the initial Efficiency Rate determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, once each Contract Year Seller will perform a Storage Capacity Test and will give Buyer ten (10) Business Days prior Notice of such test. Buyer shall have the right (i) once per Contract Year, to require Seller to schedule and complete a Storage Capacity Test upon no less than five (5) Business Days prior written Notice and (ii) to require a test or retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test (any such test, a "**Buyer Initiated Test**"). Buyer shall be responsible for all costs and entitled to all revenues associated with any such Buyer-requested Storage Capacity Tests. Seller shall have the right to run a retest of any Storage Capacity Test upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Contract Capacity and Efficiency Rate. No later than ten (10) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.9(c) of the Agreement and Part II(I) below, the actual Efficiency Rate and Storage Capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a "SCT". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity (including but not limited to additional inverters and batteries) in excess of the initially installed Storage Contract Capacity identified on the cover sheet; provided, for all purposes of this Agreement, the amount of Installed Battery Capacity shall never be deemed to exceed the Storage Contract Capacity, and all SOC measurements associated with a Storage Capacity Test shall be based on the Storage Contract Capacity without taking into account any capacity that exceeds the Storage Contract Capacity amount listed on the cover sheet.

(a) Purpose of Test. Each SCT shall:

a. Determine an updated Storage Contract Capacity;

b. Determine the amount of Energy required to fully charge the Facility;

c. Determine the Facility charge ramp rate;

d. Determine the Facility discharge ramp rate;

e. Determine an updated Efficiency Rate.

(b) Test Elements. Each SCT shall include the following test elements:

(a) The measurement of charging energy exclusive of Station Use and Electrical Losses, as measured by the Facility Meter or other mutually agreed meter, that is required to charge the Facility up to the Maximum Stored Energy Level not to exceed the Storage Contract Output (MWh) ("Energy In");

(b) The measurement of discharging energy exclusive of Station Use and Electrical Losses, as measured by the Facility Meter or other mutually agreed meter, that is discharged from the Facility to the Delivery Point until the Stored Energy Level reaches zero MWh as indicated by the battery management system ("Energy Out");

(c) Electrical output at Maximum Discharging Capacity (as defined in Exhibit A) at the Facility Meter (MW);

(d) Electrical input at Maximum Charging Capacity (as defined in Exhibit A) at the Facility Meter ((MW);

(e) Amount of time between the Facility's electrical output going from 0 to Maximum Discharging Capacity;

(f) Amount of time between the Facility's electrical input going from 0 to Maximum Charging Capacity;

(g) Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

(c) Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Facility, at ten (10) minute intervals:

(1) discharge time (minutes);
(2) charging energy (MWh);
(3) discharging energy (MWh);
(4) Stored Energy Level (MWh).

(d) Test Showing. Each SCT must demonstrate that the Facility:

(1) successfully started;

(2) operated for at least four (4) consecutive hours at Maximum Discharging Capacity;

(3) operated for at least four (4) consecutive hours at Maximum Charging Capacity; and

(4) is able to deliver Discharging Energy to the Delivery Point as measured by the Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity;

(e) Test Conditions.

(a) General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit A).

(b) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.G below.

(c) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

(f) Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if

Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties; provided, that if Seller is unable to complete an SCT within ten (10) Business Days of a Force Majeure Event, the Storage Capacity shall be deemed to be zero (0) until such time as Seller completes a SCT demonstrating a Storage Capacity greater than 0 MW.

(g) Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

(1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
(2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;
(3) the level of Storage Contract Capacity, Energy In, Energy Out, Efficiency Rate, Maximum Charging Capacity, the current charge and discharge ramp rate, and Stored Energy Level determined by the SCT, including supporting calculations; and
(4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.G.

(h) Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to conducting the initial Commercial Operation Date Storage Capacity Test, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) an updated supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("Supplementary Storage Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

(i) Adjustment to Storage Contract Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh-$_{AC}$) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on

the Cover Sheet may have been adjusted (if at all) under this Agreement, , shall be divided by four (4) hours to determine the Storage Contract Capacity, which shall be expressed in MW_{AC}, and shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.

(j) Adjustment to Efficiency Rate. The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above), measured at the Facility Meter location, exclusive of Electrical Losses to the Delivery Point and separately metered Station Use associated with battery cooling and other thermal management equipment, and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

Part III. SUPPLEMENTARY STORAGE CAPACITY TEST PROTOCOL

A. Conditions Precedent to SCT

- Control System Functionality: The Facility control system shall be successfully configured to receive data from the battery system, exchange distributed network protocol 3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

- Communications: Remote Terminal Unit (RTU) testing should be successfully completed prior to SCT. The interface between Buyer's RTU and the Facility SCADA system should be fully tested and functional prior to starting testing. This includes verification of data transmission pathway between the Buyer's RTU and Seller's control system interface and the ability to record SCADA data.

- Commissioning Checklist: Commissioning Checklist shall be successfully completed on all installed facility equipment, including verification that all controls, set points, and instruments of the control system are configured.

- Control System Functionality: The control system is operable within the requirements and has been successfully configured to receive data from the battery system and transfer data to the onsite servers for the calculation, recording and archiving of data points.

- The Round-Trip Efficiency Test will be repeated annually.

B. Storage Contract Capacity and Efficiency Rate Test

- Procedure:

  (1) System Starting State: The Facility shall be balanced using original equipment manufacturer procedures as appropriate and will be in the on-line state at 0% SOC.

(2) Record the initial value of the SOC.

(3) Command a real power charge that results in an AC power of Facility's maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Facility commenced charging.

(4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours of continuous charging.

(5) Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC.

(6) Following one (1) hour rest period, command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, or (b) the Facility has reached 0% SOC.

(7) Record and store the SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Storage Contract Capacity. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Storage Contract Capacity (or at or above the Installed Battery Capacity after a Commercial Operation Storage Capacity Test) for four (4) consecutive hours pursuant to Part III.B.6(a), the SOC will be deemed 0 for the purposes of calculating the Storage Contract Capacity.

(8) Record and store the Discharging Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Storage Contract Capacity.

(9) If the Facility has not reached 0% SOC pursuant to Section III.B.6, continue discharging the Facility until it reaches a 0% SOC.

(10) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Part III.B.6 until the Facility has reached a 0% SOC pursuant to either Part III.B.7 or Part III.B.9, as applicable.

- Test Results:

(1) The resulting Storage Contract Capacity measurement is the sum of the total Discharging Energy as recorded pursuant to Part III.A.8 at the Facility Meter divided by four (4) hours.

(2) The quotient of (x) the total amount of Discharging Energy (as reported under Section III.B(10) above), divided by (y) the total amount of Charging

Energy (as reported under Section III.B(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate liquidated damages in Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

C. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's maximum discharging level within 30 seconds.

- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.

- Procedure:

  (1) Record the Facility active power level at the Facility Meter.

  (2) Command the Facility to follow a simulated CAISO RIG signal of PMAX at .95 power factor for ten (10) minutes.

  (3) Record and store the Facility active power response (in seconds).

- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the facility's full charging level within 30 seconds.

- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.

- Procedure:

  (1) Record the Facility active power level at the Facility Meter.

  (2) Command the Facility to follow a simulated CAISO RIG signal of PMAX at .95 power factor for ten (10) minutes.

  (3) Record and store the Facility active power response (in seconds).

- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

E. Reactive Power Production Test

- Purpose: This test will demonstrate the reactive power production capability of the Facility.

- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.

- Procedure:

    (1) Record the Facility reactive power level at the Facility Meter.

    (2) Command the Facility to follow 50 MVAR for ten (10) minutes.

    (3) Record and store the Facility reactive power response.

- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

F. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.

- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.

- Procedure:

    (1) Record the Facility reactive power level at the Facility Meter.

    (2) Command the Facility to follow 50 MVAR for ten (10) minutes.

    (3) Record and store the Facility reactive power response.

- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

EXHIBIT P

STORAGE FACILITY AVAILABILITY

Monthly Storage Availability

(a) Calculation of Monthly Storage Availability. Seller shall calculate the "**Monthly Storage Availability**" in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{[MNTHHRS_m - UNAVAILHRS_m]}{[MNTHHRS_m]}$$

where:

m = relevant month "m" in which availability is calculated;

$MNTHHRS_m$ is the total number of On-Peak Hours for the month;

$UNAVAILHRS_m$, is the total number of On-Peak Hours in the month during which the Facility was unavailable to deliver Product for any reason other than the occurrence of any of the following (each, an "**Excused Event**"): a Force Majeure Event, Curtailments, Buyer Default, Storage Capacity Tests, System Emergencies, [redacted] or the Operating Restrictions in Exhibit Q; provided that notwithstanding anything to the contrary set forth above in this Exhibit P or elsewhere in this Agreement, to the extent the Facility is unable to provide Ancillary Services for any reason not excused under this Agreement during any Settlement Interval or Settlement Period that is not otherwise deemed an Excused Event, but the Facility is available to charge and discharge Energy between the Facility and the Delivery Point, then such impact on UNAVAILHRSm shall be reduced [redacted] To be clear, hours of unavailability caused by any Excused Event will not be included in $UNAVAILHRS_m$ for such month. Additionally, if during any applicable hour the Facility is available, but for less than the full amount of the then effective Storage Contract Capacity, the UNAVAILHRSm for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available Storage Contract Capacity.

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

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Facility in the Real-Time Market, and the Facility is dispatched in the Real-Time Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

Availability Factor

The applicable "**Availability Factor**" or "**AF**" is calculated as follows:

(i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

AF = 100%

(ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability but greater than or equal to [redacted], then:

[redacted]

(iii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability is less than [redacted] but greater than or equal to [redacted], then:

[redacted]

(iv) If the Monthly Storage Availability is less than [redacted] then:

[redacted]

EXHIBIT Q

OPERATING RESTRICTIONS

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

Interconnection Capacity Limit:	100 MW
Maximum Stored Energy Level:	400 MWh
Minimum Stored Energy Level:	0 MWh
Maximum Charging Capacity:	100 MW
Minimum Charging Capacity:	0 MW
Maximum Discharging Capacity:	100 MW
Minimum Discharging Capacity:	0 MW
Maximum State of Charge (SOC) during Charging:	100%
Minimum State of Charge (SOC) during Discharging:	0%
Ramp Rate:	100 MW/minute
Annual Cycles:	365 cycles per Contract Year (maximum annual throughput of [redacted] with no more than two cycles per day; provided, however, Seller shall provide Notice to Buyer within at least 180 days prior to the Guaranteed Commercial Operation Date the amount payable by Buyer for each MWh of throughput (i.e., discharged MWh) that Buyer dispatches in excess of [redacted] during a Contract Year (the "**Additional Cycles Payment Amount**"). Within thirty (30) days after Seller's providing such Notice to Buyer, Buyer shall provide Notice to Seller stating whether it accepts the Additional Cycles Payment Amount or not.

	If Buyer does not accept the Additional Cycles Payment Amount, or fails to timely provide such a response Notice to Seller, within that thirty (30) day period, Buyer shall not be allowed to discharge the Facility in excess of 365 cycles during a Contract Year. If Buyer provides Notice to Seller accepting the Additional Cycles Payment Amount, Buyer shall be allowed to discharge the Facility in excess of 365 cycles during a Contract Year subject to Buyer's payment to Seller of the Additional Cycles Payment Amount for any Throughput that exceeds [redacted] during a Contract Year.
Maximum Average Annual Stored Energy Level:	[redacted] If the year-to-date average Stored Energy Level exceeds [redacted] at any time during the second half of a Contract Year, then the Parties shall confer and determine a mutually agreeable cure plan to achieve an annual averaged Stored Energy Level of [redacted] for such Contract Year. If Parties cannot reach a mutually agreeable cure plan within a two (2) week period following initiation of discussions, then Seller may provide Buyer upon seventy-two (72) hours advance notice that the maximum allowed Stored Energy Level shall be limited until the CYTDA Stored Energy Level ("**Cumulative Year-to-Date Stored Energy Level**") is less than [redacted], at which point in time the limitation shall be released.
Daily Dispatch Limits:	Charging: 2 per day Discharging: 2 per day
Grid Charging of Facility:	Yes
Other Operating Limits:	N/A
Ancillary Services Capability:	Yes. Buyer is entitled to all Ancillary Services, products and other attributes, if any, associated with the Storage Facility, in each case as defined in the CAISO Tariff from time to time that the Facility is at the relevant time actually physically capable of providing consistent with the terms and conditions of this Agreement, applicable Law, the Interconnection Agreement, the Operating Restrictions, and Prudent Operating Practice.

EXHIBIT R

METERING DIAGRAM

Preliminary Metering Diagram; Final Metering Diagram shall be provided by Seller at least thirty (30) days prior to the Commercial Operation Date

EXHIBIT S

OTHER SELLER COMMITMENTS

Seller to check as applicable:

☐ Inclusion of contractors or subcontractors that are Veteran owned or from a DAC Zone
☐ At least fifty percent (50%) of labor sourced within a 50-mile radius
☐ At least [XX]% of materials sourced within a 50-mile radius
☐ US made equipment and components
☒ Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) [redacted]

EXHIBIT T

DIVERSITY REPORTING

MCE Supplier Diversity Survey

Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to Senate Bill (SB) 255.

amcgee@mcecleanenergy.org Switch account

* Required

Email *

Your email

Business Name *

Your answer

Where is your business located/headquartered?

Your answer

Is your business certified under General Order 156 (GO 156)?

General Order 156 (GO 156) is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority-owned, disabled veteran-owned, disabled-owned, and LGBT-owned business enterprises (WMDVLGBTBEs) in all categories. Qualified businesses become GO 156 Certified through the GO 156 Clearinghouse database at www.thesupplierclearinghouse.com

- ○ Yes
- ○ No
- ○ Qualified as a WMDVLGBTBE but not GO 156 Certified

If certified, when does your certification expire?

Date

mm/dd/yyyy

If you answered "yes" or "qualified but not certified", under which categories? Please choose all that apply.

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

- ☐ Minority Owned
- ☐ Woman owned
- ☐ LGBT owned
- ☐ Disabled Veteran Owned
- ☐ Disabled Owned
- ☐ Other 8(a) (found to be disadvantaged by the US Small Business Administration)

If a minority-owned business enterprise, certified or qualified as which of the following?

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

- ○ African American
- ○ Asian American
- ○ Hispanic American
- ○ Native American

Please list the Standardized Industrial Code (SIC) of the products and services contracted for. Reference sheet, here: https://www.mcecleanenergy.org/wp-content/uploads/2020/12/MCE_SIC_Commodity_Codes.pdf

Your answer

If certified, please list a) your business's annual revenue as reported to the Supplier Clearinghouse and b) what was your revenue last year?

Your answer

If your business is qualified but not GO 156 certified, please explain why your business has not gone through the certification process, found here: http://www.supplierdiversity.pro/apply.html

Your answer

If your business used subcontractors for your MCE contract, please include a list of their business names, if their subcontract was for products or services, and their subcontract amount.

Example: Electrical Design Technology, Inc; products (batteries); $100,000. If MCE is audited, we'll ask you for demonstration that subcontractor payments have occurred, such as a canceled check, bank statement, etc.

Your answer

What are your payment timelines for subcontracts - Net 30, Net 45?

Your answer

If applicable, please describe any hiring targets your business has for minority-owned, women-owned, LGBTQ-owned, disabled-owned, or disabled veteran-owned subcontractors.

Your answer

Does your business have a history of using apprenticeship programs, local-hires, union labor, or multi-trade project labor agreements?

Local hires can be defined as labor sourced from within MCE's service area which includes the towns, cities, and unincorporated counties of Marin, Napa, Contra Costa, and Solano.

- [ ] Yes, apprenticeship programs in this recent contract with MCE
- [ ] Yes, local labor in this recent contract with MCE
- [ ] Yes, union labor in this recent contract with MCE
- [ ] Yes, multi-trade PLA in this recent contract with MCE
- [ ] Yes, apprenticeship programs but not in this contract with MCE
- [ ] Yes, history of local hire but not in this contract with MCE
- [ ] Yes, history of union labor but not in this contract with MCE
- [ ] Yes, history of multi-trade PLA but not in this contract with MCE
- [ ] Majority of workforce is California-based, but not local to MCE service area
- [ ] None of the above
- [ ] Not applicable

If you answered yes, please describe your history with labor agreements, union labor, multi-trade labor, apprenticeship labor, or how many local workers/businesses you employ for your contract with MCE.

