# MCE Technical Committee Meeting
# Friday, October 2, 2026
# 10:00 a.m.

1125 Tamalpais Avenue
San Rafael, CA 94901

2300 Clayton Road, Suite 1500
Concord, CA, 94520

Dion Bailey, City of Hercules (Committee Chair)
Charles Palmares, City of Vallejo (Committee Vice Chair)
Stephanie Andre, City of Larkspur
John McCormick, City of Lafayette
Devin Murphy, City of Pinole
Amanda Szakats, City of Pleasant Hill
Brianne Zorn, City of Martinez

*Public comments may be made in person or remotely via the details below.*

**Remote Public Meeting Participation**

Video Conference:
https://us02web.zoom.us/j/82851037385?pwd=NTNsNXN4eXgvQ3AxNnpoUW5FSlkrUT09

Phone: Dial (669) 900-9128, Meeting ID: 828 5103 7385, Passcode: 142534

DISABLED ACCOMMODATION: If you are a person with a disability who requires an accommodation or an alternative format, please contact MCE at (888) 632-3672 or ada-coordinator@mceCleanEnergy.org at least 72 hours before the meeting start time to ensure arrangements are made.

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

## Agenda Page 1 of 2

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 9.4.26 Meeting Minutes
6. Power Purchase Agreement with RPCA Solar 19, LLC (Discussion/Action)
7. WAPA Contract for Displacement of Base Resource - Amendment 2 (Discussion/Action)
8. Member Requests for Future Agenda Items (Discussion)
9. Committee & Staff Matters (Discussion)
10. Adjourn

The next regularly scheduled Technical Committee meeting will be November 6, 2026.

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**MCE TECHNICAL COMMITTEE MEETING MINUTES**
**Friday, September 4, 2026**
**10:00 A.M.**

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|---|---|
| **Present:** | Stephanie Andre, City of Larkspur<br>Dion Bailey, City of Hercules, Chair<br>John McCormick, City of Lafayette<br>Devin Murphy, City of Pinole<br>Charles Palmares, City of Vallejo, Vice Chair<br>Amanda Szakats, City of Pleasant Hill, joined at 10:02 a.m.<br>Brianne Zorn, City of Martinez |
| **Staff & Others:** | Jared Blanton, VP of Public Affairs<br>Jesica Brooks, Lead Board Clerk and Executive Assistant<br>CB Hall, Director of Power Resources<br>Vicken Kasarjian, Acting CEO and COO<br>Jonnie Kipyator, Power Analytics Principal Manager<br>Tanya Lomas, Board Clerk<br>Nathaniel Malcolm, Senior Commercial Counsel<br>Stephen Mariani, Manager of Power Resources<br>Catalina Murphy, General Counsel<br>Ashley Muth, Internal Operations Associate<br>Zae Perrin, VP of Customer Operations<br>Mike Rodriguez-Vargas, Internal Operations Assistant<br>Enyonam Senyo-Mensah, Manager of Internal Operations<br>Sabrinna Soldavini, VP of Policy<br>Son Tran, Internal Operations Assistant<br>Jamie Tuckey, Chief Customer Officer |

1. **Roll Call**
   (Video 0:00:00)
   Chair Bailey called the regular Technical Committee meeting to order at 10:00 a.m. with quorum established by roll call.

2. **Board Announcements (Discussion)**
   (Video 0:00:45)
   There were no comments.

3. **Public Open Time (Discussion)**
   (Video 0:01:00)
   Chair Bailey opened the public comment period and there were no comments.

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**4. Report from Chief Executive Officer (Discussion)**

(Video 0:01:39)
Vicken Kasarjian, Acting CEO & COO, introduced this item.

Chair Bailey opened the public comment period and there were no comments.

**5. Consent Calendar (Discussion/Action)**

(Video 0:07:50)
C.1 Approval of 7.14.26 Meeting Minutes
C.2 Approval of EEI Master Agreement and Collateral Annex with J.P. Morgan Ventures Energy Corp.

Chair Bailey opened the public comment period and there were no comments.

Action: It was M/S/C (McCormick/Zorn) to **Approve Consent Calendar items C.1 and C.2.** Motion carried by unanimous roll call vote.

**6. MCE 2025 Power Source Disclosure Attestation (Discussion/Action)**

(Video 0:09:00)
Stephen Mariani, Manager of Power Resources, and Haynes Stephens, Senior Policy Analyst, presented this item and addressed questions from Committee members.

Chair Bailey opened the public comment period and there were comments from members of the public, Hari Lamba, Dan Segedin, Robert Miller, and Howdy Goudey.

Action: It was M/S/C (Szakats/McCormick) to **Recommend the Board of Directors adopt *proposed* Resolution 2026-08 at the September 17, 2026 Board of Directors Meeting approving MCE's 2025 Power Source Disclosure Annual Report and attesting, to the best of its knowledge and belief, to the veracity of information presented therein.** Motion carried by unanimous roll call vote.

**7. Member Requests for Future Agenda Items (Discussion/Action)**

(Video 1:26:10)
Chair Bailey opened the floor to Committee Members and there were no requests.

Chair Bailey opened the public comment period and there were no comments.

**8. Committee & Staff Matters (Discussion)**

(Video 1:26:46)
There were no comments.

**9. Adjournment**
(Video 1:27:00)
Chair Bailey adjourned the meeting at 11:27 a.m. to the next scheduled Technical Committee Meeting on October 2, 2026.

**Dion Bailey, Chair**

**Attest:**

**Justine Parmelee, Secretary**

Empowering Our Clean Energy Future
CONTRA COSTA | MARIN | NAPA | SOLANO

October 2, 2026

TO: MCE Technical Committee

FROM: Andy Twilling, Power Procurement Manager

RE: Power Purchase Agreement with RPCA Solar 19, LLC
(Agenda Item #06)

ATTACHMENTS:
A. REDACTED Power Purchase Agreement with RPCA Solar 19, LLC
B. Presentation - Power Purchase Agreement with RPCA Solar 19, LLC

Dear Technical Committee Members:

**Background:**
In June 2018, the California Public Utilities Commission (Commission) issued Decision (D.)18-06-027, creating new programs to promote the installation of renewable generation among residential customers in disadvantaged communities (DACs), including the DAC Green Tariff (DAC-GT) program.

MCE filed its Implementation Advice Letter with the Commission on May 7, 2020, requesting approval to administer its DAC-GT program and received approval on April 15, 2021. The program provides eligible customers living in DACs ranked in the top 25% of CalEnviroScreen with access to a 100% renewable energy service option and a 20% electricity bill discount. To serve participating customers, Program Administrators must procure solar generation with or without paired storage , with projects required to be located no more than five miles from DACs in the same IOU service area as customers served by the program. Per Commission rules, MCE's DAC-GT administrative program costs, including customer discounts, above-market generation costs, and staff time are recovered from Public Purpose Program funds.