Your answer

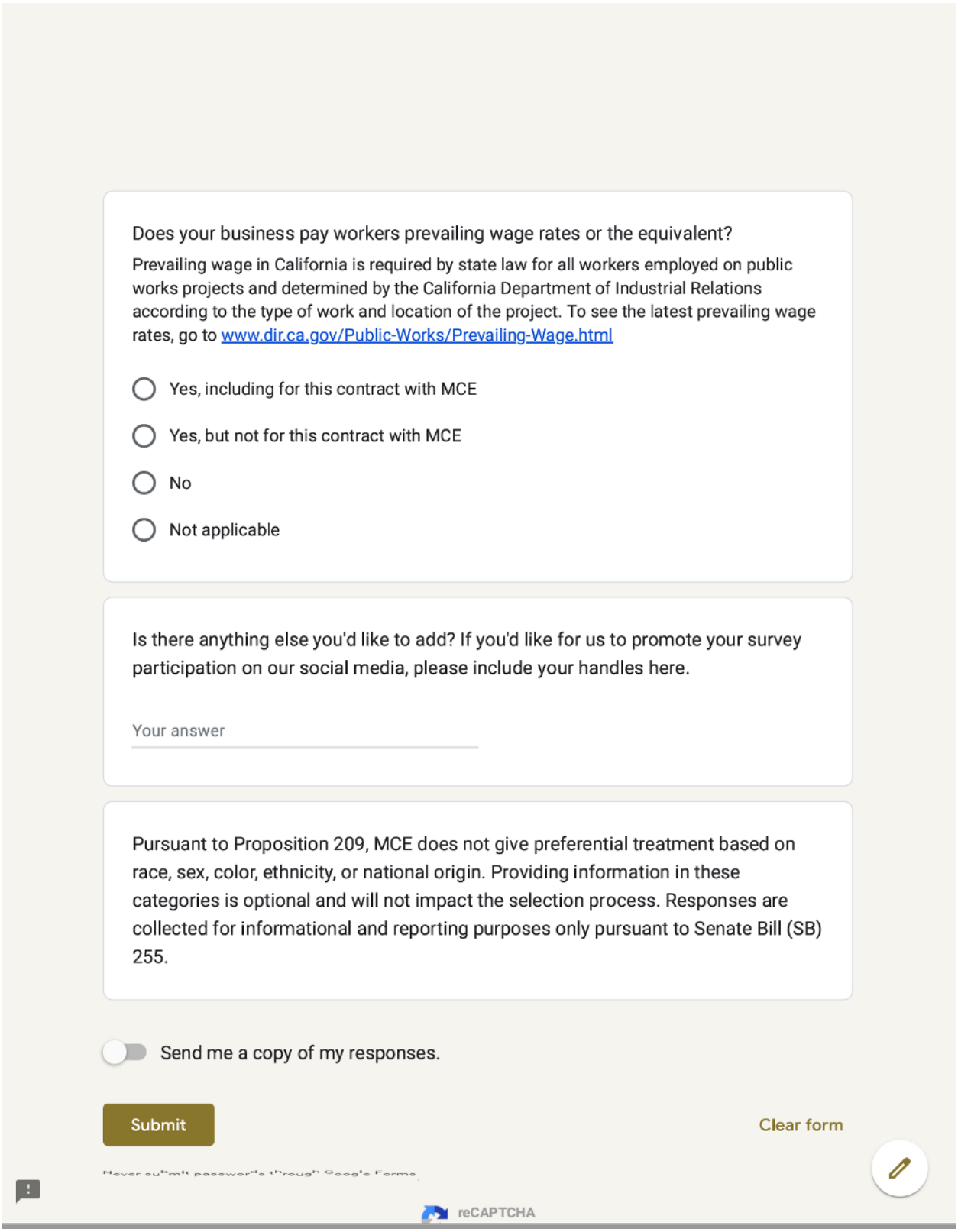

Does your business pay workers prevailing wage rates or the equivalent?
Prevailing wage in California is required by state law for all workers employed on public works projects and determined by the California Department of Industrial Relations according to the type of work and location of the project. To see the latest prevailing wage rates, go to www.dir.ca.gov/Public-Works/Prevailing-Wage.html
Yes, including for this contract with MCE
Yes, but not for this contract with MCE
No
Not applicable
Is there anything else you'd like to add? If you'd like for us to promote your survey participation on our social media, please include your handles here.
Your answer
Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to Senate Bill (SB) 255.
Send me a copy of my responses.
Submit
Clear form
reCAPTCHA

EXHIBIT U

FORM OF COLLATERAL ASSIGNMENT AGREEMENT
FORM OF CONSENT AND AGREEMENT
([NAME OF CONTRACTING PARTY])
([NAME OF ASSIGNED AGREEMENT])

This **COLLATERAL ASSIGNMENT AGREEMENT** (this "Consent"), dated as of _____, 20[ ], is executed by and among [NAME OF CONTRACTING PARTY], a [legal form of Contracting Party] organized under the laws of the State of [_____] (the "Contracting Party"), [_____], a [_____] (the "Project Owner"), and [_____], as collateral agent (in such capacity, together with its successors and permitted assigns, the "Collateral Agent") for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the "Secured Parties").

A. The Project Owner owns, operates and maintains [_____] (the "Project").

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "Assigned Agreement").

C. The Borrower, the Project Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders,[_____] , as the Administrative Agent and Collateral Agent, have entered into a Credit Agreement, dated as of [_____](as amended, modified or supplemented from time to time, the "Credit Agreement"), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Project Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Project Owner has assigned all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of [_____]between the Project Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Security Agreement", and, together with the Credit Agreement and any other financing documents relating to the issuance of the Notes, the "Financing Documents").

E. It is a requirement under the Credit Agreement that the Project Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. Consent to Assignment. The Contracting Party hereby acknowledges and consents to the pledge and assignment of all right , title and interest of the Project Owner in, to and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by the Project Owner to the Collateral Agent pursuant to the Security Agreement.

2. Representations and Warranties. The Contracting Party represents and warrants the following as of the date hereof:

(a) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(b) No Previous Assignments. The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.

(c) No Termination Event: No Disputes. After giving effect to the pledge and assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, to the actual knowledge of Contracting Party there exists no event or condition (a "Termination Event") that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] to the actual knowledge of Contracting Party there are no unresolved disputes between the parties under the Assigned Agreement and all amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. RIGHT TO CURE.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an "event of default" or "default" (or any other similar event however defined) by the Project Owner under the Assigned Agreement, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(b) The Contracting Party agrees that it will not (i) terminate the Assigned Agreement [(other than pursuant to Section __ of the Assigned Agreement)]1or (ii) suspend the performance of any of its obligations under the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent, except to the extent the Contracting Party may subcontract such obligations to other parties.

(c) If a Termination Event shall occur [(other than a termination pursuant to Section __ of the Assigned Agreement)]2, and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. The Collateral Agent shall have the right to cure such Termination Event if Collateral Agent sends a written notice of its intention to cure to Contracting Party before the later of (i) the expiration of any cure period provided to the Project Owner and (ii) ten (10) Business Days after Collateral Agent's receipt of notice of such default from Contracting Party. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall have a period of [30]3 days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a "Non-monetary Event") the Collateral Agent must remedy or cure the default within ninety (90) days (or one hundred eighty (180) days in the event of bankruptcy of Project Owner or any foreclosure or similar proceeding if required by Collateral Agent to cure any default) after Contracting Party's receipt of Collateral Agent's notice of its intention to cure the applicable default; provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

4. REPLACEMENT AGREEMENTS. NOTWITHSTANDING ANY PROVISION IN THE ASSIGNED AGREEMENT TO THE CONTRARY, IN THE EVENT

---

1 Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

2 Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

3 Or longer cure period specified in Assigned Agreement.

THE ASSIGNED AGREEMENT IS REJECTED OR OTHERWISE TERMINATED AS A RESULT OF ANY BANKRUPTCY, INSOLVENCY, REORGANIZATION OR SIMILAR PROCEEDINGS AFFECTING THE PROJECT OWNER, AT THE COLLATERAL AGENT'S REQUEST MADE WITHIN FORTY-FIVE (45) DAYS AFTER SUCH REJECTION OR TERMINATION, THE CONTRACTING PARTY WILL ENTER INTO A NEW AGREEMENT WITH THE COLLATERAL AGENT OR THE COLLATERAL AGENT'S DESIGNEE FOR THE REMAINDER OF THE ORIGINALLY SCHEDULED TERM OF THE ASSIGNED AGREEMENT, EFFECTIVE AS OF THE DATE OF SUCH REJECTION, WITH THE SAME COVENANTS, AGREEMENTS, TERMS, PROVISIONS AND LIMITATIONS AS ARE CONTAINED IN THE ASSIGNED AGREEMENT; PROVIDED THAT CONTRACTING PARTY'S OBLIGATION TO ENTER INTO THE NEW AGREEMENT IS SUBJECT TO THE COLLATERAL AGENT, OR THE COLLATERAL AGENT'S DESIGNEE, AS APPLICABLE, SATISFYING THE REQUIREMENTS OF A PERMITTED TRANSFEREE SET FORTH IN THE ASSIGNED AGREEMENT AND IS AN ENTITY THAT CONTRACTING PARTY IS PERMITTED TO CONTRACT WITH UNDER APPLICABLE LAW [IN ADDITION, IF COLLATERAL AGENT OR ITS DESIGNEE, DIRECTLY OR INDIRECTLY, TAKES POSSESSION OF, OR TITLE TO, THE PROJECT (INCLUDING POSSESSION BY A RECEIVER OR TITLE BY FORECLOSURE OR DEED IN LIEU OF FORECLOSURE) AFTER ANY SUCH REJECTION OR TERMINATION OF THE ASSIGNED AGREEMENT, PROMPTLY AFTER CONTRACTING PARTY'S WRITTEN REQUEST, COLLATERAL AGENT MUST ITSELF OR MUST CAUSE ITS DESIGNEE TO PROMPTLY ENTER INTO A NEW AGREEMENT WITH CONTRACTING PARTY].4

5. SUBSTITUTE OWNER. THE CONTRACTING PARTY ACKNOWLEDGES THAT IN CONNECTION WITH THE EXERCISE OF REMEDIES FOLLOWING A DEFAULT UNDER THE FINANCING DOCUMENTS, THE COLLATERAL AGENT MAY (BUT SHALL NOT BE OBLIGATED TO) ASSUME, OR CAUSE ANY PURCHASER AT ANY FORECLOSURE SALE OR ANY ASSIGNEE OR TRANSFEREE UNDER ANY INSTRUMENT OF ASSIGNMENT OR TRANSFER IN LIEU OF FORECLOSURE TO ASSUME, ALL OF THE INTERESTS, RIGHTS AND OBLIGATIONS OF THE PROJECT OWNER THEREAFTER ARISING UNDER THE ASSIGNED AGREEMENT; PROVIDED THAT SUCH PURCHASER, ASSIGNEE OR TRANSFEREE MUST (I) MEET THE DEFINITION OF PERMITTED TRANSFEREE SET FORTH IN THE ASSIGNED AGREEMENT AND (II) BE AN ENTITY THAT CONTRACTING PARTY IS PERMITTED TO CONTRACT WITH UNDER APPLICABLE LAW. IF THE INTEREST OF THE PROJECT OWNER IN THE ASSIGNED AGREEMENT SHALL BE ASSUMED, SOLD OR TRANSFERRED AS PROVIDED ABOVE, THE ASSUMING PARTY SHALL AGREE IN WRITING TO BE BOUND BY AND TO ASSUME THE TERMS AND CONDITIONS OF THE ASSIGNED AGREEMENT AND ANY AND ALL OBLIGATIONS TO THE CONTRACTING PARTY ARISING OR ACCRUING THEREUNDER FROM AND AFTER THE DATE OF SUCH ASSUMPTION, AND THE CONTRACTING PARTY SHALL CONTINUE TO PERFORM ITS OBLIGATIONS UNDER THE ASSIGNED AGREEMENT IN FAVOR OF THE ASSUMING PARTY AS IF SUCH PARTY HAD THEREAFTER BEEN NAMED AS

4 Drafting Note: Bracketed language for consideration by and negotiation with Lenders.

THE "CUSTOMER" UNDER THE ASSIGNED AGREEMENT; PROVIDED THAT IF THE COLLATERAL AGENT OR ITS DESIGNEE (OR ANY ENTITY ACTING ON BEHALF OF THE COLLATERAL AGENT, THE COLLATERAL AGENT'S DESIGNEE OR ANY OF THE OTHER SECURED PARTIES) ASSUMES THE ASSIGNED AGREEMENT AS PROVIDED ABOVE, IT SHALL NOT BE PERSONALLY LIABLE FOR THE PERFORMANCE OF THE OBLIGATIONS THEREUNDER EXCEPT TO THE EXTENT OF ALL OF ITS RIGHT, TITLE AND INTEREST IN AND TO THE PROJECT.

6. PAYMENTS. THE CONTRACTING PARTY SHALL MAKE ALL PAYMENTS DUE TO THE PROJECT OWNER UNDER THE ASSIGNED AGREEMENT DIRECTLY INTO THE ACCOUNT SPECIFIED ON SCHEDULE II HERETO, OR TO SUCH OTHER PERSON OR ACCOUNT AS SHALL BE SPECIFIED FROM TIME TO TIME BY THE COLLATERAL AGENT TO THE CONTRACTING PARTY IN WRITING AND DELIVERED VIA CERTIFIED MAIL AND EMAIL AND SHALL INCLUDE CONTACT INFORMATION FOR AN AUTHORIZED PERSON WHO IS AVAILABLE BY TELEPHONE TO VERIFY THE AUTHENTICITY OF SUCH REQUESTED CHANGES. ALL PARTIES HERETO AGREE THAT EACH PAYMENT BY THE CONTRACTING PARTY AS SPECIFIED IN THE PRECEDING SENTENCE OF AMOUNTS DUE TO THE PROJECT OWNER FROM THE CONTRACTING PARTY UNDER THE ASSIGNED AGREEMENT SHALL SATISFY THE CONTRACTING PARTY'S CORRESPONDING PAYMENT OBLIGATION UNDER THE ASSIGNED AGREEMENT.

7. NO AMENDMENTS. THE CONTRACTING PARTY ACKNOWLEDGES THAT THE FINANCING DOCUMENTS RESTRICT THE RIGHT OF THE PROJECT OWNER TO AMEND OR MODIFY THE ASSIGNED AGREEMENT, OR TO WAIVE OR PROVIDE CONSENTS WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS CERTAIN CONDITIONS SPECIFIED IN THE FINANCING DOCUMENTS ARE MET. THE CONTRACTING PARTY SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT, AMEND OR MODIFY THE ASSIGNED AGREEMENT, OR ACCEPT ANY WAIVER OR CONSENT WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS THE CONTRACTING PARTY HAS RECEIVED FROM THE PROJECT OWNER A COPY OF A CERTIFICATE DELIVERED BY THE PROJECT OWNER TO THE COLLATERAL AGENT TO THE EFFECT THAT SUCH AMENDMENT, MODIFICATION, WAIVER OR CONSENT HAS BEEN MADE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE FINANCING DOCUMENTS, WHICH MAY IN CERTAIN CIRCUMSTANCES REQUIRE THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT THERETO.

8. ADDITIONAL PROVISIONS. [TO BE SPECIFIED IF NECESSARY TO CLARIFY THE ASSIGNED AGREEMENT.]

9. NOTICES. NOTICE TO ANY PARTY HERETO SHALL BE IN WRITING AND SHALL BE DEEMED TO BE DELIVERED ON THE EARLIER OF: (A)

THE DATE OF PERSONAL DELIVERY, (B) POSTAGE PREPAID, REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR SENT BY EXPRESS COURIER, IN EACH CASE ADDRESSED TO SUCH PARTY AT THE ADDRESS INDICATED BELOW (OR AT SUCH OTHER ADDRESS AS SUCH PARTY MAY HAVE THERETOFORE SPECIFIED BY WRITTEN NOTICE DELIVERED IN ACCORDANCE HEREWITH), UPON DELIVERY OR REFUSAL TO ACCEPT DELIVERY, OR (C) IF TRANSMITTED BY FACSIMILE, THE DATE WHEN SENT AND FACSIMILE CONFIRMATION IS RECEIVED; PROVIDED THAT ANY FACSIMILE COMMUNICATION SHALL BE FOLLOWED PROMPTLY BY A HARD COPY ORIGINAL THEREOF BY EXPRESS COURIER:

The Collateral Agent: [_____]
[ ]
Attn: [ ]
Telephone No.: [ ]
Facsimile No.: [ ]

The Project Owner: _____
_____
_____
_____

The Contracting Party: _____
_____
_____
_____

10. SUCCESSORS AND ASSIGNS. THIS CONSENT SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THE SUCCESSORS AND ASSIGNS OF THE CONTRACTING PARTY, AND SHALL INURE TO THE BENEFIT OF THE COLLATERAL AGENT, THE OTHER SECURED PARTIES, THE PROJECT OWNER AND THEIR RESPECTIVE SUCCESSORS, TRANSFEREES AND ASSIGNS.

11. LIABILITY. COLLATERAL AGENT AND PROJECT OWNER HEREBY ACKNOWLEDGE AND AGREE THAT CONTRACTING PARTY IS AUTHORIZED TO ACT IN ACCORDANCE WITH COLLATERAL AGENT'S INSTRUCTIONS WITH RESPECT TO THIS CONSENT AND THE ASSIGNED AGREEMENT, AND THAT CONTRACTING PARTY SHALL BEAR NO LIABILITY TO COLLATERAL AGENT, PROJECT OWNER OR ANY OTHER PERSON UNDER THIS CONSENT OR THE ASSIGNED AGREEMENT FOR ACTING IN ACCORDANCE WITH THIS CONSENT OR WITH COLLATERAL AGENT'S INSTRUCTIONS WITH RESPECT TO THIS CONSENT AND THE ASSIGNED AGREEMENT.

12. COUNTERPARTS. THIS CONSENT MAY BE EXECUTED IN ONE OR MORE COUNTERPARTS WITH THE SAME EFFECT AS IF THE SIGNATURES THERETO AND HERETO WERE UPON THE SAME INSTRUMENT.

13. GOVERNING LAW. THIS CONSENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREUNDER.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By: _____
Name:
Title:

[_____]
as Collateral Agent

By: _____
Name:
Title:

Acknowledged and Agreed:

[_____]

By: _____
Name:
Title:

Schedule I

Assigned Agreement

Schedule II

Payment Instructions
(Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Schedule III]

[Amounts Due and Unpaid under the Assigned Agreement
(Section 2(c))]

EXHIBIT V

FORM OF ESTOPPEL CERTIFICATE

ESTOPPEL CERTIFICATE
(Energy Storage Service Agreement)

This ESTOPPEL CERTIFICATE (this "Estoppel Certificate"), dated as of _____ __, 202_, is provided by _____, a _____ ("Buyer").

RECITALS

A. Buyer and _____, a Delaware limited liability company (the "Project Company") are parties to that certain Energy Storage Service Agreement, dated as of _____, 202_ (the "Energy Storage Service Agreement"), in connection with the _____ storage project ("Storage Project").

B. Pursuant to that certain [describe Lender financing agreement].

C. Pursuant to Section ____ of the [Lender financing agreement], the [Lenders] have required that this Estoppel Certificate be delivered as a condition precedent to the consummation of the transactions described therein.

NOW, THEREFORE, in consideration of the foregoing recitals, Buyer hereby certifies, agrees and acknowledges as follows as of the date hereof:

1. To Buyer's actual knowledge, no default or event of default with respect to Buyer nor any other party has occurred under the Energy Storage Service Agreement, and there are no defaults or unsatisfied conditions presently existing (or which would exist after the passage of time and/or giving of notice) that would allow the Project Company or Buyer to terminate the Energy Storage Service Agreement.

2. To Buyer's actual knowledge, there exists no event or condition that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Company or Buyer to suspend the performance of its obligations under the Energy Storage Service Agreement.

3. As of the date hereof, to Buyer's actual knowledge: (i) the Energy Storage Service Agreement is in full force and effect and has not been assigned, amended, supplemented or modified, (ii) there are no pending or threatened disputes or legal proceedings between Buyer and the Project Company, (iii) there is no pending or threatened action or proceeding involving or relating to Buyer before any court, tribunal, governmental authority or arbitrator which

purports to affect the legality, validity or enforceability of the Energy Storage Service Agreement, (iv) there is no event, act, circumstance or condition constituting an event of force majeure under the Energy Storage Service Agreement, and (v) the Project Company owes no indemnity payments or other amounts to Buyer under the Energy Storage Service Agreement.

4. The execution, delivery and performance by Buyer of this Estoppel Certificate have been duly authorized by all necessary action on the part of Buyer and do not require any approval or consent of any other person or entity and do not violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Buyer.

5. [Additional provisions to be included if necessary to clarify the Energy Storage Service Agreement.]

6. This Estoppel Certificate shall be governed by the laws of the State of California, without regard to principles of conflict of law.

[Signature page follows]

IN WITNESS WHEREOF, Buyer has caused this Estoppel Certificate to be executed by its undersigned authorized officer as of the date first set forth above.

_____

By: _____
Name:
Title

MCE Empowering Our Clean Energy Future

CONTRA COSTA | MARIN | NAPA | SOLANO

Energy Storage Agreements with Corby Energy Storage LLC and Key Energy Storage LLC

MCE BOARD OF DIRECTORS | OCTOBER 19, 2023

Overview of Today's Presentation

- Open Season Overview
- Corby Energy Storage, LLC – Project Overview
- Key Energy Storage, LLC – Project Overview
- Recommendation
- Q/A

What is Open Season?

MCE's annual solicitation for large-scale renewable energy and storage projects

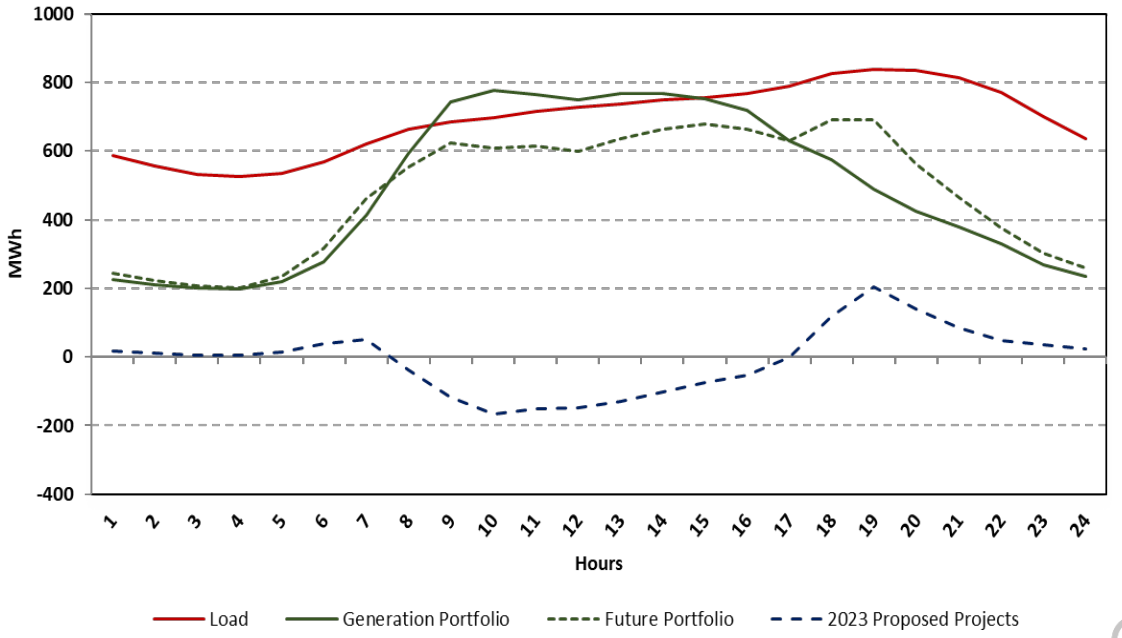
Open Season 2023 Overview

- **Goals**
  - Meet Integrated Resource Planning (IRP) targets for renewable energy and energy storage
  - Add Resource Adequacy (RA) supply to the portfolio
  - Add resources to fulfill the Mid Term Reliability (MTR) obligations as outlined in the California Public Utilities Commission (CPUC) decisions D.21-06-035 and D.23-02-040
- **Product Types**
  - Renewable Product Content Category 1 energy (PCC1)
  - Paired & stand-alone energy storage

Why target energy storage resources?

- Ability to shift energy to fill open positions during critical hours
- Helps MCE meet its resource adequacy targets
- Valuable contribution towards meeting MTR compliance obligations

Simulated effect of adding energy storage projects to MCE's existing portfolio - 2030 Snapshot



Outstanding MTR Requirements

Deadline	Net Qualifying Capacity	Technology
6/2026	61	4Hr Energy Storage
6/2027	61	4Hr Energy Storage
6/2028	29	8Hr Energy Storage

The Path to MTR Compliance

Bucket	Requirements	MCE's Obligation	Online Date	Eligible Resource Types	Resources for MCE's Compliance
Generic	• Resource Adequacy (RA)	353 MW	Part 1 - 8/2023 Part 2 - 6/2024 Part 3 - 6/2026 Part 4 - 6/2027	• PV+ 4 Hour Storage • Stand-Alone Storage • Wind • Geo or Biomass • Long-Term Imports	• Daggett - 8/2023 • Humidor - 4/2024 • Cormorant (Arevon) - 4/2026 • Corby (NextEra) - 4/2027
Diablo Canyon Power Plant (DCPP) Replacement (5 Hour)	• Zero emissions or RPS • 5MWh / 1 MW (HE18 - HE22)	72 MW	6/1/2025	• PV + Storage • Geo/Bio/Landfill Gas • Demand Response	• Golden Fields - 3/2025
Long Duration Storage (8 Hour)	• 8 Hours - full capacity discharge	29 MW	6/1/2028 (extended from 6/1/26)	• Stand-Alone Storage	• Key (NextEra) - 4/2027
Clean-Firm (Geo/Bio)	• Firm • 80 % capacity factor • not weather dep or use limited • Zero emissions or RPS	29 MW	6/1/2028 (extended from 6/1/2026)	• Geothermal • Biomass/Landfill Gas	• Mayacma - 10/2022 • Humboldt House - 11/2022 • Geysers (7MW) - 6/2025

Two Contracts

1. Corby Energy Storage, LLC
    - Energy Storage Agreement (ESA)
    - 100 MW
    - 4 Hour Duration

2. Key Energy Storage, LLC
    - Energy Storage Agreement (ESA)
    - 35 MW
    - 8 Hour Duration

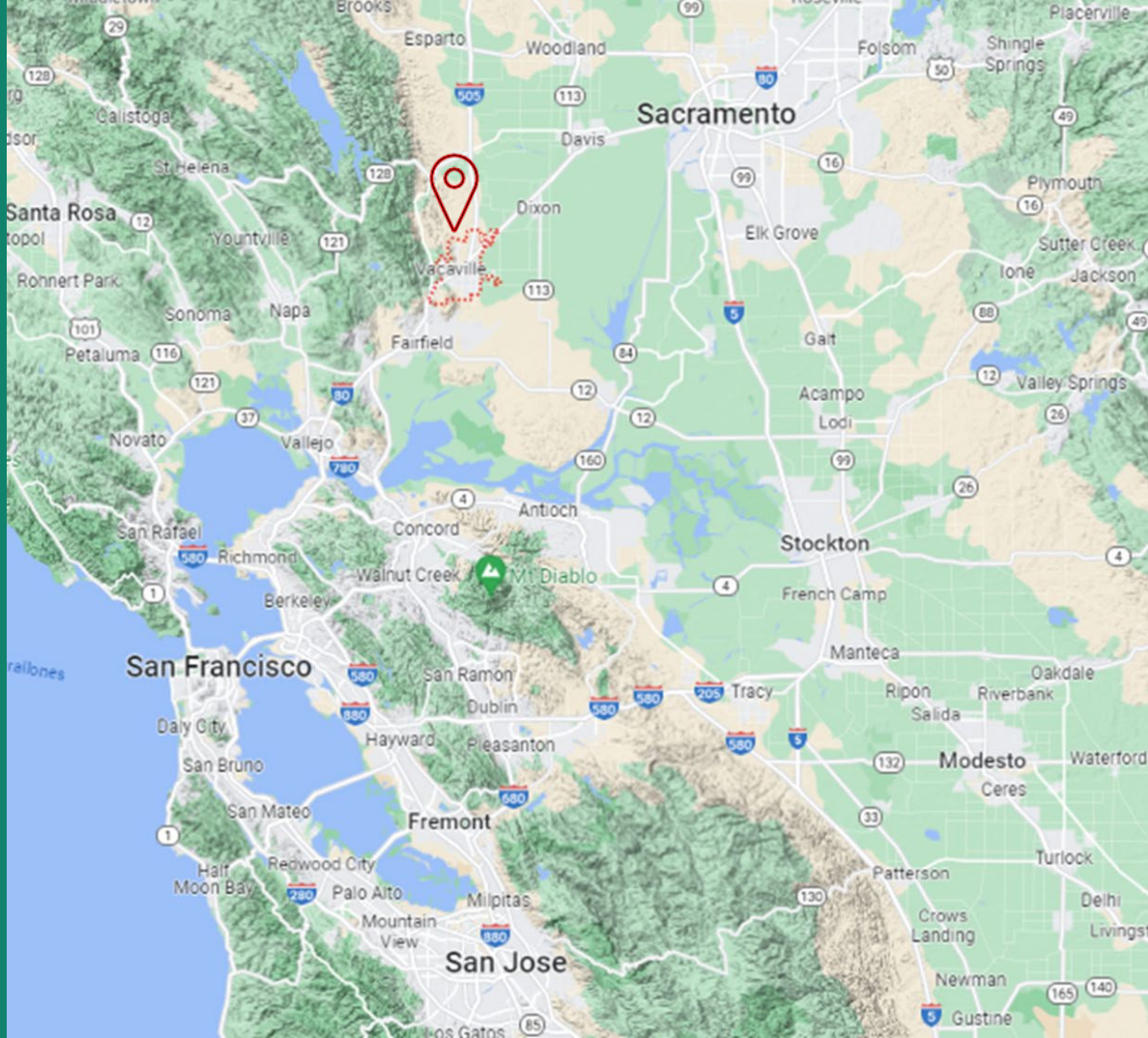
Overview:
Corby Energy Storage, LLC

- Stand-alone battery energy storage project located in Solano County
- 100 MW / 4-hour discharge capacity
- Owned and operated by NextEra Energy Resources

Fifth Standard Energy Storage
Fresno County, CA

Corby Energy Storage, LLC

- Full-toll contract includes energy, RA capacity and ancillary services
- On-line date: 4/1/2027
- 15-year term
- No credit/collateral obligations for MCE



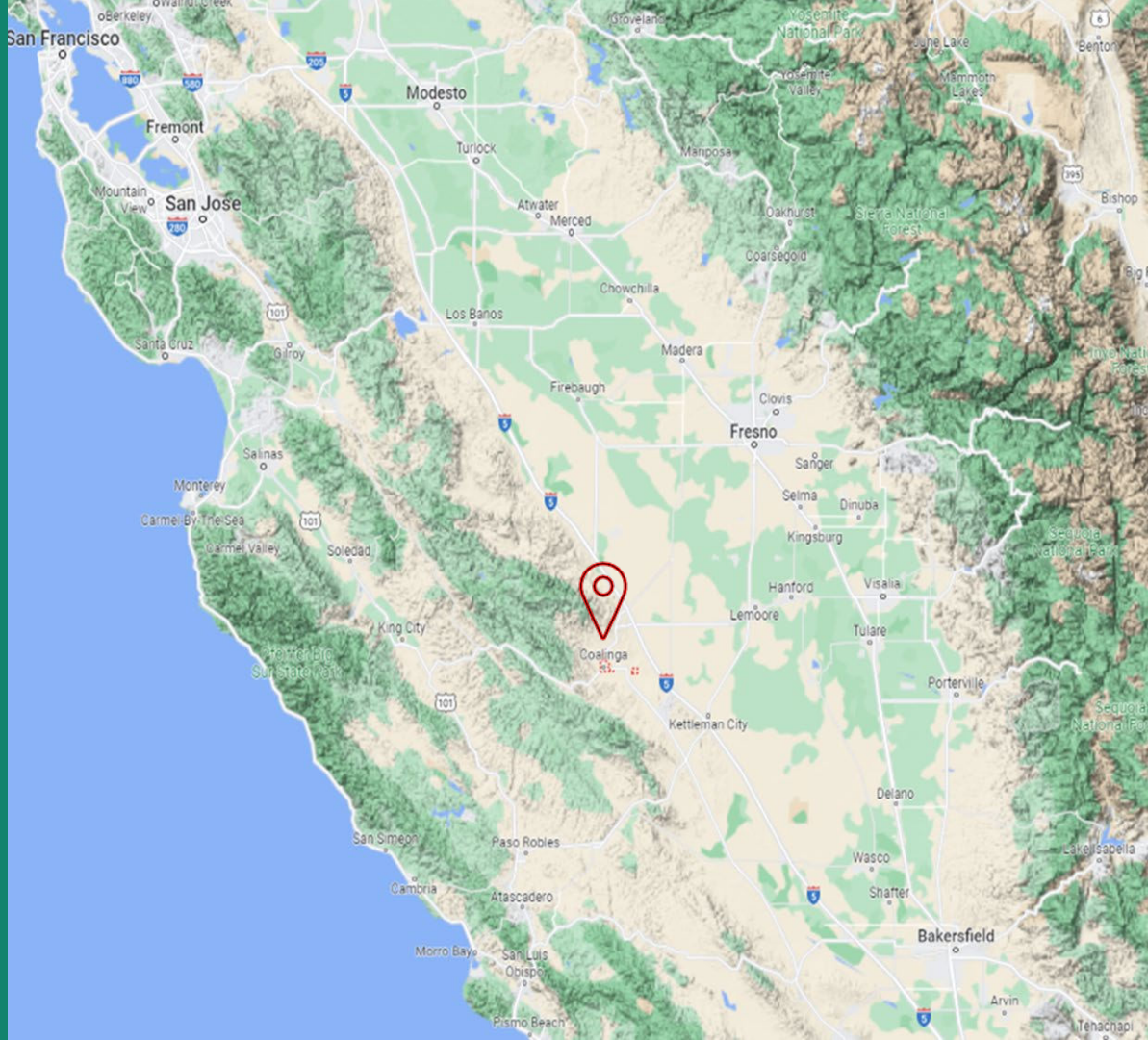
Overview:
Key Energy Storage, LLC

- Stand-alone battery energy storage project located in Fresno County
- 35 MW / 8-hour discharge capacity
- Owned and operated by NextEra Energy Resources

Fifth Standard Energy Storage
Fresno County, CA

Key Energy Storage, LLC

- Full-toll contract includes energy, RA capacity and ancillary services
- On-line date: 4/1/2027
- 15-year term
- No credit/collateral obligations for MCE



Notable Terms & Conditions

- Financial incentives for performance
- Union labor requirement
- Security deposit to ensure milestones are met
- Seller would make a one-time contribution of $100,000 per project to community benefit initiatives
- RA delivery guarantee
- Fixed price over the contract term with no annual escalation

Recommendation

Approve:

1. Energy Storage Agreement between MCE and Corby Energy Storage, LLC
2. Energy Storage Agreement between MCE and Key Energy Storage, LLC

Rationale:

- The project type, size, specifications and commercial operation date fit the requirements detailed in the CPUC MTR mandated procurement order
- Projects are at a mature stage of development, and will be constructed by a sophisticated counterparty with a successful track record
- Full toll battery projects provide additional benefits including portfolio balancing and flexibility for hourly accounting
- Procuring now provides certainty in an uncertain market for resource adequacy

Thank You!