MCE's original allocation in the program was to build up to 4.64 MW of new build solar within PG&E's service territory to serve MCE customers that meet income eligibility requirements. Conflitti Solar (4.64 MW) was approved by the Technical Committee on March 3, 2022, was approved by Energy Division in 2024, and came online in January 2026.

In 2024, MCE was allocated an additional 3.61 MW of DAC-GT capacity, raising total DAC-GT capacity from 4.64 MW to 8.25 MW[1]. Currently, MCE is serving this expanded capacity with solar generation from an interim resource, the Corcoran Solar and Goose Lake projects.[2]

[1] D.24-05-065, p. 138 and p. 170, OP 3(e).

[2] Resolution E-4999, p. 24 and p. 63 OP 1(i), permits PAs to serve DAC-GT customers through existing eligible

However, the Commission requires that MCE procure a new eligible resource for continued participation in the program.[3] In 2025, the Commission established a new procurement framework for CCAs meeting expanded DAC-GT capacity obligations, including a cost cap for power purchase agreements (PPAs) set by an Independent Evaluator/Reviewing Representative. [4] MCE received its confidential cost cap in December 2025.

**Summary of Procurement Activity:**
In February 2026, MCE issued a solicitation for new build solar to serve the DAC-GT program. The solicitation resulted in several offers, some of which were under the confidential cost cap. The procurement team evaluated each offer under the cost cap and subsequently entered an exclusivity period to negotiate the RPCA Solar 19, LLC PPA to purchase products from the Copperopolis solar facility being developed by Renewable Properties.

The project would fill 2 MW of the total 3.6 MW allocated. MCE is separately in commercial conversations to fill the remaining 1.6 MW of program capacity. MCE is requesting Technical Committee approval of the RPCA Solar 19, LLC Power Purchase Agreement (PPA) resulting from its 2026 solicitation to purchase all renewable energy products offered by the Copperopolis solar facility in Stockton, CA.

**Additional Information:**

<u>Counterparty Information</u>

- Counterparty Name: Renewable Properties
- Developer of FIT and FIT+ projects in MCE's portfolio
- Headquartered in San Francisco, CA
- 170 Megawatts (MW) of total renewable energy capacity developed in the last five years

<u>Overview</u>

- Facility Name: Copperopolis Solar (RPCA 19 Solar LLC)
- Facility Size / Type: 2 MW solar generation facility
- Capable of supplying the annual electric needs of approximately 1,240 low-income MCE residential customers living in a disadvantaged community, with an expected annual supply of 5,198 megawatt-hours ("MWh") of renewable energy
- Location: Stockton, CA
- Owner/Operator: Renewable Properties
- Commercial Operations Date: 6/30/28
- Term: 20 years
- Energy-only PPA, no Resource Adequacy
- Facility is in an eligible disadvantaged community census tract and within PG&E's distribution service territory

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resources that meet all other DAC-GT program rules on an interim basis, until new DAC-GT projects are interconnected.

[3] D.24-05-065.

[4] Resolution E-5367.

- Renewable rate is flat over the 20-year term with no escalation
- MCE will be the scheduling coordinator
- Contractors are required to enter into union project labor agreements (PLA) for all on-site construction and at least 50% of labor will be sourced within an 80-mile radius
- Pollinator-friendly habitat requirement
- No credit/collateral obligations for MCE

**Fiscal Impacts:**
There would be no impact on the Fiscal Year 2026/2027 budget. Incremental costs would be accounted for beginning in the FYE 2029 budget and cost recovery would be received for incremental program costs.

**Recommendation:**
Authorize execution of the Power Purchase Agreements with RPCA Solar 19, LLC.

EXECUTION VERSION

# DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT)
# RENEWABLE POWER PURCHASE AGREEMENT
# COVER SHEET

**Seller**: RPCA Solar 19, LLC, a California limited liability company

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

**Description of Facility**: A 2.0 MW solar photovoltaic renewable energy generating facility project located in a CPUC-eligible disadvantaged community census tract as determined by the CPUC, or within five (5) miles of such census tract (such community, a "**DAC**"), and within PG&E's distribution service territory.

**Milestones**:

| Milestone | Date for Completion |
|---|---|
| **Evidence of Site Control** | Completed |
| **Obtain Federal and State Discretionary Permits** | 6/30/2027 |
| **Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities** | Completed |
| **Executed Interconnection Agreement** | Completed |
| **Procure Major Equipment** | 3/30/2027 |
| **Financial Close** | 8/30/2027 |
| **Expected Construction Start Date** | 9/30/2027 |
| **Initial Synchronization** | 2/28/2028 |
| **Network Upgrades completed** | N/A |
| **Expected Commercial Operation Date** | 6/30/2028 |

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

**Expected Energy**:

| Contract Year | Expected Energy (MWh) |
|---|---|
| 1 | [redacted] |
| 2 | [redacted] |
| 3 | [redacted] |
| 4 | [redacted] |
| 5 | [redacted] |

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

**Guaranteed Capacity**: 2.0 MW

**Contract Price**:

The Renewable Rate shall be:

| Contract Year | Renewable Rate |
|---|---|
| 1 – 20 | $[redacted] |

**Product**:

- ☒ Facility Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Capacity Attributes (select options below as applicable)
  - ☒ Energy Only Status
  - ☐ Full Capacity Deliverability Status and Expected FCDS Date:
  - ☒ Ancillary Services

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

**Development Security and Performance Security**

Development Security: ***$[redacted]/kW of Guaranteed Capacity***.

Performance Security:  ***$[redacted]/kW of Guaranteed Capacity***.

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**Exhibits**:

# RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (this "**Agreement**") is entered into as of _______________, 2026 (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, control and operate the Facility; and

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

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 3.10.

"**Adjusted Energy Production**" has the meaning set forth in Section 4.8.

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transferee", "control", "controlled by", and "under common control with", as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, the term "Affiliate" when used with respect to Seller shall not include any direct or indirect tax equity investor.

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

"**Ancillary Services**" means all ancillary services, products and other attributes recognized by the CAISO from time to time, if any, that the Facility is capable of providing when operated in accordance with the terms and conditions of this Agreement.

"**Approved Forecast Vendor**" means a forecasting provider selected by Seller and reasonably acceptable to Buyer, which provider is capable of supplying day-ahead, intra-day and real-time generation forecasts for the Facility in a format reasonably required by Buyer and consistent with applicable CAISO requirements. Seller may change its Approved Forecast Vendor from time to time upon prior Notice to Buyer, provided that any replacement vendor satisfies the foregoing requirements.

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

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

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

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

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

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

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

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

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

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

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

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

"**Buyer Curtailment Order**" means the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, which instruction shall be consistent with the Operating Restrictions, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order.

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

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

"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.6(a).