David Potovsky
Manager of Power Resources
dpotovsky@mceCleanEnergy.org

MCE Empowering Our Clean Energy Future

CONTRA COSTA | MARIN | NAPA | SOLANO

MCE BOARD MEETING MINUTES
Friday, October 19, 2023
7:00 P.M.

Present:
Eli Beckman, Town of Corte Madera
Barbara Coler, Town of Fairfax
Cindy Darling, City of Walnut Creek
Alexis Fineman, Town of San Anselmo
David Fong, Town of Danville
Ryan Gregory, The County of Napa and Four Napa Cities
Maika Llorens Gulati, City of San Rafael
Kerry Hillis, Town of Moraga
Eduardo Martinez, City of Richmond
Aaron Meadows, City of Oakley
Devin Murphy, City of Pinole
Laura Nakamura, Alternate, City of Concord
Max Perrey, City of Mill Valley
Beth Painter, City of Napa
Gabe Paulson, City of Larkspur
Charles Palmares, City of Vallejo
Scott Perkins, City of San Ramon
Gabriel Quinto, City of El Cerrito
Katie Rice, County of Marin
Matt Rinn, City of Pleasant Hill
Shanelle Scales-Preston, City of Pittsburg
Holli Thier, Town of Tiburon
Sally Wilkinson, City of Belvedere
K. Patrice Williams, City of Fairfield

Absent:
Kari Birdseye, City of Benicia
Gina Dawson, City of Lafayette
John Gioia, Contra Costa County
Janelle Kellman, City of Sausalito
C. William Kircher, Town of Ross
Patricia Ponce, City of San Pablo
John Vasquez, County of Solano
Susan Wernick, City of Novato
Brianne Zorn, City of Martinez

Staff & Others:
Jesica Brooks, Board Clerk
Darlene Jackson, Lead Board Clerk
Alice Havenar-Daughton, VP of Customer Programs introduced
Vicken Kasarjian, COO

Tanya Lomas, Internal Operations Coordinator
Alexandra McGee, Director of Strategic Initiatives,
Lillian Mirviss, Senior Legislative Manager
Catalina Murphy, General Counsel
Ashley Muth, Internal Operations Coordinator
Justine Parmelee, Director of Internal Operations
David Potovsky, Manager of Power Resources
Garth Salisbury, Chief Financial Officer & Treasurer
Enyonam Senyo-Mensah, Office Manager
Jamie Tuckey, Chief of Staff
Dawn Weisz, CEO

1. **Roll Call**
   Chair Scales-Preston called the regular meeting to order at 7:09 p.m. with quorum established by roll call.

2. **Board Announcements (Discussion)**
   There were none.

3. **Public Open Time (Discussion)**
   Chair Scales-Preston opened the public comment period and there were no comments.

4. **Report from Chief Executive Officer (Discussion)**
   CEO Dawn Weisz introduced this item and addressed questions from Board members.

   Chair Scales-Preston opened the public comment period and there were no comments.

5. **Consent Calendar (Discussion/Action)**
   C.1 Approval of 8.17.23 Meeting Minutes
   C.2 Approval of 9.29.23 MCE Special Meeting Minutes
   C.3 Approved Contracts for Energy Update

   Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Darling/Perkins) to **approve Consent Calendar items C.1-C.3.** Motion carried by unanimous roll call vote. (Absent: Directors Birdseye, Dawson, Gioia, Kellman, Kircher, Ponce, Vasquez, Wernick, and

6. **Proposed Amended and Restated MCE Policy No. 003 Records Retention (Discussion/Action)**

Catalina Murphy, General Counsel, introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Meadows/Thier) to **approve Proposed Amended and Restated MCE Policy No. 003 – Records Retention. Motion carried by unanimous roll call vote.** (Absent: Directors Birdseye, Dawson, Gioia, Kellman, Kircher, Ponce, Vasquez, Wernick, and Zorn).

7. **Proposed Resolution 2023-10: Authorizing the Execution and Delivery of a Clean Energy Purchase Contract and Certain Other Documents in Connection with the Issuance of the California Community Choice Financing Authority Clean Energy Project Revenue Bonds; and Certain Other Actions Required to Ensure the Reduction in the Costs of Renewable Energy Therewith (Discussion/Action)**
   Garth Salisbury, Chief Financial Officer & Treasurer, introduced this item and addressed questions from Board members.

   Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Perkins/Quinto) to **approve Resolution 2023-10: Authorizing the Execution and Delivery of a Clean Energy Purchase Contract and Certain Other Documents in Connection with the Issuance of the California Community Choice Financing Authority Clean Energy Project Revenue Bonds; and Certain Other Actions Required to Ensure the Reduction in the Costs of Renewable Energy Therewith.** Motion carried by roll call vote. (No: Wilkinson, Abstained: Thier, Absent: Directors Birdseye, Dawson, Gioia, Kellman, Kircher, Ponce, Vasquez, Wernick, and Zorn).

8. **Energy Storage Agreement with Corby Energy Storage, LLC (Discussion/Action)**
   David Potovsky, Manager of Power Resources, introduced this item and addressed questions from Board members.

   Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Coler/Gulati) to **authorize execution of the Energy Storage Agreement with Corby Energy Storage, LLC. for the purchase of all resources associated with the project including energy, RA, and Ancillary Services.** Motion carried by unanimous roll call vote. (Absent:

Directors Birdseye, Dawson, Gioia, Kellman, Kircher, Ponce, Vasquez, Wernick, and Zorn).

9. Energy Storage Agreement with Key Energy Storage, LLC (Discussion/Action)

David Potovsky, Manager of Power Resources, introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Thier/Perkins) to **authorize execution of the Energy Storage Agreement with Key Energy Storage, LLC. for the purchase of all resources associated with the project including energy, RA and Ancillary Services.** Motion carried by unanimous roll call vote. (Absent: Directors Birdseye, Dawson, Gioia, Kellman, Kircher, Ponce, Vasquez, Wernick, and Zorn).

10. MCE Climate Action Leadership Award (Discussion)

Lillian Mirviss, Senior Legislative Manager, introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: No action required.

11. Proposed Resolution No. 2023-11 Accepting Award number DE-EE0010626 "Charged by Public Power - Community Voices & Community Choice" from the U.S. Department of Energy (Discussion/Action)

Alexandra McGee, Director of Strategic Initiatives, introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Gulati/Nakamura) to **approve Proposed Resolution No. 2023-11 Accepting Award number DE-EE0010626 "Charged by Public Power - Community Voices & Community Choice" from the U.S. Department of Energy.** Motion carried by unanimous roll call vote. (Absent: Directors Birdseye, Dawson, Gioia, Kellman, Kircher, Paulson, Ponce, Vasquez, Wernick, and Zorn).

12. Report on MCE FY2022/23 Financial Audit (Discussion)

Garth Salisbury, Chief Financial Officer & Treasurer, introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: No action required.

13. CCA Update on Bay Area Air Quality Management District Nitrogen Oxides Appliance Ban (Discussion)

Alice Havenar-Daughton, VP of Customer Programs, introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: No action required.

14. Adjournment

Chair Scales-Preston adjourned the meeting at 9:57 p.m. to the next scheduled Board Meeting on November 16, 2023.

DocuSigned by:
5185F1BAECF0439...
Shanelle Scales-Preston, Chair

Attest:

DocuSigned by:
A59878416EBC4F8...
Dawn Weisz, Secretary

Empowering Our Clean Energy Future
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January 15, 2026

TO:	MCE Board of Directors
FROM:	Alice Havenar-Daughton, VP of Customer Programs
RE:	Customer Programs Update (Agenda Item #11)

Dear MCE Board Members:

Summary:
The following tables provide key metrics on current MCE Customer Programs. CPUC-funded energy efficiency programs operate on a calendar year basis, whereas MCE-funded programs operate on a fiscal year basis. Accordingly, program results are presented in alignment with each funding cycle. Detailed information on each program is provided below the tables.

1. ENERGY EFFICIENCY

Home Energy Savings

2025 (Q1-Q3):

- 293 low- or moderate-income homes upgraded
- 64 no-cost heat pumps installed
- Program expenditures Q1-Q3 2025: $2,636,968
- Value of no-cost projects delivered to customers: $1,396,804
- Lifecycle Gross GHG Emissions Reductions: 3,308 MT/CO2e

Results from prior years (2019-2024):

- 1,700 single family homes upgraded
- Saved participants over 500,000 kWh and over 7,000 therms
- Program expenditures 2019-2024: $9,800,000
- Customers save an average of $143 per year on energy bills

Results from Richmond Rising Grant (2023-present):

- 36 homes received solar installs
- 41 homes received energy efficiency upgrades
- 30 homes received electrification upgrades

Funding	CPUC ($2,8000,000 annually), California Strategic Growth Council grant ($3,000,000), Chevron grant ($35,000)

Multifamily Energy Savings	
2025 (Q1-Q3): • 147 units at 5 properties upgraded • Lifecycle Gross GHG Emissions Reductions: 109 MT/CO2e **Results from prior years (2013-2024):** • 4,700+ multifamily units upgraded • Saved participants more than 1.4 million kWh and 108,000 therms (approximately $666,240 in annual energy bill savings) • Distributed nearly $1.2 million in incentive payments to customers	
Funding	CPUC ($1,706,03 annually)

Flex Market Commercial Efficiency	
2025 (Q1-Q3): • 49 projects approved for installation • Forecasted to save 1,618,000 kWh annually (approximately $485,400 in annual energy bill savings) • Lifecycle Gross GHG Emissions Reductions: 475 MT/CO2e **Results from prior years (2021-2024):** • Installed 103 projects that are forecasted to save over 8,650,000 kWh annually (approximately $2,595,000 in annual energy bill savings)	
Funding	CPUC ($6,733,937 annually)

Flex Market Residential Efficiency	
2025 (Q1-Q3): • Launched in mid-2025, focusing on heat pump water heaters • 54 projects approved for installation • GHG Emissions Reductions will be reported once installations have been completed	
Funding	CPUC ($809,783 annually)

Small Business Energy Advantage
2025 (Q1-Q3): • 136 businesses upgraded

- Over $397,000 in incentives
- GHG Emissions Reduction methodology is still being developed for this program and will be reported in future reports

Results from prior years (2024):

- Provided 40 small businesses with over $135,000 in incentives to install efficient equipment

Funding	CPUC ($973,276 annually)

Strategic Energy Management

- **2025 (Q1-Q3):** 7 participating multifamily properties forecasted to save 166,448 kWh and 5,000 therms annually (approximately $55,000 in annual energy bill savings)
- 21 participating non-residential customers forecasted to save 1,166,000 kWh and 96,000 therms annually (approximately $568,680 in annual energy bill savings)
- Lifecycle Gross GHG Emissions Reductions: 827 MT/CO2e

Results from prior years (2020-2024):

- Distributed over $240,000 in incentives to 12 participants
- Saved over 3.7 million kWh of electricity and over 315,000 therms annually (approximately $1,828,200 in annual energy bill savings)

Funding	CPUC ($1,775,805 annually)

Green Workforce Pathways

2025 (Q1-Q3):

- Placed 12 jobseekers with local electrification contractors in MCE's service area
- 16 contractors provided with stipends to attend manufacturer training
- Launched the Contractor Finder Tool on MCE's website
- Hosted the E-Contractor Academy at MCE's Concord Offices and at the UA Local 342 JATC in Concord
    - 16 participants representing 13 small, minority, women-owned construction businesses, ranging across different trades from general, electrical, plumbing to HVAC, solar and seismic engineering
- GHG emissions reductions are not tracked for this program because it is a workforce program and does not directly influence the installation of equipment

Marin Community Foundation Grant:

- Launched the LIME Foundation's Next Gen Trades Academy in San Rafael
- ABC7 aired a broadcast segment in January 2026

Results from prior years (2021-2024):

- Placed 48 job seekers with local electrification contractors in MCE's service area
- Supported 139 job seekers in career readiness workshops

Funding	CPUC ($1,055,940 annually), Marin Community Foundation Grant ($380,000)

2. TRANSPORTATION ELECTRIFICATION

MCE Sync

- 3,022 vehicles with Smart Charging enabled

Current Fiscal Year (April 1- Dec. 16, 2025):

- Off peak charging: 4,797,114 kWh
- Shifted out of peak: 728,434 kWh
- Annual GHG Emissions Reductions: 78 MT/CO2e
- Customer savings (avg): $61/EV
- Customer incentives (avg): $67.42
- Customer incentives (total): $296,656

Chargewise Pilot:

- 522 vehicles on a Dynamic Rate with Smart Charging enabled
- 98% of charging shifted out of peak periods
- 30% of charging occurred during the day (9am-3pm)
- Participants earned an average of $19/month in dynamic rate credits in addition to the average monthly savings of $11/month on their electricity bill
- Participating customers have earned approximately $120,000 in dynamic rate credits

Funding	MCE Resiliency Fund FY 2025/26 ($926,692)

EV Rebates

Current Fiscal Year:

Instant Rebates:

- 1,031 rebates issued for EV purchase or lease using $2,718,500 in MCE rebates
  - 443 new vehicles ($1,550,500 in MCE rebates)
  - 588 used vehicles ($1,168,000 in MCE rebates)
- Lifecycle Gross GHG Emissions Reductions: 3,155 MT/CO2e

Results from prior years (2022-2024):

EV Instant Rebates:

- 1,367 rebates for EV purchase or lease using $4,170,000 in MCE rebates
  - 1,007 new vehicles ($3,498,000 in MCE rebates)
  - 360 used vehicles ($672,000 in MCE rebates)

EV Rebate Program (2019-2022):

- 347 rebates issued for EV purchase or lease using $1,211,000 in MCE rebates

Funding	MCE Local Programs Fund FY25/26 ($4,566,480)

EV Charging Program

Current Fiscal Year:

- 152 new charging ports installed, 749 under reservation
- $621,000 in MCE incentives provided
- GHG Emissions Reductions are not tracked for this program because of the administrative burden of tracking charging station usage data

Results from prior years (2018-2024):

- 1,232 new charging ports installed using $2,390,000 in MCE incentives

Charge up Contra Costa (2022-present):

- 92 ports installed in low-income communities in Contra Costa using $545,000 in grant funding
- 128 additional ports under construction

Funding	MCE Local Programs Fund FY 2025/26 ($1,710,745), CEC Grant – Charge Up Contra Costa ($1,200,000), Marin Community Foundation Grant ($180,000)

Charged by Public Power

- Launched in 2024
- Collected over 600 survey responses
- Reached 131 focus group participants
- Starting project host site identification
- GHG Emissions Reductions are not tracked for this program because of the administrative burden of tracking charging station usage data

Funding	DOE Grant ($1,000,000)

3. BUILDING ELECTRIFICATION

Heat Pump Water Heater Incentives	
Current Fiscal Year: • 216 heat pumps installed • $463,570 in MCE incentives • Lifecycle Gross GHG Emissions Reductions: 192 MT/CO2e **Results from prior Years (2022-2024):** • 600 heat pumps installed using $854,000 in MCE incentives	
Funding	MCE Local Programs Fund FY 2025/26 ($800,000)

Emergency Water Heater Loaner Program	
• Launched in 2024 • 10 heat pump water heaters installed using emergency loaners since the program • Lifecycle Gross GHG Emissions Reductions: 9 MT/CO2e	
Funding	MCE Local Programs Fund FY 2025/26 ($142,000)

4. ENERGY STORAGE PROGRAM

Energy Storage for Residents and Critical Facilities	
• Program closed to new applicants **Results from prior Years (2020-2024):** • 1.25 MWh of non-residential storage installed at 13 sites • 1.24 MWh of residential storage installed at 76 homes • Annual Gross GHG Emissions Reductions: 482 MT/CO2e	
Funding	MCE Resiliency Fund FY 2025/26 ($306,000), Marin Community Foundation Grant ($750,000), Self Generation Incentive Program Funding (>$1,000,000)

Department of Energy Storage Grant	
Current program status: • 12 applications received • 2 sites selected for federal funding	
Funding	DOE Grant ($500,000), MCE Match Funding ($500,000)

Solar Storage Credit Program	
• 1,469 active customers	
Funding	MCE Operational Funds FY 2025/26 ($250,000)

Program Participation by Community

The following tables summarize community participation by county across MCE's customer programs.