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

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

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

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

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

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

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility's capability and ability to produce and deliver energy. Capacity Attributes shall be deemed to include all Resource Adequacy Benefits, if any, associated with the Facility. Capacity Attributes are measured in MW and shall exclude Energy, Green Attributes, and PTCs or any other Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

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

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

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

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

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

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

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

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity investor directly or indirectly providing financing or refinancing for the Facility, and any trustee or agent or similar representative acting on their behalf) or permitted assignee thereof) shall be excluded from the total outstanding equity interests in Seller solely so long as (i)(a) Ultimate Parent remains the managing member (or equivalent controlling Person) of Seller, or (b) Ultimate Parent retains the power to direct the day-to-day management and operation of Seller and the Facility, and (ii) no tax equity investor or other Lender has obtained the right to control the material operational decisions of Seller or the Facility other than customary tax equity protective rights.

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

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

"**Commercial Operation Delay Damages**" or "**COD Delay Damages**" are equal to [redacted].

"**Compliance Actions**" has the meaning set forth in Section 3.10.

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.10.

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

"**Construction Delay Damages**" are 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**" means the Renewable Rate.

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

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

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

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

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

"**CPUC Approval**" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by the Buyer. CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

"**Credit Rating**" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

"**Curtailment Cap**" means the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.

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

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

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

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

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

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

"**DAC-GT**" means the Disadvantaged Communities – Green Tariff (DAC-GT) program approved by the CPUC.

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

"**Day**" or "**day**" means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Pacific Prevailing Time on any calendar day and ending at 00:00 hours Pacific Prevailing Time on the next calendar day.

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

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

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

"**Deemed Delivered Energy**" means the amount of Facility Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be calculated using an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such a Buyer Curtailment Period.

"**Dedicated Interconnection Capacity**" has the meaning set forth in Section 4.12.

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

"**Deficient Month**" has the meaning set forth in Section 4.6(e).

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

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

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

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

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

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

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

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

"**Electrical Losses**" means all transmission or transformation losses between the Facility and the Delivery Point, calculated in accordance with CAISO approved methodologies applicable to revenue metering.

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

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

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

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

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

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

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

"**Expected Energy**" means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year in the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed Capacity to Installed Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

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

"**Facility**" means the electricity generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point; provided, that the "Facility" does not include the Shared Facilities or Interconnection Facilities (other than Seller's Interconnection Facilities).

"**Facility Energy**" means the Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Industry Practices to account for Electrical Losses and Station Use.

"**Facility Meter**" means the CAISO Approved Meter as shown in Exhibit Q, 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 Facility Energy.

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

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

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

"**Forced Facility Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Facility to the Delivery Point due to events or conditions outside the control of Seller and are not the result of a Force Majeure Event or Planned Outage.

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

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

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

"**Gains**" means, with respect to the 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, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement. Factors used in determining the economic benefit to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and, if applicable, Capacity Attributes and Ancillary Services.

"**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 hereto.

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits.

"**Green Tag Reporting Rights**" means the right of a purchaser of renewable energy to report ownership of accumulated "green tags" in compliance with and to the extent permitted by applicable Law and include rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

"**Guaranteed Capacity**" means the amount of generating capacity of the Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet.

"**Guaranteed Commercial Operation Date**" means the Expected Commercial Operation Date, as such date may be extended pursuant to the terms of Exhibit B.

"**Guaranteed Construction Start Date**" means the Expected Construction Start Date, as such date may be extended pursuant to the terms of Exhibit B.

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

"**Guarantor**" means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating [redacted] (d) has a tangible net worth of at least [redacted], (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

"**Guaranty**" means a payment guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L or in such other form as is reasonably acceptable to Buyer.

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

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

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

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

"**Installed Capacity**" means the actual generating capacity of the Facility, as measured in MW at the Delivery Point, that achieves Commercial Operation (whether prior to, on, or after the Guaranteed Commercial Operation Date), adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate(s) substantially in the form attached as Exhibit H hereto.

"**Interconnection Agreement**" means the interconnection agreement(s) entered into by Seller with the CAISO, the Participating Transmission Owner and/or the distribution operator pursuant to which the Facility will be interconnected with the Transmission System and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities, as applicable, 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.

"**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.

"**ITC**" means the investment tax credit established pursuant to Section 48, or the clean electricity investment credit under Section 48E, of the Tax Code, or any substantially similar federal tax credits under Applicable Law that provides Seller with a tax credit based on investment in the Facility.

"**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 credit support, senior or subordinated construction, interim, back leverage or long-term debt, working capital, equity or tax equity, tax credit, tax transfer or cash equity financing or refinancing for or in connection with the development, construction, purchase, installation, operation, maintenance, repair, replacement or improvement of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of

Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates or the Portfolio Financing Entity, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a Qualified Issuer in a form substantially similar to the letter of credit set forth in Exhibit K.

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

"**Limited Assignee**" has the meaning set forth in Section 14.4.

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

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

"**Losses**" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and shall include the value of Green Attributes and, if applicable, Capacity Attributes and Ancillary Services. In the case of Seller as the Non-Defaulting Party, to the extent directly caused by a Buyer Event of Default, and only to the extent Seller was unable to avoid or mitigate such loss or recapture through the use of commercially reasonable efforts, Losses shall include lost Renewable Energy Incentives and actual amounts required to be repaid by Seller to a Governmental Authority as a result of the recapture of Renewable Energy Incentives associated with the Facility, in each case, determined on an after-tax basis.

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

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

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

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

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

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

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

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

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

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

"**NP-15**" means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

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

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

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

"**Performance Measurement Period**" shall be each two (2) consecutive Contract Year period during the Delivery Term, calculated on a rolling basis (e.g., Contract Years 1-2, 2-3, 3-4, etc.).

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

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

(a) [redacted]

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

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

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

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

"**Portfolio**" means the single portfolio of electrical energy generating facilities or related assets, including the Facility (or the interests of Seller or Seller's Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

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

"**Portfolio Financing**" means any debt incurred by an Affiliate of Seller prior to the Commercial Operation Date that is secured only by lien(s) or other security interest on the Portfolio.

"**Portfolio Financing Entity**" means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

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

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

"**Prudent Industry Practice**" means the applicable practices, methods and standards of care, skill and diligence engaged in or approved by a significant portion of the electric generation industry during the relevant time period with respect to grid-interconnected, utility-scale electricity generating facilities in the Western United States, that, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, and standards of economy and expedition. Prudent Industry Practice is not intended to be limited to the optimum practice, method or act to the exclusion of others but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Prudent Industry Practice includes compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

"**PTC**" means the production tax credits established pursuant to Section 45 or Section 45Y of the Tax Code, or any substantially similar federal tax credits under Applicable Law that provides Seller with a tax credit based on energy production from the Facility.

"**Qualified Issuer**" means a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's or (b) ) being reasonably acceptable to Buyer.

"**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.

"**Recurring Certificate Transfers**" has the meaning set forth in Section 4.6(a).

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

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

"**Renewable Energy Incentives**" means: (a) all federal, state, or local Tax credits or other Tax Benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 45Y, 46, 48, and 48E of the Tax Code, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

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

"**Resource Adequacy**" means the procurement obligation of load serving entities, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003, R.05-12-013, R.10-04-012 and R.11-10-023 or by any successor proceeding, and the Resource Adequacy supply obligations of generators provided in the CAISO Tariff, including Section 40 of such Tariff.

"**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, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

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

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

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

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

"**Security Interest**" has the meaning set forth in Section 8.9.

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

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

[redacted]

"**Seller's WREGIS Account**" has the meaning set forth in Section 4.6(a).

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages; *provided* that the Parties agree that (a) any lost Green Attributes, or, if applicable, Capacity Attributes and Ancillary Services, and (b) lost Renewable Energy Incentives and actual amounts required to be repaid by Seller to a Governmental Authority as a result of the recapture of Renewable Energy Incentives associated with the Facility, in each case, determined on an after-tax basis, as set forth in the definition of Losses, shall be deemed direct damages covered by this Agreement.

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

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

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

"**Shared Facilities Agreements**" has the meaning set forth in Section 6.3.

"**Site**" means the necessary real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

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

"**Station Use**" means:

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

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

"**System Emergency**" means any condition that 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 Code**" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute, including the rules or regulations promulgated thereunder, in each case as in effect from time to time. References to sections of the Tax Code shall be construed to also refer to any successor sections.

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

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

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

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

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

"**Transformer Failure**" means the first failure of all or part of the main power transformer that results in the Generating Facility being unable to generate or deliver Facility Energy, and such failure was not caused by Seller's breach of this Agreement, negligence, willful misconduct, or failure to maintain the Facility in accordance with Prudent Industry Practice. For avoidance of doubt, only the first such failure at the Generating Facility shall qualify as a "Transformer Failure."

"**Transmission System**" means the transmission, distribution or interconnection facilities that provide energy delivery services to the Delivery Point and/or the CAISO Grid, as applicable.

"**Ultimate Parent**" means Renewable Properties, LLC, a California limited liability company.

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

"**Workforce Requirements**" refers to the Seller requirements set forth in Exhibit M.

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

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.6(e).

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

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

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

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

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

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

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

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

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

(g) the terms "include" and "including" or similar words shall be deemed to be followed by the words "without limitation" and any list of examples following such terms shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

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

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

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

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

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

(m) "or" is not necessarily exclusive; and

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

## ARTICLE 2
## TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (the "**Contract Term**"); provided, however, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product (other than Test Energy) 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 three (3) years following the termination of this Agreement.

2.2 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes each of the following conditions set forth in this Section 2.2 and delivers Notice of such completion to Buyer, and Buyer confirms or is deemed to have confirmed in accordance with the following sentence, that such conditions have been satisfied. Buyer shall review such Notice and either confirm or provide Notice to Seller of any deficiencies with ten (10) Business Days of receipt; provided that Buyer shall be deemed to confirm such Notice from Seller if Buyer does not provide Notice to Seller of any deficiencies within such ten (10) Business Day period. Provided Buyer confirms or is deemed to have confirmed such Notice, the Commercial Operation Date shall be deemed to have occurred on the date such Notice was delivered to Buyer:

(a) Seller has delivered to Buyer a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement has been delivered to Buyer;

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

(d) All required regulatory authorizations, approvals and permits that are necessary to commence Commercial Operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within 90 days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

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

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

(g) Seller has demonstrated compliance with the Workforce Requirements in Exhibit M by certifying such compliance to MCE in writing and providing reasonably requested documentation demonstrating such compliance as set forth in Exhibit M;

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

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

(j) CPUC Approval has been obtained, or waived by MCE in MCE's sole discretion, and such waiver is set forth in writing.

2.3 **CPUC Approval**. Within ninety (90) days after the Effective Date of this Agreement, Buyer shall file with the CPUC the appropriate request for CPUC Approval. As requested by Buyer, Seller shall use commercially reasonable efforts to support Buyer in obtaining CPUC Approval. MCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party. Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by Buyer in its sole discretion within one hundred eighty (180) days after Buyer files its request for CPUC Approval and a Notice of termination is given on or before the two hundred tenth (210th) day after Buyer files the request for CPUC Approval.

2.4 **Development; Construction; Progress Reports**. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (ii) each calendar month from the first calendar month following the Expected Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly telephonic or video-conferenced scheduled meetings (no more than monthly) between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.5 **Remedial Action Plan**. If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date, as such date may be extended pursuant to Exhibit B; provided that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.5, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone, other than the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date.

2.6 **Workforce Requirements**. Seller agrees to comply with the Workforce Requirements as set forth in Exhibit M and to provide Buyer copies of documentation establishing ongoing compliance with the Workforce Requirements as may be reasonably requested by Buyer from time to time.

## ARTICLE 3
## PURCHASE AND SALE

3.1 **Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable prices set forth in Exhibit C and receive, all of the Product produced by or associated with the Facility. At its sole discretion, but subject to the second sentence of Section 5.2, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product. During the Delivery Term, Buyer's obligation to make payment for Facility Energy and all of the remaining Product from Seller under this Agreement shall be excused during the pendency of, and to the extent required by (a) a Force Majeure Event, (b) a Curtailment Period; provided such Curtailment Period is not attributable to Buyer's breach of its obligations under this Agreement or any other agreement, or (c) a period of Buyer suspension due to a Seller Default pursuant to Section 11.1. Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

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

3.3 **Imbalance Energy**. Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible provided that such cooperation efforts will not require to reduce Facility Energy except as a result of a Curtailment Order, Buyer Curtailment Order or Buyer Bid Curtailment. Subject to Seller's responsibility for CAISO penalties pursuant to Section 4.3(c), to the extent there are such deviations between Facility Energy and Scheduled Energy, any CAISO costs, charges or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

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

3.5 **Future Environmental Attributes**

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

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

3.6 **Test Energy**. Prior to the Commercial Operation Date, Buyer will purchase all Test Energy and any associated Product and Seller will be compensated at [redacted] for such Test Energy ("**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

**3.7 <u>Capacity Attributes</u>**.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility, if any. Buyer acknowledges that Seller is not required to obtain Full Capacity Deliverability Status under this Agreement.

(b) Buyer shall be entitled to all Capacity Attributes, if any, associated with the Facility during the Delivery Term. The consideration for all such Capacity Attributes is included within the Contract Price. Seller transfers to Buyer, and Buyer accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Attributes, if any, existing during the Delivery Term.