Contra Costa County									
Community	Home Energy Savings	Multi-Family Energy Savings	Flex Market Commercial Efficiency	Small Business Energy Advantage	Strategic Energy Management	MCE Sync	EV Rebate	EV Charging	Energy Storage
Concord	✓	✓	✓	✓		✓	✓	✓	
Danville	✓	✓	✓			✓	✓	✓	✓
El Cerrito	✓		✓	✓		✓	✓	✓	✓
Hercules						✓	✓		
Lafayette	✓					✓	✓		✓
Martinez	✓	✓	✓	✓	✓	✓	✓	✓	✓
Moraga	✓		✓			✓	✓	✓	✓
Oakley	✓	✓		✓		✓	✓	✓	
Pinole	✓		✓	✓		✓	✓		✓
Pittsburg	✓	✓		✓	✓	✓	✓	✓	✓
Pleasant Hill	✓			✓		✓	✓		
Richmond	✓	✓			✓	✓	✓	✓	✓
San Pablo	✓	✓	✓	✓		✓	✓	✓	✓
San Ramon	✓	✓		✓		✓	✓	✓	✓
Walnut Creek	✓	✓	✓		✓	✓	✓	✓	✓
Uninc. Contra Costa County	✓			✓		✓	✓		

Marin County									
Community	Home Energy Savings	Multi-Family Energy Savings	Flex Market Commercial Efficiency	Small Business Energy Advantage	Strategic Energy Management	MCE Sync	EV Rebate	EV Charging	Energy Storage
Belvedere		✓				✓	✓	✓	
Corte Madera	✓	✓				✓	✓	✓	
Fairfax		✓		✓		✓	✓	✓	✓
Larkspur	✓	✓				✓	✓	✓	
Mill Valley	✓	✓	✓			✓	✓	✓	✓
Novato	✓	✓	✓	✓		✓	✓	✓	✓
Ross						✓		✓	
San Anselmo	✓					✓	✓	✓	✓
San Rafael	✓	✓		✓	✓	✓	✓	✓	✓
Sausalito	✓					✓	✓	✓	✓
Tiburon		✓				✓	✓	✓	
Uninc. Marin County	✓	✓				✓	✓	✓	✓

Napa County									
Community	Home Energy Savings	Multi-Family Energy Savings	Flex Market Commercial Efficiency	Small Business Energy Advantage	Strategic Energy Management	MCE Sync	EV Rebate	EV Charging	Energy Storage
American Canyon	✓					✓	✓	✓	✓
Calistoga	✓					✓		✓	
City of Napa	✓	✓	✓	✓	✓	✓	✓	✓	✓
St. Helena	✓					✓	✓	✓	
Yountville						✓	✓	✓	
Uninc. Napa County	✓					✓	✓	✓	✓

Solano County									
Community	Home Energy Savings	Multi-Family Energy Savings	Flex Market Commercial Efficiency	Small Business Energy Advantage	Strategic Energy Management	MCE Sync	EV Rebate	EV Charging	Energy Storage
Benicia	✓	✓				✓		✓	✓
Fairfield	✓	✓	✓	✓	✓	✓			
Vallejo	✓	✓	✓	✓		✓		✓	
Uninc. Solano County	✓					✓			✓

<u>Detailed Program Information</u>

1. **Home Energy Savings**

Description: MCE's Home Energy Savings program aims to improve the comfort, efficiency and indoor air quality of low- and moderate-income households living in single family homes. The program offers free energy assessments and education with single point-of-contact customer service and free energy-efficient and electrification measures.

The program serves homeowners and renters whose household income is 200%-400% of the Federal Poverty Guidelines. This typically exceeds the income limit for services provided by programs like PG&E's Energy Savings Assistance program. However, income constraints often prevent this group from participating in market-rate programs.

Richmond Rising is an initiative funded by a $35M grant awarded to the City of Richmond by the Strategic Growth Council. MCE was a sub awardee for this grant to expand Home Energy Savings and the installation of rooftop solar in Richmond.

2. **Multifamily Energy Savings Program**

Description: MCE's Multifamily Energy Savings program helps transform multifamily homes into healthier, more energy efficient, all-electric spaces. The program is designed to make electrification and energy upgrades easier by breaking down common barriers like high upfront costs, complex decision-making, and the technical expertise needed to get started. The program offers free energy assessments for common areas and units, support with contractor selection and project planning and rebates for in-unit and common area measure upgrades such as ENERGY STAR® appliances, efficient lighting, insulation, windows, and water fixtures, electrification upgrades including heat pumps, induction stoves, electric dryers, and panel upgrades.

3. **Efficiency Flex Market**

Description: MCE's Commercial Flex Market programs provide energy efficiency incentives directly to project developers or contractors known as aggregators. The incentives are based on metered energy savings, instead of traditional energy efficiency programs that utilize deemed or custom models. These programs do not limit the technology or energy saving strategies implemented, resulting in the opportunity to maximize energy efficiency and load-shifting projects. Because the incentive is paid directly to the aggregator, the value is passed along to the customer in the way that best drives the success of the project, either by reducing upfront costs or getting paid based on energy savings performance.

MCE's Residential Flex Market was relaunched in 2025 after contractors shared that the previous incentive process made it hard to manage cash flow between project completion and the later measurement period used to calculate payments. The updated program now provides an upfront rebate at installation based on estimated savings, plus a performance bonus a year later based on the project's actual energy savings.

4. **Small Business Energy Advantage**

Description: MCE's Small Business Energy Advantage program helps small businesses in underserved communities become more resilient by providing equitable access to bill-reducing energy efficient upgrades that improve health, comfort, and safety. Unlike traditional programs, MCE's Small Business Energy Advantage program focuses on businesses that have historically been overlooked, ensuring real-world impacts and lasting community benefits.

The program offers free energy assessments and tailored education for all enrolled businesses, no-cost and low-cost energy efficiency upgrades, ongoing support, including project planning, installation, and post-installation follow-up to ensure satisfaction and connect businesses to additional resources.

5. **Strategic Energy Management**

Description: The Strategic Energy Management program offers a long-term approach to help multifamily properties and businesses save money, earn financial incentives, and better manage their energy usage. Participants can access free onsite assessments, cohort-style training, individual

coaching, and peer-to-peer learning to build a stronger energy culture within their organization. The program offers customized opportunities to change how existing equipment is used (rather than installing new equipment) so the customer can see significant bill savings with little to no-upfront cost.

6. **Green Workforce Pathways**

Description: MCE's Green Workforce Pathways program supports both residential service contractors and job seekers. For contractors, the program provides no-cost training on cutting-edge clean technologies and connections to vetted job seekers to help grow their business. For job seekers, the program offers individualized career support services and opportunities for paid positions with local energy contractors.

7. **MCE Sync**

Description: MCE Sync is a load-shifting app that helps EV drivers automate their EV charging at home to use the least expensive and cleanest energy on the grid. On average, 80% of EV charging happens at home, with every EV adding around 50% to a resident's overall electricity usage. As the EV market continues to grow, the importance of smart EV charging will be even more significant. Shifting electricity load toward lower-cost energy hours when more renewables are available bolsters grid resiliency from outages during critical periods.

In late 2024, MCE partnered with EV.Energy to launch ChargeWise, a CEC grant funded pilot. The ChargeWise Pilot deploys dynamic rates that align charging to wholesale electricity prices. Customers who opt into this pilot can take advantage of very low daytime pricing to earn EV charging credits. The customers are provided a credit for the difference between their based electricity rate and the dynamic rate offered by the pilot.

8. **EV Charging**

Description: MCE's EV Charging program provides multifamily properties and businesses with EV charging rebates, along with free technical assistance. The program offers:

- Up to $4,500 per networked Level 2 charging port plus $500 per L2 charging port for projects located in state-designated priority population areas and up to $875 per networked Level 1 charging port
- Stackable rebates with other regional EV charging programs
- Technical assistance including a customized EV Charging Planning Report, which includes a site assessment, load study, available incentives, recommended vendors, and user pricing

9. **Charged by Public Power**

Description: MCE's Charged by Public Power program supports the planning and deployment of EV chargers and clean mobility options – such as bikeshare and carshare – in nine historically underserved communities across MCE's service area. Priority communities include Concord,

Fairfield, Napa, Pittsburg, Richmond, San Pablo, San Rafael, Unincorporated Contra Costa County, and Vallejo.

To ensure community-driven decision-making, the program established the Community Electric Transportation Council (CETC), which includes representatives from local governments, transit agencies, and community-based organizations. The CETC plays a key role in shaping inclusive engagement strategies, assessing transportation needs through surveys and focus groups, and informing the design and placement of EV chargers based on direct community input.

10. **Heat Pump Water Heater Incentives**

Description: To help increase adoption, MCE offers rebates to contractors for each energy-efficient heat pump water heater unit they install in the home of an MCE market-rate customer and slightly higher incentives for equipment installed in low- and moderate-income homes or multifamily properties. This can be combined with other energy efficiency rebates to further reduce costs.

11. **Emergency Water Heater Loaner Program**

Description: Approximately 90% of water heater replacements are emergency replacements. The urgency of restoring hot water to a home compresses a customer's timeframe in deciding whether to switch to a heat pump water heater or continue burning fossil fuels. Customers are often unwilling to go without hot water during the time it takes to complete the retrofit requirements. The ability to provide an emergency replacement heat pump water heater solution that doesn't inconvenience the customer is essential to moving California toward its carbon-neutral goals.

MCE's Emergency Water Heater Incentive provides contractors $1,500 to help cover the cost of installing and maintaining a temporary loaner water heater (gas or electric) as part of the customer's permanent heat pump water heater installation.

12. **Energy Storage for Residents and Critical Facilities**

Description: MCE's Energy Storage Program provided rebates, monthly bill credits and for battery energy storage systems paired with solar, in exchange for allowing MCE to discharge the battery daily from 4-9pm to manage peak loads and mitigate high energy costs. The program is currently closed to new customers, but staff are continuing to support some customers through the installation process which includes PG&E project approval (Permission to Operate) and to provide performance payments to non-residential batteries for 7 years post installation.

13. **Department Of Energy (DOE) Energy Storage Grant**

Description: In 2025, MCE offered a grant to our municipal customers to support the installation of storage on municipal sites funded by a DOE Energy Storage Grant that was awarded to MCE. The batteries will be used to provide resiliency and to offset peak demand.

14. **Solar Storage Credit Program**

Description: MCE offers customers with solar and storage at their home a monthly bill credit ($10-$20) in exchange for automating their battery to discharge down to a 20% reserve margin daily from 4-9 p.m., except to prepare for or during a power outage.

Recommendation:

Discussion only.

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January 15, 2026

TO:	MCE Board of Directors
FROM:	Catalina Murphy, General Counsel David J. Ruderman, Colantuono, Highsmith & Whatley, Special Counsel
RE:	Voting Process (Agenda Item #12)
ATTACHMENTS:	A. MCE Joint Powers Agreement B. MCE Operating Rules and Regulations

Dear MCE Board Members:

Summary:

Directors have requested guidance on the voting process generally and the applicable voting method for two specific matters on the January 15, 2025 agenda (the Governance Assessment and the Finance Committee Scope). Concerns have also been raised that a recent change in the order of the roll call disadvantages member communities with smaller voting shares.

The MCE Joint Powers Agreement ("JPA") and the MCE Operating Rules and Regulations ("OR&R") govern voting by Board Members on matters before the agency. The JPA provides for two methods of voting. Per Section 4.9.1 of the JPA, "all matters specifically related to the CCA Program" are to be decided by (i) a vote of Directors and (ii) by voting shares based on proportionate energy usage ("voting shares method"). Per Section 4.10, "general administrative matters," including but not limited to adoption or amendment of the OR&R, and items related to "energy programs not involving CCA" are to be resolved by a vote of Directors, without any use of voting shares.

The proposed action regarding the Governance Assessment requires a majority vote of Directors. For the reasons set forth below, the Finance Committee Scope requires the voting shares method because the purpose of the Committee is to assist the Board with its implementation of core CCA programmatic issues such as rate setting. As explained below, however, there is some ambiguity in the JPA and OR&R, and that the Board could choose to specify that creation of the Finance Committee Scope (or committee scopes in general) is instead an administrative matter that requires a vote of Directors, without any use of voting shares. Any such clarification should occur through a properly noticed process and a document duly adopted by the Board, such as an amended OR&R or amended JPA. Finally, the ordering of roll call is a ministerial matter that does not affect the outcome of a vote, as it does not alter the *weight* of a community's vote. While it is true that the outcome of a

vote is sometimes apparent before the end of roll call, that can occur regardless of the order in which roll is called.

Background:

As noted above, the JPA provides for two different voting methods.

Section 4.9.1 provides that an action by the Board "on all matters specifically related to the CCA Program" is only "effective" if comprised of (1) a majority vote of all Directors and (2) the Directors voting in the affirmative have more than 50% of voting shares based on MCE's total energy usage.[1] Involuntary termination of a member jurisdiction and amendment of the JPA also require the voting shares method, but further require a higher super majority threshold. (JPA Sections 7.2 and 8.4.)

For "general administrative matters" and "energy programs not involving CCA," Section 4.10 provides that each member has a vote and the voting shares method does not apply.[2]

The initial JPA was adopted in 2008 to provide a mechanism for member jurisdictions "to collectively study, promote, develop, conduct, operate, and manage energy programs." (JPA Recitals, Para. 4.) Its "first priority" was to take "actions necessary to implement the CCA Program," (JPA Recitals, Para. 5), which include various processes before the California Public Utilities Commission. (*See* Pub. Util. Code § 366.2(c)(7)-(8).) The JPA was drafted with the potential that the member entities might not ultimately be able to implement a CCA Program and therefore contemplated that MCE (then, the Marin Energy Authority) could nevertheless engage in other "energy programs not involving CCA." This is the reason for the two separate voting methods, one for each of two separate functions -- those related to the core of what MCE now does, providing energy to consumers residing within its member jurisdictions, *i.e.*, the CCA Program -- and those related to other, non-CCA energy programs, as well as administrative matters. In other words, the voting method depends on the *function* at issue.

The JPA does not define "administrative matters" or "energy programs not involving CCA," although it expressly identifies adoption of the OR&R as an example of an administrative matter without the use of voting shares. (JPA Section 4.10.) The JPA defines "CCA Program" but that definition simply

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[1] Section 4.9.1 provides: "To be effective, on all matters specifically related to the CCA Program, a vote of the Board shall consist of the following: (1) a majority of all Directors shall vote in the affirmative or such higher voting percentage expressly set forth in Sections 7.2 and 8.4 (the "percentage vote") and (2) the corresponding voting shares (as described in Section 4.9.2 and Exhibit D) of all such Directors voting in the affirmative shall exceed 50%, or such other higher voting shares percentage expressly set forth in Sections 7.2 and 8.4 (the "percentage voting shares"), provided that, in instances in which such other higher voting share percentage would result in any one Director having a voting share that equals or exceeds that which is necessary to disapprove the matter being voted on by the Board, at least one other Director shall be required to vote in the negative in order to disapprove such matter."

[2] Section 4.10 provides: "Except as otherwise provided by this Agreement or the Operating Rules and Regulations, each member shall have one vote on general administrative matters, including but not limited to the adoption and amendment of the Operating Rules and Regulations, and energy programs not involving CCA. Action on these items shall be determined by a majority vote of the quorum present and voting on the item or such higher voting percentage expressly set forth in Sections 7.2 and 8.4."

refers to the JPA's "Purpose" section and the JPA's Article related to initial implementation of a CCA program, obtaining approval by the CPUC, and termination of a CCA Program. (See JPA Sections 2.4, 5.1 & Exhibit A.) The CCA Program did launch successfully, and "other energy programs not involving CCA" were never explored or implemented.

The OR&R do not define "administrative matters" or "matters specifically related to the CCA Program." Instead, it enumerates eight types of matters (including approval of the issuance of bonds, hiring of a CEO, and appointment or removal of an officer) as administrative matters subject to a vote of Directors without the use of voting shares and governed by JPA Section 4.10. (OR&R Article VI, Section 2.) It further provides that "approval of an Administrative Services Agreement … for planning, implementing, operating and administering the CCA Program shall be subject to the voting requirements of section 4.9 of the Agreement" (OR&R Article VI, Section 3), i.e., a matter related to the implementation of the CCA Program subject to the voting shares method.

Also of relevance, the JPA provides that "the Board may establish any advisory … committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA program, other energy programs and the provisions of this Agreement." (JPA Section 4.7.)

Analysis

The applicable voting method depends on whether the matter "relates to the CCA Program" or, on the other hand, to an administrative matter or non-CCA energy program. While the JPA identifies adoption of the OR&R as an administrative matter, it provides no further guidance on what constitutes an administrative matter. The Board, in adopting the OR&R, identified eight types of matters that it considers administrative matters that would not need the voting shares method, and one type of matter (approval of an Administrative Services Agreement) that it considers subject to the voting shares method and therefore "related to the CCA Program."

<u>Governance Assessment</u>

The JPA explicitly identifies adoption and amendment of the OR&R as an administrative matter and defines OR&R to mean "the rules, regulations, policies, bylaws and procedures governing the operation of the Authority." (JPA Section 4.10 and Exhibit A.) The proposed action on the Governance Assessment for Board consideration is creation of an Ad Hoc Governance Assessment Committee to guide the Governance Assessment process. This is a general governance issue, which in light of the JPA's definition of OR&R, constitutes an administrative matter. As a result, a majority vote of the quorum of Directors voting and present, without the use of voting shares would apply, per JPA Section 4.10. Subsequent implementation of any recommendations of the Governance Assessment that address programmatic CCA matters would likely, however, require use of the voting shares method.

<u>Finance Committee Scope</u>

Neither the JPA nor the OR&R specify the applicable voting method for committee creation. The Executive Committee and Technical Committee Scopes were each adopted through unanimous votes of the Board, making the voting method moot.

Although creation of a committee could be viewed as an administrative matter related to governance, the committee -- depending on its purpose and scope -- could equally be viewed as Board oversight of and direction regarding MCE's implementation of the CCA Program.

As noted above, the JPA expressly authorizes the Board to create committees "to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement." (JPA Section 4.7.) The language of this section coupled with the dual method voting structure (i.e., voting method determined based on the function at issue) suggest that the voting method depends on the function of the particular committee: Is the purpose of the committee to assist the Board in implementing the CCA program, or to assist the Board in implementing other energy programs or purely administrative matters?

Because the proposed scope of the Finance Committee includes consideration of core programmatic CCA matters, such as rate proposals, its function is to assist the Board in implementing the CCA Program. A functional approach to interpreting the JPA therefore weighs in favor of concluding that the proposed action on the Board agenda is "related to the CCA Program" and therefore requires the voting shares method pursuant to JPA Section 4.9.1.

We note that there are several types of matters — including the Finance Committee Scope -- that could reasonably be viewed as both administrative and also related to the CCA Program. The JPA does not specify the applicable voting method for such dual category matters. As a result, the Board has discretion, should it decide to exercise it, to choose a reasonable interpretation. In the past, it has done so through the OR&R. For example, the JPA authorizes the MCE to enter into an Administrative Services Agreement. (JPA Section 4.14.) Although approval of an *Administrative* Services Agreement could appear on its face to be an "administrative" matter, the Board determined that it should be subjected to the voting shares method of JPA Section 4.9, presumably because the function of the agreement would be for "planning, implementing, operating and administering the CCA Program." (OR&R Article VI, Section 3.) Similarly, the adoption of the Annual Budget certainly implicates core CCA programmatic matters, including rate setting and expenses for energy procurement and regulatory compliance. But the Annual Budget could also be seen as a more general administrative matter. In adopting the OR&R, the Board chose to classify the Annual Budget as an administrative matter without the use of voting shares, as set forth in JPA Section 4.10. (OR&R Article VI, Section 2.)

In short, because the Finance Committee Scope is before the Board on the January 15, 2025 agenda, Directors have requested clarification on the applicable voting method. Based on the existing JPA and OR&R, we conclude that the creation of a Finance Committee, the scope of which includes rate setting, assists the Board in implementing the CCA Program and therefore requires the voting shares method. The JPA, however, creates sufficient room for the Board to directly classify creation of the Finance Committee Scope as an administrative matter without the use of voting shares, which would need to be done through an amendment of the OR&R or potentially the JPA.

This approach would be consistent with past practice and JPA Section 5.2 (affairs of the Authority to be implemented through documents "duly adopted by the Board").

Order of Roll Call Vote

In November, a new roll call order was implemented based on the size of the member jurisdiction's voting share. Although voting shares are listed in the JPA, the purpose of the new roll call order was to provide greater clarity for the Board and public in real time, as votes are being tallied. Concerns have been raised that the new order in which roll is called disadvantages member communities with smaller voting shares.

The order in which the roll is called does not affect the outcome of any votes because it does not affect the *weight* of a particular community's vote. That is and continues to be determined by the JPA. While the outcome of some votes may be *apparent* before the end of the roll call, that will always be the case, regardless of the order of the roll call. The only way to avoid this would be through a simultaneous voting mechanism such as a show of hands, which is not permissible for MCE. Under Government Code Section 54953(b)(2)(A) of the Brown Act, all votes during a teleconferenced meeting (*i.e.*, meetings in which Directors participate from more than one location) must be taken by roll call.

Because the ordering of roll call does not affect the outcome of votes and is a ministerial, non-substantive matter, a vote of the Board is not needed to modify roll call order. Moving forward, however, the roll call order is reverting to alphabetical by jurisdiction in light of recently articulated concerns.

Fiscal Impacts:
None

Recommendation:

Discussion item only.

Marin Energy Authority
- Joint Powers Agreement -

Effective December 19, 2008
As amended by Amendment No. 1 dated December 3, 2009
As further amended by Amendment No. 2 dated March 4, 2010
As further amended by Amendment No. 3 dated May 6, 2010
As further amended by Amendment No. 4 dated December 1, 2011
As further amended by Amendment No. 5 dated July 5, 2012
As further amended by Amendment No. 6 dated September 5, 2013
As further amended by Amendment No. 7 dated December 5, 2013
As further amended by Amendment No. 8 dated September 4, 2014
As further amended by Amendment No. 9 dated December 4, 2014
As further amended by Amendment No. 10 dated April 21, 2016 As further amended by Amendment No. 11 dated May 19, 2016
As further amended by Amendment No. 12 dated July 20, 2017
As further amended by Amendment No. 13 dated October 18, 2018
As further amended by Amendment No. 14 dated November 21, 2019
As further amended by Amendment No. 15 dated November 19, 2020
As further amended by Amendment No. 16 dated November 16, 2023

Among the Following Parties:
City of American Canyon
City of Belvedere
City of Benicia
City of Calistoga
City of Concord
Town of Corte Madera
Town of Danville
City of El Cerrito
Town of Fairfax
City of Fairfield
City of Hercules
City of Lafayette
City of Larkspur
City of Martinez
Town of Moraga
City of Mill Valley
City of Napa
City of Novato
City of Oakley
City of Pinole

City of Pittsburg
City of Pleasant Hill
City of Richmond
Town of Ross
Town of San Anselmo
City of San Pablo
City of San Rafael
City of San Ramon
City of Sausalito
City of St. Helena
Town of Tiburon
City of Vallejo
City of Walnut Creek
Town of Yountville
County of Contra Costa
County of Marin
County of Napa
County of Solano

MARIN ENERGY AUTHORITY
JOINT POWERS AGREEMENT

This **Joint Powers Agreement** ("Agreement"), effective as of December 19, 2008, is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the parties set forth in Exhibit B ("Parties"). The term "Parties" shall also include an incorporated municipality or county added to this Agreement in accordance with Section 3.1.

RECITALS

1. The Parties are either incorporated municipalities or counties sharing various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and their inhabitants.

2. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local government to develop programs to reduce greenhouse emissions.

3. The purposes for the Initial Participants (as such term is defined in Section 2.2 below) entering into this Agreement include addressing climate change by reducing energy related greenhouse gas emissions and securing energy supply and price stability, energy efficiencies and local economic benefits. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production.

4. The Parties desire to establish a separate public agency, known as the Marin Energy Authority ("Authority"), under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act") in order to collectively study, promote, develop, conduct, operate, and manage energy programs.

5. The Initial Participants have each adopted an ordinance electing to implement through the Authority Community Choice Aggregation, an electric service enterprise agency available to cities and counties pursuant to California Public Utilities Code Section 366.2 ("CCA Program"). The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program. Regardless of whether or not Program Agreement 1 is approved and the CCA Program becomes operational, the parties intend for the Authority to continue to study, promote, develop, conduct, operate and manage other energy programs.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

ARTICLE 1
CONTRACT DOCUMENTS

1.1 **Definitions**. Capitalized terms used in the Agreement shall have the meanings specified in Exhibit A, unless the context requires otherwise.

1.2 **Documents Included**. This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

Exhibit A:	Definitions
Exhibit B:	List of the Parties
Exhibit C:	Annual Energy Use
Exhibit D:	Voting Shares

1.3 **Revision of Exhibits**. The Parties agree that Exhibits B, C and D to this Agreement describe certain administrative matters that may be revised upon the approval of the Board, without such revision constituting an amendment to this Agreement, as described in Section 8.4. The Authority shall provide written notice to the Parties of the revision of any such exhibit.

ARTICLE 2
FORMATION OF MARIN ENERGY AUTHORITY

2.1 **Effective Date and Term**. This Agreement shall become effective and Marin Energy Authority shall exist as a separate public agency on the date this Agreement is executed by at least two Initial Participants after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(10). The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 7.4, subject to the rights of the Parties to withdraw from the Authority.

2.2 **Initial Participants**. During the first 180 days after the Effective Date, all other Initial Participants may become a Party by executing this Agreement and delivering an executed copy of this Agreement and a copy of the adopted ordinance required by Public Utilities Code Section 366.2(c)(10) to the Authority. Additional conditions, described in Section 3.1, may apply (i) to either an incorporated municipality or county desiring to become a Party and is not an Initial Participant and (ii) to Initial Participants that have not executed and delivered this Agreement within the time period described above.

2.3 **Formation**. There is formed as of the Effective Date a public agency named the Marin Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. The debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 8.4 of this Agreement, this Section 2.3 may not be amended unless such amendment is approved by the governing board of each Party.

2.4 **Purpose**. The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate as a group in the CCA Program, as further described in Section 5.1. The Parties intend that subsequent agreements shall define the terms and conditions associated with the actual implementation of the CCA Program and any other energy programs approved by the Authority.

2.5 **Powers**. The Authority shall have all powers common to the Parties and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following:

2.5.1 make and enter into contracts;
2.5.2 employ agents and employees, including but not limited to an Executive Director;
2.5.3 acquire, contract, manage, maintain, and operate any buildings, works or improvements;
2.5.4 acquire by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property;
2.5.5 lease any property;
2.5.6 sue and be sued in its own name;
2.5.7 incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Section 53850 et seq. and authority under the Act;
2.5.8 issue revenue bonds and other forms of indebtedness;
2.5.9 apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state or local public agency;

2.5.10 submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;

2.5.11 adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority ("Operating Rules and Regulations"); and

2.5.12 make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services.

2.6 **Limitation on Powers**. As required by Government Code Section 6509, the power of the Authority is subject to the restrictions upon the manner of exercising power possessed by the County of Marin.

2.7 **Compliance with Local Zoning and Building Laws**. Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings or structures located, constructed or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed.

ARTICLE 3
AUTHORITY PARTICIPATION

3.1 **Addition of Parties**. Subject to Section 2.2, relating to certain rights of Initial Participants, other incorporated municipalities and counties may become Parties upon (a) the adoption of a resolution by the governing body of such incorporated municipality or such county requesting that the incorporated municipality or county, as the case may be, become a member of the Authority, (b) the adoption, by an affirmative vote of the Board satisfying the requirements described in Section 4.9.1, of a resolution authorizing membership of the additional incorporated municipality or county, specifying the membership payment, if any, to be made by the additional incorporated municipality or county to reflect its pro rata share of organizational, planning and other pre-existing expenditures, and describing additional conditions, if any, associated with membership, (c) the adoption of an ordinance required by Public Utilities Code Section 366.2(c)(10) and execution of this Agreement and other necessary program agreements by the incorporated municipality or county, (d) payment of the membership payment, if any, and (e) satisfaction of any conditions established by the Board. Notwithstanding the foregoing, in the event the Authority decides to not implement a CCA Program, the requirement that an additional party adopt the ordinance required by Public Utilities Code Section 366.2(c)(10) shall not apply. Under such circumstance, the Board resolution authorizing membership of an additional incorporated municipality or county shall be adopted in accordance with the voting requirements of Section 4.10.

3.2 **Continuing Participation**. The Parties acknowledge that membership in the Authority may change by the addition and/or withdrawal or termination of Parties. The Parties agree to participate with such other Parties as may later be added, as described in Section 3.1. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

ARTICLE 4
GOVERNANCE AND INTERNAL ORGANIZATION

4.1 **Board of Directors**. The governing body of the Authority shall be a Board of Directors ("Board") consisting of one director for each Party appointed in accordance with Section 4.2.

4.2 **Appointment and Removal of Directors**. The Directors shall be appointed and may be removed as follows:

4.2.1 The governing body of each Party shall appoint and designate in writing one regular Director who shall be authorized to act for and on behalf of the Party on matters within the powers of the Authority. The governing body of each Party also shall appoint and designate in writing one alternate Director who may vote on matters when the regular Director is absent from a Board meeting. The person appointed and designated as the Director or the alternate Director shall be a member of the governing body of the Party. As an alternative to appointing its own Director and alternate Director, the governing body of any Party may elect to designate another Party within the same county (the "designated Party") to represent it on the Board with the Director and alternate Director from the designated Party (the "consolidated Parties"). Notwithstanding any provision in this Agreement to the contrary, in the case of such an election by one or more Parties in the same county, the designated Party shall have the combined votes and voting shares of the consolidated Parties and shall vote on behalf of the consolidated Parties. The governing body of a Party may revoke its designation of another Party to vote on its behalf at any time. Neither an election by a Party to designate another Party to vote on its behalf or a revocation of this election shall be effective unless provided in a written notice to the Authority.

4.2.2 The Operating Rules and Regulations, to be developed and approved by the Board in accordance with Section 2.5.11, shall specify the reasons for and process associated with the removal of an individual Director for cause. Notwithstanding the foregoing, no Party shall be deprived of its right to seat a Director on the Board and any such Party for which its

Director and/or alternate Director has been removed may appoint a replacement.

4.3 **Terms of Office**. Each Director shall serve at the pleasure of the governing body of the Party that the Director represents, and may be removed as Director by such governing body at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed to fill the position of the previous Director in accordance with the provisions of Section 4.2 within 90 days of the date that such position becomes vacant.

4.4 **Quorum**. A majority of the Directors shall constitute a quorum, except that less than a quorum may adjourn from time to time in accordance with law.

4.5 **Powers and Function of the Board**. The Board shall conduct or authorize to be conducted all business and activities of the Authority, consistent with this Agreement, the Authority Documents, the Operating Rules and Regulations, and applicable law.

4.6 **Executive Committee**. The Board may establish an executive committee consisting of a smaller number of Directors. The Board may delegate to the executive committee such authority as the Board might otherwise exercise, subject to limitations placed on the Board's authority to delegate certain essential functions, as described in the Operating Rules and Regulations. The Board may not delegate to the Executive Committee or any other committee its authority under Section 2.5.11 to adopt and amend the Operating Rules and Regulations.

4.7 **Commissions, Boards and Committees**. The Board may establish any advisory commissions, boards and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement.

4.8 **Director Compensation**. Compensation for work performed by Directors on behalf of the Authority shall be borne by the Party that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.

4.9 **Board Voting Related to the CCA Program**.

4.9.1. To be effective, on all matters specifically related to the CCA Program, a vote of the Board shall consist of the following: (1) a majority of all Directors shall vote in the affirmative or such higher voting percentage expressly set forth in Sections 7.2 and 8.4 (the "percentage vote") and (2) the corresponding voting shares (as described in Section 4.9.2 and Exhibit D) of all such Directors voting in the affirmative shall exceed 50%, or such other higher voting shares percentage expressly set forth in Sections 7.2 and 8.4 (the "percentage voting shares"), provided that, in instances in which such other higher voting share percentage would result in any one

Director having a voting share that equals or exceeds that which is necessary to disapprove the matter being voted on by the Board, at least one other Director shall be required to vote in the negative in order to disapprove such matter.

4.9.2. Unless otherwise stated herein, voting shares of the Directors shall be determined by combining the following: (1) an equal voting share for each Director determined in accordance with the formula detailed in Section 4.9.2.1, below; and (2) an additional voting share determined in accordance with the formula detailed in Section 4.9.2.2, below.

4.9.2.1 Pro Rata Voting Share. Each Director shall have an equal voting share as determined by the following formula: (1/total number of Directors) multiplied by 50, and

4.9.2.2 Annual Energy Use Voting Share. Each Director shall have an additional voting share as determined by the following formula: (Annual Energy Use/Total Annual Energy) multiplied by 50, where (a) "Annual Energy Use" means, (i) with respect to the first 5 years following the Effective Date, the annual electricity usage, expressed in kilowatt hours ("kWhs"), within the Party's respective jurisdiction and (ii) with respect to the period after the fifth anniversary of the Effective Date, the annual electricity usage, expressed in kWhs, of accounts within a Party's respective jurisdiction, and any additional jurisdictions which they represent, that are served by the Authority and (b) "Total Annual Energy" means the sum of all Parties' Annual Energy Use. The initial values for Annual Energy use are designated in Exhibit C, and shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year

4.9.2.3 The voting shares are set forth in Exhibit D. Exhibit D may be updated to reflect revised annual energy use amounts and any changes in the parties to the Agreement without amending the Agreement provided that the Board is provided a copy of the updated Exhibit D.

4.10 Board Voting on General Administrative Matters and Programs Not Involving CCA. Except as otherwise provided by this Agreement or the Operating Rules and Regulations, each member shall have one vote on general administrative matters, including but not limited to the adoption and amendment of the Operating Rules and Regulations, and energy programs not involving CCA. Action on these items shall be determined by a majority vote of the quorum present and voting on the item or such higher voting percentage expressly set forth in Sections 7.2 and 8.4.

4.11 **Board Voting on CCA Programs Not Involving CCA That Require Financial Contributions.** The approval of any program or other activity not involving CCA that requires financial contributions by individual Parties shall be approved only by a majority vote of the full membership of the Board subject to the right of any Party who votes against the program or activity to opt-out of such program or activity pursuant to this section. The Board shall provide at least 45 days prior written notice to each Party before it considers the program or activity for adoption at a Board meeting. Such notice shall be provided to the governing body and the chief administrative officer, city manager or town manager of each Party. The Board also shall provide written notice of such program or activity adoption to the above-described officials of each Party within 5 days after the Board adopts the program or activity. Any Party voting against the approval of a program or other activity of the Authority requiring financial contributions by individual Parties may elect to opt-out of participation in such program or activity by providing written notice of this election to the Board within 30 days after the program or activity is approved by the Board. Upon timely exercising its opt-out election, a Party shall not have any financial obligation or any liability whatsoever for the conduct or operation of such program or activity.

4.12 **Meetings and Special Meetings of the Board**. The Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution or ordinance of the Board. Regular meetings may be adjourned to another meeting time. Special meetings of the Board may be called in accordance with the provisions of California Government Code Section 54956. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Section 54950 et seq.).