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

(d) During the Delivery Term, Seller shall not sell or attempt to sell to any other Person the Capacity Attributes, if any, and Seller shall not report to any person or entity that the Capacity Attributes, if any, belong to anyone other than Buyer. Buyer may, at its own risk and expense, report to any person or entity that any available Capacity Attributes belong exclusively to Buyer.

(e) To the extent that any Capacity Attributes associated with the Facility become available, at Buyer's request Seller shall: (i) execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Attributes, if any, to Buyer and (ii) cooperate reasonably with Buyer in order that Buyer may satisfy the Resource Adequacy requirements, if any, including (A) assisting Buyer in registering the Facility with the CAISO so that the Capacity Rights are able to be recognized and counted for Resource Adequacy purposes, (B) assist Buyer in making such annual submissions to CAISO associated with establishing the correct quantity of Capacity Rights, (C) coordinating with Buyer on the submission to the CAISO submissions (or corrections), as required by the CAISO Tariff, and (D) providing CAISO all necessary information for annual and other outage planning. Seller shall deliver such documents, instruments, submissions and information as may be requested by Buyer in connection with the Capacity Attributes and Resource Adequacy; <u>provided</u> that in responding to any such requests, Seller shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that adversely affects, or could reasonably be expected to have or result in an adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

3.8 **<u>CEC Certification and Verification</u>**. Subject to Section 3.10, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial

Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date or such longer period as may be required provided that Seller has timely filed for CEC Certification and Verification as set forth herein), Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

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

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

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

(d) Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17].

(e) With respect to the immediately preceding paragraphs, (i) the references in Section 3.9(a) to "Project" have the same meaning as "Facility", and (ii) the reference in Section 3.9(a)(ii) to "the Project's output" has the same meaning as "Facility Energy".

**3.10 Change in Law**. The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Seller agrees to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in law to maximize benefits to Buyer, including: (i) modification of the description of Green Attributes, Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to assure that this Agreement or the Facility is eligible. as an ERR and other benefits under the California Renewables Portfolio Standard; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) **Compliance Expenditure Cap**. If Seller establishes to Buyer's reasonable satisfaction that a change in Laws occurring after the Effective Date has increased Seller's cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller's obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed in Section 3.10(b) (i), (ii) and (iii) or other obligations that are made subject to this Section 3.10, then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at [redacted] per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**"):

(i) CEC Certification and Verification;

(ii) Green Attributes; and

(iii) Capacity Attributes.

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

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

(d) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.10 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its right to require Seller to incur costs in excess of the Compliance Expenditure Cap for the applicable Compliance Action unless and until Buyer agrees to pay the Accepted Compliance Costs. Seller shall remain obligated to perform all Compliance Actions that can reasonably be performed without incurring costs in excess of the Compliance Expenditure Cap.

(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. For the avoidance of doubt, Seller will have no obligation to take any Compliance Actions that are in excess of the Compliance Expenditure Cap unless Buyer has agreed to pay such additional Accepted Compliance Costs associated with such Compliance Actions.

## ARTICLE 4
## OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Participating Transmission Owner directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

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

4.2 **Title and Risk of Loss.**

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

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS. Seller shall cooperate reasonably with Buyer, at Buyer's expense, in order for Buyer to register, hold, and manage such Green Attributes in Buyer's own name and to Buyer's accounts.

4.3 **Forecasting**. Seller shall provide the Available Capacity forecasts described below. Seller's Available Capacity forecasts shall include availability for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee).

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

(b) Monthly Forecast of Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the Available Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**"), or as reasonably requested by Buyer.

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Industry Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Capacity and (ii) hourly expected Facility Energy in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of (i) the Available Capacity and (ii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate. For the avoidance of doubt, Seller may satisfy its obligation to provide a Day-Ahead Forecast under this Section 4.3(c) by causing the Scheduling Coordinator to receive a CAISO VER Forecast or a Day-Ahead Forecast from an Approved Forecast Vendor within the timeframe required by this Section 4.3(c); provided that Seller remains responsible for compliance with its other obligations under this Agreement and the use of any Approved Forecast Vendor shall not excuse any failure of Seller to perform such other obligations.

(d) Hourly and Sub-Hourly Forecasts. Notwithstanding anything to the contrary herein, if the forecasted Available Capacity changes from the applicable Day-Ahead Forecast by one (1) MW/one (1) MWh or more on the actual date of delivery for any reason, including Forced Facility Outages (other than a scheduling change imposed by Buyer or CAISO), which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

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

(f) CAISO Tariff Requirements. Subject to Section 3.10, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

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

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller, provided that, between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation 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 for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Industry Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a "**Planned Outage**").

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

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

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

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

4.5 **Scheduling Coordinator Responsibilities**. Buyer shall be the Scheduling Coordinator for the Facility and shall perform such responsibilities in accordance with requirements set forth in Exhibit D.

4.6 **WREGIS**. Subject to Section 3.10, Seller shall at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio

Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

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

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

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

(d) Buyer shall make payment for a given month in accordance with Section 8.2 notwithstanding that the corresponding WREGIS Certificates may not have been issued, certified, or transferred to Buyer as of the applicable invoice due date in accordance with the WREGIS Operating Rules and this Section 4.6. Notwithstanding the timing of such issuance, certification, or transfer, upon Buyer's payment of the applicable invoice in accordance with Section 8.2, Buyer shall be vested with and entitled to all right, title, and interest in and to all WREGIC Certificates associated with the Facility Energy for such month.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced on a one-for-one basis by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 for the applicable Contract Year. Without limiting Seller's obligations under this Section 4.6, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.6 after the Effective Date, the Parties promptly shall modify this Section 4.6 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

4.7 **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. Buyer will not be responsible for Station Use and Station Use will not be provided by the Facility, except to the extent Station Use is netted from Facility Energy when the Facility is generating.

4.8 **Guaranteed Energy Production**. Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (i) any Deemed Delivered Energy and (ii) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Force Majeure Events, System Emergency, Buyer Default, Curtailment Periods, and Buyer Curtailment Periods (the "**Adjusted Energy Production**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.9 **Interconnection Capacity**. Seller shall ensure throughout the Delivery Term that (a) the Facility will have and maintain interconnection capacity available or allocable to the Facility under the Interconnection Agreement that is no less than the Guaranteed Capacity and (b) Seller shall have sufficient interconnection capacity and rights under the Interconnection Agreement to interconnect the Facility with the CAISO Grid and to fulfill Seller's obligations under this Agreement, including with respect to Resource Adequacy Benefits, and to allow Buyer to dispatch the Facility in accordance with the CAISO Tariff and 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**"). Buyer shall be entitled to all rights and benefits associated with the Dedicated Interconnection Capacity, including any associated deliverability rights. Seller shall be responsible for all costs of interconnecting the Facility to the Transmission System. Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or under this Agreement resulting from Seller's inability to provide due to any third-party use of the Dedicated Interconnection Capacity. To the extent that transmission service is required to deliver the Product to the Delivery Point, Seller shall maintain firm transmission equal to the Guaranteed Capacity during the Delivery Term at Seller's expense.

## 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 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**. The Parties shall cooperate to minimize tax exposure; *provided*, *however*, that neither Party shall be obligated to incur any financial burden for which the other Party is responsible hereunder. All sales of Energy under this Agreement constitute sales for resale and not retail sales.

## ARTICLE 6
## MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Industry Practice relating to the operation and maintenance of the Facility 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 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 to Buyer.

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities (including a transformer, substation and associated equipment and real property), and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements ("**Shared Facilities 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 Shared Facilities Agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing the Dedicated Interconnection Capacity, (ii) continue to provide for separate metering and a separate Resource ID for the Facility, and (iii) shall not allow any Affiliate of Seller or third party to use the Dedicated Interconnection Capacity if such use would have an adverse impact on Buyer's dispatch rights of the Facility. Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs or losses from CAISO or under the Agreement resulting from a third party's use of the Dedicated Interconnection Capacity.

## ARTICLE 7
## METERING

7.1 **Metering**. Seller shall measure the amount of Facility Energy using the Facility

Meter which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Industry Practices, including to account for Electrical Losses and Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer's prior written approval. Metering will be consistent with the Metering Diagram set forth as Exhibit Q. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification**. 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. Seller may elect to install and maintain, at its own expense, backup metering devices.

## ARTICLE 8
## INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall deliver an invoice to Buyer within fifteen (15) days after the end of the prior monthly delivery period. Each Seller invoice shall include (a) records of metered data, including CAISO metering and transaction data sufficient to validate all invoiced amounts for each Settlement Period during the preceding month, including the Facility Energy produced by the Facility as read by the Facility Meter, the amount of Product in MWh delivered during the prior billing period, and the Contract Price applicable to such Product and other relevant data for payment obligations of Buyer set forth in Exhibit C for such month; and (b) be in a format reasonably specified by Buyer. 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 (and any other amounts due) 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. Buyer shall pay undisputed invoice amounts within thirty (30) Days after receipt of the invoice, or the end of the prior monthly delivery period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days' Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors**. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice, payment 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, payment 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 or payment dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments**. The Parties hereby agree that they shall discharge undisputed 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 Section 3.7(d) or Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due after netting any such undisputed amount shall be paid by the Party who owes it.

8.7 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security to the initial amount within five (5) Business Days in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment; *provided*, [redacted] Upon the earlier of (a) Seller's delivery of the Performance Security or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its status as a Qualified Issuer, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace Development Security or change the form of Development Security to another form of Development Security authorized pursuant to the terms of this Agreement, from time to time upon reasonable prior Notice to Buyer, provided further that such replacement Development Security shall be delivered to Buyer and effective prior to or concurrently with the release of the existing Development Security.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its status as a Qualified Issuer, (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 or Guaranty that meets the requirements set forth in the definition of Performance Security. In the event a

Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace Performance Security or change the form of Performance Security to another form of Performance Security authorized pursuant to the terms of this Agreement, from time to time upon reasonable prior Notice to Buyer, provided further that such replacement Performance Security shall be delivered to Buyer and effective prior to or concurrently with the release of the existing Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, and 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 the Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

## ARTICLE 9
## NOTICES

9.1 **Addresses for the Delivery of Notices**. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or to such other people or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder; provided, however, that changes to invoicing, payment, wire transfer and other banking information on Exhibit N must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes to Exhibit N.

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including email or other electronic means), at the time indicated by the time stamp upon delivery and if after 5 pm Pacific Prevailing Time, on the next Business Day; 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. In addition, for any Notice sent pursuant to (a), (b) or (d) above, the Party sending such Notice shall send a courtesy copy by email to the email address provided on Exhibit N.

## ARTICLE 10
## FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any reasonably unforeseeable and extraordinary act or event occurring 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, except as set forth below, so long as an event otherwise satisfies the definition of Force Majeure Event, a Force Majeure Event may include: an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance or strikes or other labor difficulties caused or suffered by a Party or any third party.

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

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 promptly remove such inability with due speed and shall promptly resume performance of its obligations hereunder upon removal or termination of the Force Majeure Event. Neither Party shall be considered in breach or default of this Agreement, nor shall it be liable to the other Party, if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

10.3 **Notice for Force Majeure**. The claiming Party shall make commercially reasonable efforts to provide the other Party with oral notice of the Force Majeure Event within five (5) Business Days of the date the claiming Party becomes aware of being impacted by such Force Majeure Event, and within two (2) weeks of the date the claiming Party becomes aware of being impacted by such Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. The failure of the claiming Party to provide the written notice described above within such fourteen (14)-day period shall not preclude the claiming Party from asserting a Force Majeure Event; provided, however, that if such written notice is provided after such fourteen (14)-day period, the Force Majeure Event shall be deemed to commence no earlier than the date such written notice is provided. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming Party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

10.4 **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 with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for costs incurred and balances owed prior to the effective date of such termination and those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

## ARTICLE 11
## DEFAULTS; REMEDIES; TERMINATION

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 14.2, 14.3 or 14.5, as appropriate; or

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

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

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

(ii) the failure by Seller to achieve Commercial Operation by the Guaranteed Commercial Operation Date;

(iii) Seller has failed to demonstrate compliance with the Workforce Requirements or failed to provide documentation of Workforce Requirements requested by Buyer pursuant to Section 2.6, and Seller has not cured such failure within thirty (30) days after receiving Notice thereof from Buyer;

(iv) the failure by Seller to achieve the Construction Start Date by the Guaranteed Construction Start Date;

(v) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least [redacted] of the Expected Energy amount for the current Contract Year, and Seller fails, within ten (10) Business Days after Notice from Buyer, either (A) to provide evidence reasonably demonstrating that such condition does not constitute an abandonment of the Facility and is reasonably expected to be cured within one hundred eighty (180) days; or (B) to deliver to Buyer a remediation plan certified by a Licensed Professional Engineer describing the cause of such condition and the actions Seller will take to restore operation of the Facility, and thereafter fails to implement such remediation plan in all material respects within the time period set forth therein (which period shall not exceed one hundred eighty (180) days, except that in the case of a Transformer Failure such period may be up to three hundred sixty-five (365) days);

(vi) if, beginning in the second Contract Year, the Adjusted Energy Production amount is not at least [redacted] of the Expected Energy amount in any Contract Year;

(vii) if, in any two (2) consecutive Contract Years during the Delivery Term, the Adjusted Energy Production amount is not at least [redacted] of the Expected Energy amount in each Contract Year;

(viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

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

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

(A) the issuer of the outstanding Letter of Credit shall fail to meet the definition of Qualified Issuer;

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

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

(D) 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;

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

(F) 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 Sections 11.1(b)(ii) and 11.1(b)(iv)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

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

(d) to suspend performance;

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

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

11.3 **Termination Payment**. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not be required to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment**. 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 the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

11.6 **Rights And Remedies Are Cumulative**. Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 **Mitigation**. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

## ARTICLE 12
## LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT INCLUDED IN A LIQUIDATED DAMAGES CALCULATION OR AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, 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.