4.13 **Selection of Board Officers.**

4.13.1 **Chair and Vice Chair**. The Directors shall select, from among themselves, a Chair, who shall be the presiding officer of all Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The term of office of the Chair and Vice Chair shall continue for one year, but there shall be no limit on the number of terms held by either the Chair or Vice Chair. The office of either the Chair or Vice Chair shall be declared vacant and a new selection shall be made if: (a) the person serving dies, resigns, or the Party that the person represents removes the person as its representative on the Board or (b) the Party that he or she represents withdraws form the Authority pursuant to the provisions of this Agreement.

4.13.2 **Secretary**. The Board shall appoint a Secretary, who need not be a member of the Board, who shall be responsible for keeping the minutes of

all meetings of the Board and all other official records of the Authority.

4.13.3 Treasurer and Auditor. The Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Auditor, neither of whom needs to be a member of the Board. If the Board so designates, and in accordance with the provisions of applicable law, a qualified person may hold both the office of Treasurer and the office of Auditor of the Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall act as the depositary of the Authority and have custody of all the money of the Authority, from whatever source, and as such, shall have all of the duties and responsibilities specified in Section 6505.5 of the Act. The Board may require the Treasurer and/or Auditor to file with the Authority an official bond in an amount to be fixed by the Board, and if so requested the Authority shall pay the cost of premiums associated with the bond. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time. The duties and obligations of the Treasurer are further specified in Article 6.

4.14 Administrative Services Provider. The Board may appoint one or more administrative services providers to serve as the Authority's agent for planning, implementing, operating and administering the CCA Program, and any other program approved by the Board, in accordance with the provisions of a written agreement between the Authority and the appointed administrative services provider or providers that will be known as an Administrative Services Agreement. The Administrative Services Agreement shall set forth the terms and conditions by which the appointed administrative services provider shall perform or cause to be performed all tasks necessary for planning, implementing, operating and administering the CCA Program and other approved programs. The Administrative Services Agreement shall set forth the term of the Agreement and the circumstances under which the Administrative Services Agreement may be terminated by the Authority. This section shall not in any way be construed to limit the discretion of the Authority to hire its own employees to administer the CCA Program or any other program.

ARTICLE 5
IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

5.1 Preliminary Implementation of the CCA Program.

5.1.1 Enabling Ordinance. Except as otherwise provided by Section 3.1, prior to the execution of this Agreement, each Party shall adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(10) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in the Authority.

5.1.2 Implementation Plan. The Authority shall cause to be prepared an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations as soon after the Effective Date as reasonably practicable. The Implementation Plan shall not be filed with the Public Utilities Commission until it is approved by the Board in the manner provided by Section 4.9.

5.1.3 Effect of Vote On Required Implementation Action. In the event that two or more Parties vote to approve Program Agreement 1 or any earlier action required for the implementation of the CCA Program ("Required Implementation Action"), but such vote is insufficient to approve the Required Implementation Action under Section 4.9, the following will occur:

5.1.3.1 The Parties voting against the Required Implementation Action shall no longer be a Party to this Agreement and this Agreement shall be terminated, without further notice, with respect to each of the Parties voting against the Required Implementation Action at the time this vote is final. The Board may take a provisional vote on a Required Implementation Action in order to initially determine the position of the Parties on the Required Implementation Action. A vote, specifically stated in the record of the Board meeting to be a provisional vote, shall not be considered a final vote with the consequences stated above. A Party who is terminated from this Agreement pursuant to this section shall be considered the same as a Party that voluntarily withdrew from the Agreement under Section 7.1.1.1.

5.1.3.2 After the termination of any Parties pursuant to Section 5.1.3.1, the remaining Parties to this Agreement shall be only the Parties who voted in favor of the Required Implementation Action.

5.1.4 Termination of CCA Program. Nothing contained in this Article or this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any

time in accordance with any applicable requirements of state law.

5.2 **Authority Documents**. The Parties acknowledge and agree that the affairs of the Authority will be implemented through various documents duly adopted by the Board through Board resolution, including but not necessarily limited to the Operating Rules and Regulations, the annual budget, and specified plans and policies defined as the Authority Documents by this Agreement. The Parties agree to abide by and comply with the terms and conditions of all such Authority Documents that may be adopted by the Board, subject to the Parties' right to withdraw from the Authority as described in Article 7.

ARTICLE 6
FINANCIAL PROVISIONS

6.1 **Fiscal Year**. The Authority's fiscal year shall be 12 months commencing April 1 and ending March 31. The fiscal year may be changed by Board resolution.

6.2 **Depository**.

6.2.1 All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Party or any other person or entity.

6.2.2 All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection by the Parties at all reasonable times. The Board shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

6.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board.

6.3 **Budget and Recovery Costs**.

6.3.1 **Budget**. The initial budget shall be approved by the Board. The Board may revise the budget from time to time through an Authority Document as may be reasonably necessary to address contingencies and unexpected

expenses. All subsequent budgets of the Authority shall be prepared and approved by the Board in accordance with the Operating Rules and Regulations.

6.3.2 County Funding of Initial Costs. The County of Marin shall fund the Initial Costs of the Authority in implementing the CCA Program in an amount not to exceed $500,000 unless a larger amount of funding is approved by the Board of Supervisors of the County**.** This funding shall be paid by the County at the times and in the amounts required by the Authority. In the event that the CCA Program becomes operational, these Initial Costs paid by the County of Marin shall be included in the customer charges for electric services as provided by Section 6.3.4 to the extent permitted by law, and the County of Marin shall be reimbursed from the payment of such charges by customers of the Authority. The Authority may establish a reasonable time period over which such costs are recovered. In the event that the CCA Program does not become operational, the County of Marin shall not be entitled to any reimbursement of the Initial Costs it has paid from the Authority or any Party.

6.3.3 CCA Program Costs. The Parties desire that, to the extent reasonably practicable, all costs incurred by the Authority that are directly or indirectly attributable to the provision of electric services under the CCA Program, including the establishment and maintenance of various reserve and performance funds, shall be recovered through charges to CCA customers receiving such electric services.

6.3.4 General Costs. Costs that are not directly or indirectly attributable to the provision of electric services under the CCA Program, as determined by the Board, shall be defined as general costs. General costs shall be shared among the Parties on such basis as the Board shall determine pursuant to an Authority Document.

6.3.5 Other Energy Program Costs. Costs that are directly or indirectly attributable to energy programs approved by the Authority other than the CCA Program shall be shared among the Parties on such basis as the Board shall determine pursuant to an Authority Document.

ARTICLE 7
WITHDRAWAL AND TERMINATION

7.1 <u>Withdrawal</u>.

7.1.1 General.

7.1.1.1 Prior to the Authority's execution of Program Agreement 1, any Party may withdraw its membership in the Authority by giving no less than 30 days advance written notice of its election to do so, which notice shall be given to the Authority and each Party. To permit consideration by the governing body of each Party, the Authority shall provide a copy of the proposed Program Agreement 1 to each Party at least 90 days prior to the consideration of such agreement by the Board.

7.1.1.2 Subsequent to the Authority's execution of Program Agreement 1, a Party may withdraw its membership in the Authority, effective as of the beginning of the Authority's fiscal year, by giving no less than 6 months advance written notice of its election to do so, which notice shall be given to the Authority and each Party, and upon such other conditions as may be prescribed in Program Agreement 1.

7.1.2 Amendment. Notwithstanding Section 7.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement in the manner provided by Section 8.4.

7.1.3 Continuing Liability; Further Assurances. A Party that withdraws its membership in the Authority may be subject to certain continuing liabilities, as described in Section 7.3. The withdrawing Party and the Authority shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from membership in the Authority. The Operating Rules and Regulations shall prescribe the rights if any of a withdrawn Party to continue to participate in those Board discussions and decisions affecting customers of the CCA Program that reside or do business within the jurisdiction of the Party.

7.2 **Involuntary Termination of a Party**. This Agreement may be terminated with respect to a Party for material non-compliance with provisions of this Agreement or the Authority Documents upon an affirmative vote of the Board in which the minimum percentage vote and percentage voting shares, as described in Section 4.9.1, shall be no less than 67%, excluding the vote and voting shares of the Party subject to possible termination. Prior to any vote to terminate this Agreement with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or the Authority Documents that the Party has allegedly violated. The Party subject to possible termination

shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its membership in the Authority terminated may be subject to certain continuing liabilities, as described in Section 7.3. In the event that the Authority decides to not implement the CCA Program, the minimum percentage vote of 67% shall be conducted in accordance with Section 4.10 rather than Section 4.9.1.

7.3 **Continuing Liability; Refund**. Upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or liabilities arising from the Party's membership in the Authority through the date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any claims, demands, damages, or liabilities arising after the date of the Party's withdrawal or involuntary termination. In addition, such Party also shall be responsible for any costs or obligations associated with the Party's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or obligations were incurred prior to the withdrawal of the Party. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority, to cover the Party's liability for the costs described above. Any amount of the Party's funds held on deposit with the Authority above that which is required to pay any liabilities or obligations shall be returned to the Party.

7.4 **Mutual Termination**. This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its membership in the Authority, and thus terminate this Agreement with respect to such withdrawing Party, as described in Section 7.1.

7.5 **Disposition of Property upon Termination of Authority**. Upon termination of this Agreement as to all Parties, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any program documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 **Dispute Resolution**. The Parties and the Authority shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Should

such efforts to settle a dispute, after reasonable efforts, fail, the dispute shall be settled by binding arbitration in accordance with policies and procedures established by the Board.

8.2 **Liability of Directors, Officers, and Employees**. The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Section 995 et seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, the Authority, or its Directors, officers, or employees.

8.3 **Indemnification of Parties.** The Authority shall acquire such insurance coverage as is necessary to protect the interests of the Authority, the Parties and the public. The Authority shall defend, indemnify and hold harmless the Parties and each of their respective Board or Council members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.

8.4 **Amendment of this Agreement**. This Agreement may be amended by an affirmative vote of the Board in which the minimum percentage vote and percentage voting shares, as described in Section 4.9.1, shall be no less than 67%. The Authority shall provide written notice to all Parties of amendments to this Agreement, including the effective date of such amendments. A Party shall be deemed to have withdrawn its membership in the Authority effective immediately upon the vote of the Board approving an amendment to this Agreement if the Director representing such Party has provided notice to the other Directors immediately preceding the Board's vote of the Party's intention to withdraw its membership in the Authority should the amendment be approved by the Board. As described in Section 7.3, a Party that withdraws its membership in the Authority in accordance with the above-described procedure may be subject to continuing liabilities incurred prior to the Party's withdrawal. In the event that the Authority decides to not implement the CCA Program, the minimum percentage vote of 67% shall be conducted in accordance with Section 4.10 rather than Section 4.9.1.

8.5 **Assignment**. Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 8.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the

successors and assigns of the Parties. This Section 8.5 does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to the Authority, or the disposition of proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.

8.6 **Severability**. If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

8.7 **Further Assurances**. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.

8.8 **Execution by Counterparts**. This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

8.9 **Parties to be Served Notice**. Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties.

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: Leon Garcia

Name: Leon Garcia

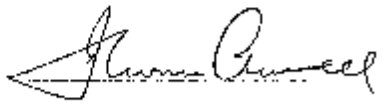
Title: Mayor

Date: 4.7.16

Party: City of American Canyon

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: 

Name: Thomas Cromwell

Title: Mayor

Date: December 8, 2008

Party: City of Belvedere

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Elizabeth Patterson

Title: Mayor

Date: 12.29.14

Party: City of Benicia

APPROVED AS TO FORM
_____
CITY ATTORNEY

ARTICLE 9

SIGNATURE

IN WITNESS WIIEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Dylan Feik

Title: City Manager

Date: April 7, 2016

Party: City of Calistoga

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: 

Name: Valerie J. Barone

Title: City Manager

Date: July 24, 2017

Party: City of Concord

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: _____

Name: Alexandra Cock

Title: Mayor

Date: December 6, 2011

Party: Town of Corte Madera

ATTEST

_____
Christine Green, Town Clerk

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: 

Name: Joseph A. Calabrigo

Title: Town Manager

Date: July 17, 2017

Party: Town of Danville

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Scott Eaton

Title: City Manager

Date: 1/8/14

Party: City of El Cerrito

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: David Weinsoff

Name: David Weinsoff

Title: Mayor

Date: 2.12.09

Party: Town of Fairfax

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: 

Name: Sean P. Quinn

Title: Interim City Manager

Date: 12/17/13

Party: City of Fairfield

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: DocuSigned by: Dante Hall 664EC62BC8D8428...

Name: Dante Hall

Title: City Manager

Date: 10/20/2023

Party: City of Hercules

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Mark Mitchell

Title: Mayor

Date: 3-14-16

Party: City of Lafayette

Attest:

_____

Joanne Robbins, City Clerk

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: _____

Name: Larry Chu

Title: Mayor, Larkspur

Date: November 16, 2011

Party: CITY OF LARKSPUR

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Brad Kilger

Title: City Manager

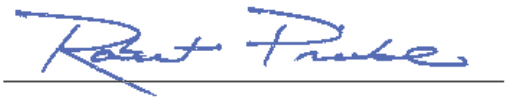
Date: 7/26/17

Party: City of Martinez

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: 

Name: Robert Priebe

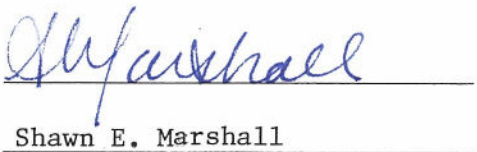
Title: Town Manager

Date: July 24, 2017

Party: Town of Moraga

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: 

Name: Shawn E. Marshall

Title: Mayor

Date: December 2, 2008

Party: City of Mill Valley

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Mike Parness

Title: City Manager

Date: 4-11-16

Party: City of Napa

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: Madeline R. Kellner

Name: Madeline R. Kellner

Title: Mayor

Date: October 7, 2011

Party: City of Novato

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Bryan H. Montgomery

Title: City Manager

Date: 8/1/17

Party: City of Oakley

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: Michelle Fitzer

Name: Michelle Fitzer

Title: City Manager

Date: 7/5/17

Party: City of Pinole

Approved as to form:

By: Eric Casher

Name: Eric Casher

Title: City Attorney

Date: 7/5/17

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Joe Sbranti

Title: City Manager

Date: 7/24/2017

Party: City of Pittsburg

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: June Catalano

Title: City Manager

Date: June 19, 2019

Party: City of Pleasant Hill

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority

By: Gayle McLaughlin

Name: Gayle McLaughlin

Title: Mayor

Date: 7/5/12

Party: City of Richmond

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: _____

Name: Carla Small

Title: Mayor

Date: 11/16/11

Party: Town of Ross

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: _____

Name: Peter Breen

Title: Mayor

Date: January 9, 2009

Party: Town of San Anselmo

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Paul V. Morris

Title: Mayor, City of San Pablo

Date: SEPT. 16, 2014

Party: City of San Pablo

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: Cyr N. Miller

Name: Cyr N. Miller

Title: Vice Mayor

Date: December 1, 2008

Party: City of San Rafael

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: JOE GORTON

Title: CITY MANAGER

Date: 7/31/17

Party: City of San Ramon

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: Amy Belser

Name: Amy Belser

Title: Mayor

Date: November 18, 2008

Party: City of Sausalito

Attest:

Deputy City Clerk

Item: 5A
Meeting Date: 11-18-08
Page #: 24

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: Alan Galbraith

Name: Alan Galbraith

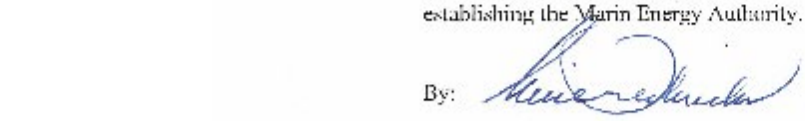
Title: Mayor

Date: 4/14/16

Party: City of St. Helena

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint
establishing the Marin Energy Authority.

By: 

Name: ALICE FREDERICKS

Title: MAYOR

Date: 2/10/09

Party: TOWN OF TIBURON

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: Greg Nyhoff

Name:

Title: City Manager

Date: June 12, 2019

Party: City of Vallejo

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: Loella Haskew

Name: LOELLA HASKEW

Title: MAYOR

Date: 4/13/16

Party: City of Walnut Creek

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Steven R. Rogers

Title: Town Manager

Date: 4/12/16

Party: Town of Yountville

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Federal D. Glover

Title: Chair, Board of Supervisors

Date: August 1, 2017

Party: Contra Costa County

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: _____

Name: CHARLES F. McGLASHAN

Title: PRESIDENT, BD OF SUPERVISORS

Date: November 18 2008

Party: COUNTY OF MARIN

ARTICLE 9

Marin Clean Energy JPA Agreement

SIGNATURE

Amendment No. 8

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Mark Luce,

Title: Chairman, Napa County Board of Supervisors

Date: 7/22/14

Party: Napa County

Approved as to form:

_____ Date 7/21/14

Minh Tran,

County Counsel

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Birgitta E. Corsello

Title: County Administrator

Date: 9/26/18

Party: County of Solano

APPROVED AS TO FORM:

_____
Solano County Counsel

Exhibit A

To the
Joint Powers Agreement
Marin Energy Authority

-Definitions-

"AB 117" means Assembly Bill 117 (Stat. 2002, ch. 838, codified at Public Utilities Code Section 366.2), which created CCA.

"Act" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq*.)