12.2 **Waiver and Exclusion of Other Damages**. 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 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. FOR THE AVOIDANCE OF DOUBT, THE LOSSES DEEMED TO BE DIRECT DAMAGES UNDER THE DEFINITION OF "SETTLEMENT AMOUNT" SHALL CONSTITUTE DIRECT DAMAGES FOR ALL PURPOSES OF THIS AGREEMENT.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.7, 4.6, 4.7, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B 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. 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; PROVIDED, HOWEVER, THAT NOTHING IN THIS AGREEMENT SHALL LIMIT OR RESTRICT A PARTY'S RIGHT TO SEEK SPECIFIC PERFORMANCE, INJUNCTIVE RELIEF OR OTHER EQUITABLE REMEDIES WITH RESPECT TO THE TRANSFER, DELIVERY OR OWNERSHIP OF GREEN ATTRIBUTES, RENEWABLE ENERGY CREDITS OR WREGIS CERTIFICATES.

[redacted]

## ARTICLE 13
## REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **<u>Seller's Representations and Warranties</u>**. 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 prohibition does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

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

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

(e) The Facility will be located in a DAC, and within PG&E's distribution service territory.

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents.

(g) Seller 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 ("**<u>Forced Labor</u>**"). Consistent with 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.

13.2 **<u>Buyer's Representations and Warranties</u>**. As of the Effective Date, Buyer represents and warrants as follows:Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

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

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

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

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

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

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

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

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

13.4 **Seller Covenants**. Seller covenants that commencing on the Effective Date and continuing throughout the Delivery Term:

(a) Ground-Mounted Solar Requirements for Pollinator-Friendly Habitats.

(i) Seller is required to establish and maintain at Seller's sole expense a pollinator-friendly habitat at the Site as provided herein ("**Pollinator-Friendly Habitat**"). Pollinator reference materials can be found at Pollinator Partnership at www.pollinator.org and EPRI at https://www.epri.com/pages/sa/pollinators. Rare exceptions to the Pollinator-Friendly Habitat requirements may be considered by Buyer in its sole discretion.

(ii) Seller shall provide a written narrative of Seller's proposal to establish a Pollinator-Friendly Habitat that describes the proposed vegetation rehabilitation design and management plan for the Site, including site preparation, landscape drawings and/or seed/plant listing, implementation, and long-term management plans for Buyer's review and approval, not to be unreasonably withheld. Seller shall provide such narrative to Buyer no later than the Construction Start Date.

(b) Pollinator Scorecard Requirements

(i) Within thirty (30) days of the Commercial Operation Date Seller shall submit to Buyer a pollinator-friendly solar scorecard ("Pollinator Scorecard") in the form attached as Exhibit P. The Pollinator Scorecard includes language that deems planning for the implementation of a Pollinator-Friendly Habitat as acceptable. Not all planned activities need to be completed upon submission of the first Pollinator Scorecard, however, planning documentation must be provided with the first Pollinator Scorecard that details the upcoming activities. Seller shall use commercially reasonable efforts to achieve a score that meets pollinator standards of 80 or above on each Pollinator Scorecard.

(ii) Seller shall complete installation of the Pollinator-Friendly Habitat within two (2) years of Commercial Operation and supply an updated Pollinator Scorecard to MCE that reflects the habitat installed. Documentation of work performed relating to site preparation and seed installation will be provided to Buyer with the updated scorecard.

(iii) Seller shall provide MCE with an updated Pollinator Scorecard within sixty (60) days of the 5th, 10th, and 15$^{th}$ anniversary of Commercial Operation.

(iv) Seller is strongly encouraged to consider, but is not required to implement, the following solar array design elements to encourage and support the Pollinator-Friendly Habitat and reduce maintenance costs:

(A) 36-inch minimum height above ground of the lowest edge of the solar panels;

(B) Burying conduits and wiring with homeruns tight to bottom of panels;

(C) Designing inter-row access/spacing to enable vegetation management; and

(D) Utilizing 'BeeWhere' registration if beehives are placed onsite.

(v) Notwithstanding the foregoing subsections (i-iv) (the "**Pollinator Scorecard Requirements**"), Seller agrees that, upon written request of Buyer, Seller shall work with EPRI to implement a pollinator habitat that conforms to the Bee Better Certified Electric program (or its successor). The Bee Better Certified Electric certification program is expected to have pollinator habitat requirements of similar scope to the Pollinator Scorecard Requirements. Seller's completion of the Bee Better Certified Electric certification program shall be deemed to satisfy the foregoing Pollinator Scorecard requirements.

(c) Signage. Seller agrees to install and maintain permanent signage during the Delivery Term at the Site displaying Buyer's logo, Seller's logo, and the name of the Facility. The sign shall be located on property frontage with visibility to the most populous roadway, subject to any local ordinance restrictions. The sign shall be large enough to be visible from such roadway. The materials should environmentally friendly, such as aluminum composite or wood, and shall not be made of acrylic or similar materials. No lighting is required. Buyer shall provide a design file for the sign. Location and final specifications for signage, including design, are subject to Buyer's approval, not to be unreasonably withheld. Seller shall construct and maintain the sign at Seller's sole expense, and Seller shall be responsible for obtaining any required permits or approvals. The sign shall be installed within 30 days of the Commercial Operation Date.

13.5 **Diversity Reporting**. Seller agrees to complete the Supplier Diversity and Labor Practices questionnaire available at https://form.asana.com/?k=jSGYk4x3sf2dHfSzywc2fg&d=163567039999692, as may be updated from time to time, or a similar questionnaire, at the reasonable request of Buyer and to comply with similar regular reporting requirements related to diversity and labor practices from time to time. A current example of the Supplier Diversity and Labor Practices questionnaire is attached as Exhibit O.

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

## ARTICLE 14
## ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of a Party (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer's consent if the resulting controlling Person is a Permitted Transferee. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including reasonable attorneys' fees. For the avoidance of doubt, Buyer's consent shall not be required for any transfer of ownership of the Facility or the Facility assets to a Lender solely in connection with a bona fide sale-leaseback tax equity financing transaction for the Facility. Such transfer shall not, by itself, constitute a Change of Control of Seller.

14.2 **Collateral Assignment**. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility without the consent of Buyer.