"Administrative Services Agreement" means an agreement or agreements entered into after the Effective Date by the Authority with an entity that will perform tasks necessary for planning, implementing, operating and administering the CCA Program or any other energy programs adopted by the Authority.

"Agreement" means this Joint Powers Agreement.

"Annual Energy Use" has the meaning given in Section 4.9.2.2.

"Authority" means the Marin Energy Authority.

"Authority Document(s)" means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions and activities of the Authority, including but not limited to the Operating Rules and Regulations, the annual budget, and plans and policies.

"Board" means the Board of Directors of the Authority.

"CCA" or "Community Choice Aggregation" means an electric service option available to cities and counties pursuant to Public Utilities Code Section 366.2.

"CCA Program" means the Authority's program relating to CCA that is principally described in Sections 2.4 and 5.1.

"Director" means a member of the Board of Directors representing a Party.

"Effective Date" means the date on which this Agreement shall become effective and the Marin Energy Authority shall exist as a separate public agency, as further described in Section 2.1.

"Implementation Plan" means the plan generally described in Section 5.1.2 of this Agreement that is required under Public Utilities Code Section 366.2 to be filed with the

California Public Utilities Commission for the purpose of describing a proposed CCA Program.

"Initial Costs" means all costs incurred by the Authority relating to the establishment and initial operation of the Authority, such as the hiring of an Executive Director and any administrative staff, any required accounting, administrative, technical and legal services in support of the Authority's initial activities or in support of the negotiation, preparation and approval of one or more Administrative Services Provider Agreements and Program Agreement 1. Administrative and operational costs incurred after the approval of Program Agreement 1 shall not be considered Initial Costs.

"Initial Participants" means, for the purpose of this Agreement, the signatories to this JPA as of May 5, 2010 including City of Belvedere, Town of Fairfax, City of Mill Valley, Town of San Anselmo, City of San Rafael, City of Sausalito, Town of Tiburon and County of Marin.

"Operating Rules and Regulations" means the rules, regulations, policies, bylaws and procedures governing the operation of the Authority.

"Parties" means, collectively, the signatories to this Agreement that have satisfied the conditions in Sections 2.2 or 3.2 such that it is considered a member of the Authority.

"Party" means, singularly, a signatory to this Agreement that has satisfied the conditions in Sections 2.2 or 3.2 such that it is considered a member of the Authority.

"Program Agreement 1" means the agreement that the Authority will enter into with an energy service provider that will provide the electricity to be distributed to customers participating in the CCA Program.

"Total Annual Energy" has the meaning given in Section 4.9.2.2.

Exhibit B

To the
Joint Powers Agreement
Marin Energy Authority

-List of the Parties-

City of American Canyon
City of Belvedere
City of Benicia
City of Calistoga
City of Concord
Town of Corte Madera
Town of Danville
City of El Cerrito
Town of Fairfax
City of Fairfield
City of Hercules
City of Lafayette
City of Larkspur
City of Martinez
Town of Moraga
City of Mill Valley
City of Napa
City of Novato
City of Oakley
City of Pinole
City of Pittsburg
City of Pleasant Hill City of Richmond Town of Ross
Town of San Anselmo
City of San Pablo
City of San Rafael
City of San Ramon
City of Sausalito
St. Helena
Town of Tiburon
City of Vallejo
City of Walnut Creek
Town of Yountville
County of Contra Costa
County of Marin County of Napa
County of Solano

Marin Clean Energy

- Annual Energy Use -

This Exhibit C is effective as of November 16, 2023.

MCE Member Community	kWh (2022)
City of American Canyon	81,427,344
City of Belvedere	8,237,519
City of Benicia	94,928,828
City of Calistoga	28,672,196
City of Concord	464,522,261
Town of Corte Madera	40,679,971
County of Contra Costa	641,627,822
Town of Danville	154,016,934
City of El Cerrito	55,954,420
Town of Fairfax	17,441,179
City of Fairfield*	452,596,498
City of Hercules**	75,602,000
City of Lafayette	91,628,665
City of Larkspur	41,529,142
City of Martinez	144,050,725
City of Mill Valley	44,544,689
County of Marin	225,874,556
Town of Moraga	42,086,139
City of Napa	273,494,891
County of Napa	296,199,222
City of Novato	188,226,487
City of Oakley	111,135,099
City of Pinole	57,339,339
City of Pittsburg	232,985,737
City of Pleasant Hill	130,900,910
City of Richmond	387,473,558
Town of Ross	9,860,762
Town of San Anselmo	31,648,284
City of San Ramon	270,273,787
City of Saint Helena	44,870,258
City of San Pablo	63,297,704
City of San Rafael	206,521,192
City of Sausalito	30,635,006
County of Solano	177,643,279
Town of Tiburon	27,721,503
City of Vallejo	335,923,675
City of Walnut Creek	323,700,192
Town of Yountville	30,326,651
MCE Total Energy Use	5,935,598,420

*2020 usage data as provided by PG&E.
**2021/2022 usage data as provided by PG&E.
All other usage data reflects MCE customer billing records for 2022.

Exhibit D
Marin Clean Energy
-Voting Shares-

This Exhibit D is effective as of April 17, 2025.

MCE Member Community	kWh (2024)	Section 4.9.2.1	Section 4.9.2.2	Voting Share
City of American Canyon	78,799,691	1.32%	0.67%	***1.99%***
City of Belvedere	8,263,706	1.32%	0.07%	***1.39%***
City of Benicia	92,321,260	1.32%	0.79%	***2.10%***
City of Calistoga	26,145,029	1.32%	0.22%	***1.54%***
City of Concord	454,574,920	1.32%	3.89%	***5.20%***
Town of Corte Madera	40,477,392	1.32%	0.35%	***1.66%***
County of Contra Costa	626,122,320	1.32%	5.35%	***6.67%***
Town of Danville	145,541,261	1.32%	1.24%	***2.56%***
City of El Cerrito	57,298,828	1.32%	0.49%	***1.81%***
Town of Fairfax	18,512,859	1.32%	0.16%	***1.47%***
City of Fairfield	430,102,219	1.32%	3.68%	***4.99%***
City of Hercules*	75,602,000	1.32%	0.65%	***1.96%***
City of Lafayette	93,553,376	1.32%	0.80%	***2.12%***
City of Larkspur	41,608,344	1.32%	0.36%	***1.67%***
City of Martinez	137,220,970	1.32%	1.17%	***2.49%***
City of Mill Valley	47,126,654	1.32%	0.40%	***1.72%***
County of Marin	227,581,619	1.32%	1.95%	***3.26%***
Town of Moraga	41,703,870	1.32%	0.36%	***1.67%***
City of Napa	270,336,225	1.32%	2.31%	***3.63%***
County of Napa	293,765,476	1.32%	2.51%	***3.83%***
City of Novato	189,067,082	1.32%	1.62%	***2.93%***
City of Oakley	111,950,201	1.32%	0.96%	***2.27%***

City of Pinole	55,986,348	1.32%	0.48%	***1.79%***
City of Pittsburg	231,467,002	1.32%	1.98%	***3.29%***
City of Pleasant Hill	129,045,362	1.32%	1.10%	***2.42%***
City of Richmond	388,830,214	1.32%	3.32%	***4.64%***
Town of Ross	10,348,374	1.32%	0.09%	***1.40%***
Town of San Anselmo	31,647,618	1.32%	0.27%	***1.59%***
City of San Ramon	261,710,750	1.32%	2.24%	***3.55%***
City of Saint Helena	44,644,990	1.32%	0.38%	***1.70%***
City of San Pablo	59,136,744	1.32%	0.51%	***1.82%***
City of San Rafael	216,854,604	1.32%	1.85%	***3.17%***
City of Sausalito	30,535,555	1.32%	0.26%	***1.58%***
County of Solano	169,023,155	1.32%	1.44%	***2.76%***
Town of Tiburon	28,407,490	1.32%	0.24%	***1.56%***
City of Vallejo	329,028,964	1.32%	2.81%	***4.13%***
City of Walnut Creek	325,236,881	1.32%	2.78%	***4.10%***
Town of Yountville	30,239,354	1.32%	0.26%	***1.57%***
MCE Total Energy Use	5,849,818,708	50.00%	50.00%	**100.00%**

* This is forecasted calendar year usage based on 2021 and 2022 averaged data as provided by PG&E. All other usage data reflects MCE customer billing records for 2024.

MARIN CLEAN ENERGY

OPERATING RULES AND REGULATIONS

(As Amended)

ARTICLE I

FORMATION

Marin Clean Energy ("MCE"), formerly known as Marin Energy Authority, was established on December 19, 2008 pursuant to the execution of the Marin Energy Authority Joint Powers Agreement (the "Agreement") by the County of Marin, the Town of Fairfax and the Town of Tiburon. The Initial Participants in MCE who executed the Agreement within 180 days of the establishment of MCE are the following: Belvedere, Mill Valley, San Anselmo, San Rafael, and Sausalito. The members of MCE are referred to as Party or Parties in these Operating Rules and Regulations. As defined by the Agreement, these Operating Rules and Regulations consist of rules, regulations, policies, bylaws and procedures governing the operation of MCE.

ARTICLE II

PURPOSES

MCE is formed to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. These programs include but are not limited to the establishment of a Community Choice Aggregation Program in accordance with the terms of the Agreement.

ARTICLE III

BOARD OF DIRECTORS

Section 1. MCE shall be governed by a Board of Directors composed of one representative of each of the Parties. The Board may delegate specified functions or actions to the Executive Committee or other committees that may be established by the Board. The governing body of each Party shall appoint and designate in writing to MCE one regular Director who shall be authorized to act for and on behalf of the Party on all matters within the power of MCE. The governing body of each Party also shall appoint and designate in writing to MCE one alternate Director who may vote on all matters when the regular Director is absent for a Board, Executive Committee, Technical Committee, or other standing meeting. Both the Director and the Alternate Director shall be members of the governing body of the Party.

Section 2. Each Director and Alternate Director shall serve at the pleasure of the governing body of the Party that the Director represents and may be removed as Director or Alternate Director by such governing body at any time.

Section 3. A Director may be removed by the Board for cause. Cause shall be defined for the purposes of this section as follows:

a. Unexcused absences from three consecutive Board meetings.

b. Unauthorized disclosure of confidential information or documents from a closed session or the unauthorized disclosure of information or documents provided to the Director on a confidential basis and whose public disclosure may be harmful to the interests of MCE.

Written notice shall be provided to the Director proposed for removal and the governing body that appointed such Director at least thirty days prior to the meeting at which the proposed removal will be considered by the Board. The notice shall state the grounds for removal, a brief summary of the supporting facts, and the date of the scheduled hearing on the removal. The Director proposed for removal shall be given an opportunity to be heard at the removal hearing and to submit any supporting oral or written evidence. A Director shall not be removed for cause from the Board unless two-thirds of all Directors (excluding the Director subject to removal) vote in favor of the removal.

Section 4. If at any time a vacancy occurs on the Board, for whatever reason, a replacement shall be appointed by the governing body of the subject Party to fill the position of the previous Director within ninety days of the date that such position becomes vacant.

ARTICLE IV

OFFICERS AND TERMS OF OFFICE

Section 1. There shall be a Chairperson, a Vice-Chairperson, a Secretary and a Treasurer.

a. Chairperson. The Chairperson shall be a Director. Duties of the Chairperson are to review the business agenda before MCE meetings, preside over MCE Board meetings, and sign all ordinances, resolutions, contracts, and correspondence adopted or authorized by the Board. The term of office of the Chairperson shall be for one year.

b. Vice-Chairperson. The Vice-Chairperson shall be a Director. The Vice-Chairperson shall perform the duties of Chairperson in the absence of such officer. The term of office of the Vice-Chairperson shall be for one year.

c. Secretary. The Secretary will supervise the preparation of the meeting minutes and the maintenance of the records of MCE. Once appointed by the Board, the term of the Secretary shall continue each year until the Secretary wishes to step down from the role and/or the Board decides to remove the Secretary pursuant to subsection (g) below. The Secretary does not need to be a Director.

d. Treasurer and Auditor. The Treasurer shall have custody of all the money of MCE and shall have all of the duties and responsibilities specified in Government Code Section 6505.5. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The positions of Treasurer and Auditor may be combined into one position known as the Treasurer/Auditor of MCE. The term of the Treasurer and Auditor shall be for one

year. The Board may transfer the responsibilities of the Treasurer and Auditor to any person or entity permitted by law. Neither the Treasurer nor the Auditor needs to be a Director.

e. Initial Terms of Office. Notwithstanding the one-year term generally established for officers above, the terms of the initial officers elected by the Board shall not expire until the annual meeting of the Board held in June 2010.

f. No Term Limits. There are no limits on the numbers of terms that an officer of MCE may serve.

g. Removal. An officer of the Board shall be subject to removal with or without cause at any time by a majority vote of the full Board.

h. Committees. The Executive Committee and all other Committees of the Board shall be selected as provided by Sections 4.6 and 4.7 of the Agreement. Each duly established Committee may establish any Standing or Ad Hoc Committees determined to be appropriate or necessary. The duties and authority of all Committees shall be subject to the approval and direction of the Board.

i. Committee of the Whole. To allow full participation by Board members at meetings of Standing Committees, each Standing Committee meeting except the Executive Committee also shall be noticed as a "Committee of the Whole" meeting. In the event that a quorum of Board members are present at a Standing Committee meeting, the Standing Committee will automatically convert into a Committee of the Whole. Likewise, if there is no longer a quorum of the Board present, then the Committee of the Whole will automatically convert back into a Standing Committee. The chair of the Standing Committee will serve as Chair of the Committee of the Whole. Any item acted upon by the Committee of the Whole will be considered advisory to the Board of Directors and require consideration and action by the Board of Directors at a noticed Board meeting before adoption or approval of the item.

The agenda for each Standing Committee, other than the Executive Committee, shall include the following statement:

> "This Committee may be attended by Board Members who do not serve on this Committee. In the event that a quorum of the entire Board is present, this Committee shall act as a Committee of the Whole. Any item acted upon by the Committee of the Whole will be considered advisory to the Board of Directors and require consideration and action by the Board of Directors at a noticed Board meeting before adoption or approval of the item."

ARTICLE V

MEETINGS

Section 1. A meeting of the Board shall be held on or near December of each year to elect MCE Chairperson, Vice-Chairperson, and other officers of MCE. The Board by resolution shall

establish the date, time, and meeting location of all regular meetings of the Board. Special meetings may be called upon the request of a majority of the members of the Board or by the Chairperson.

Section 2. The meetings of the Board, the Executive Committee and all other committees established by the Board shall be governed by the provisions of the Ralph M. Brown Act (Government Code Section 54950 et seq.).

ARTICLE VI

VOTING

Section 1. Voting on MCE matters shall be held in accordance with the requirements of Sections 4.9 and 4.10 of the Agreement.

Section 2. Under Section 4.10 of the Agreement, each member of the Board shall have one vote on general administrative matters and energy programs not involving Community Choice Aggregation unless otherwise provided by the Agreement or these Operating Rules and Regulations. Unless the Agreement or these Operating Rules and Regulations require a two-thirds vote, action on these items shall be determined by a majority vote of the quorum present and voting on the item except for the following matters which shall be approved only by a majority vote of the full membership of the Board:

a. The approval of the issuance of bonds or any other financing even if program revenues pay for such financing.

b. The hiring of a Chief Executive Officer.

c. The appointment or removal of an officer.

d. The adoption of the Annual Budget.

e. The adoption of an ordinance.

f. The initiation of litigation where MCE will be the plaintiff, petitioner or cross complainant or cross petitioner.

g. The adoption and amendment of the Operating Rules and Regulations.

h. The approval of any program or other activity requiring financial contributions by individual Parties subject to the right of any Party who votes against the program or activity to opt-out of such program or activity pursuant to Section 4 of this Article.

Section 3. The approval of an Administrative Services Agreement under Section 4.14 of the Agreement for planning, implementing, operating and administering the CCA Program shall be subject to the voting requirements of Section 4.9 of the Agreement.

Section 4. The Board shall provide at least 45 days prior written notice to each Party before it considers a program or activity for adoption at a Board meeting not involving CCA that requires financial contributions by individual Parties. Such notice shall be provided to the governing body and the chief administrative officer, city manager or town manager of each Party. The Board also shall provide written notice of such program or activity adoption to the above-described officials of each Party within 5 days after the Board adopts the program or activity. Any Party voting against the approval of such program or activity may elect to opt-out of participation in the program or activity by providing written notice of this election to the Board within 30 days after the program or activity is approved by the Board. Upon timely exercising its opt-out election, a Party shall not have any financial obligation or any liability whatsoever for the conduct or operation of such program or activity.

ARTICLE VII

DEBTS, LIABILITIES AND OBLIGATIONS

As provided by Section 2.3 of the Agreement, the debts, liabilities and obligations of MCE shall not be debts, liabilities or obligations of the individual Parties unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of MCE. A Party who has not agreed to assume a MCE debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of MCE.

ARTICLE VIII

AMENDMENTS

These Operating Rules and Regulations may be amended by a majority vote of the full membership of the Board but only after such amendment has been proposed at a regular meeting and acted upon at the next or later regular meeting of the Board for final adoption. The proposed amendment shall not be finally acted upon unless each member of the Board has received written notice of the amendment at least 10 days prior to the date of the meeting at which final action on the amendment is to be taken. The notice shall include the full text of the proposed amendment.