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

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

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

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

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

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

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

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller only if Lender sends written notice to Buyer, before the later of (i) the expiration of the applicable cure period and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender shall remedy or cure the Event of Default within the cure period provided under this Agreement, together with any additional cure periods agreed to in the Collateral Assignment Agreement; provided that, except as expressly provided below, the aggregate additional cure period granted to Lender shall not exceed ninety (90) days. If cure of the Event of Default reasonably requires foreclosure, exercise of remedies against collateral, a bankruptcy proceeding involving Seller, or a similar enforcement action, Lender shall be entitled to an additional period not to exceed one hundred eighty (180) days, provided that Lender is diligently pursuing such cure and such enforcement action. Any further extension shall require Buyer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed;

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

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

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) (but excluding a Lender in a sale-leaseback tax equity transaction), Lender must assume all of Seller's obligations arising under this Agreement (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings, to representations and warranties made by Seller, or which are otherwise personal to Seller) in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

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

(ii) Not assume this Agreement;

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

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith, Lender or its designee shall have the right, by written notice delivered within ninety (90) days after such rejection or termination, to request that Buyer enter into a replacement agreement on substantially the same terms as this Agreement for the remaining term thereof; and promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or its designee;

(i) If requested by Lender, upon receipt of written notice from Lender and Seller, or such other evidence of Lender's authority reasonably acceptable to Buyer, Buyer will make all payments due to Seller under this Agreement to an account designated by Lender in writing; and

(j) Lender shall not have any liability or obligation under this Agreement as a result of exercising its rights under the Collateral Assignment Agreement, and Lender shall not be obligated or required to perform any of Seller's obligations under this Agreement, except if this Agreement is transferred to Lender pursuant to subsection (b) above or Lender is a counterparty to a replacement agreement entered into pursuant to subsection (h) above. Upon such assignment, transfer or replacement, Lender or its designee shall be obligated to perform all obligations expressly assumed thereunder from and after such assignment, transfer or replacement. Nothing herein shall limit Buyer's rights or remedies against Seller arising prior to such assignment, transfer or replacement.

14.3 **Permitted Assignment by Seller**. Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act, (Cal. Gov . Code section 81000 et seq,) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to (a) an Affiliate of Seller, (b) a transferee in connection with an exercise of any remedies provided to a Lender subject to the provisions of the Collateral Assignment Agreement, or (c) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law and whether by assignment or Change of Control), if, and only if:

(i) the assignee is a Permitted Transferee;

(ii) Seller has given Buyer Notice at least thirty (30) days before the date of such proposed assignment or change of control; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

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

14.4 **Buyer Limited Assignment**. Buyer shall have the right to make a limited assignment in connection with a municipal prepayment transaction to an entity ("**Limited Assignee**") that has, or provides a parent guaranty in form and substance reasonably acceptable to Seller from an entity with, an investment grade credit rating, of Buyer's right to receive Product and Buyer's obligation to make payments to the Seller. The limited assignment shall be expressly subject to the Limited Assignee's timely payment of amounts as due hereunder. Buyer shall pay Seller for any payments not timely made by the Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under the Agreement notwithstanding the limited assignment. Any failure by the Limited Assignee to make payments to Seller when due hereunder shall be a Buyer Event of Default if not cured within the applicable cure period specified herein. Subject to the foregoing, Buyer may make such assignment upon not less than thirty (30) days' advance written notice by delivering to Seller a written request for Seller's consent to such assignment, which request must include a proposed assignment agreement substantially in the form attached to this Agreement as Exhibit R, or as otherwise reasonably acceptable to Seller, Limited Assignee, Buyer and Lender(s). Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies.

**14.5 Portfolio Financing**. Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities through tax equity investments, cash equity investments and/or Portfolio Financings. Buyer shall reasonably cooperate with Seller in connection with such transactions, including executing such consents, acknowledgements and agreements as are reasonably requested by Seller; provided that Buyer shall not be required to agree to any provision that (a) materially increases Buyer's obligations, liabilities or administrative burdens, (b) materially impairs Buyer's rights or remedies under this Agreement, (c) modifies the assignment, Change of Control, Event of Default or collateral provisions of this Agreement, or (d) permits any transfer of control of Seller or the Facility except as otherwise expressly permitted under this Agreement. Seller shall reimburse Buyer for all reasonable attorneys' fees and expenses incurred in connection therewith.

## ARTICLE 15
## DISPUTE RESOLUTION

15.1 **Venue**. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.2 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to non-binding mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

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

## ARTICLE 16
## INDEMNIFICATION

16.1 **Indemnification**.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

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

16.2 **Claims**. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided*, *however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs.

If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## ARTICLE 17
## INSURANCE

17.1 **Insurance**.General Liability. Seller shall maintain, or cause to be maintained at its sole expense, commercial general liability insurance, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall be in a minimum amount of per occurrence and annual aggregate of not less than Two Million Dollars ($2,000,000), exclusive of defense costs, for all coverages. The policy shall be endorsed to provide contractual liability in the required amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured. Such insurance shall contain standard cross-liability and severability of interest provisions.

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

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

(e) Construction All-Risk Insurance. Seller shall maintain during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

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

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

(h) Umbrella/Excess Liability Insurance. Seller shall maintain at all times during the Contract Term umbrella/excess liability providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Business Auto Insurance, on terms at least as broad as the underlying coverage, with limits of not less than Five Million Dollars ($5,000,000) per occurrence and in the annual aggregate. The insurance requirements of this Section 17.1 can be provided by any combination of Seller's primary and excess liability policies.

(i) Evidence of Insurance. Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance or self-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. Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

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

## ARTICLE 18
## CONFIDENTIAL INFORMATION

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

18.2 **Duty to Maintain Confidentiality**. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 7920 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement. Each Party agrees that this Agreement, and any information and documentation related to this Agreement, may be disclosed to the CPUC to comply with any and all requirements of the DAC-GT program, and such disclosures to the CPUC or any other Governmental Authority will not require any prior notice by either Party to the other Party. Notwithstanding the foregoing, the Parties agree and acknowledge that the information disclosed by either Party to any Governmental Authority becomes subject to any public disclosure laws, rules, orders, regulations, policies, or practices applicable to the respective Governmental Authority.

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 investor 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 either is bound by similarly restrictive confidentiality obligations as those contained in this Agreement, or agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases**. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

## ARTICLE 19
## MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

19.14 **Service Contract**. Seller represents and warrants this Agreement to be considered as a service contract for the purposes of Section 7701(e) of the Tax Code, as amended and given this representation and warranty, Buyer agrees that it will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the Facility.

*[Signatures on following page]*

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

| | |
|---|---|
| **RPCA SOLAR 19, LLC**, | **MARIN CLEAN ENERGY,** |
| a California limited liability company | **a California joint powers authority** |
| By: __________________________ | By: __________________________ |
| Name: __________________________ | Name: __________________________ |
| Title: __________________________ | Title: __________________________ |
| | By: __________________________ |
| | Name: __________________________ |
| | Title: __________________________ |

## EXHIBIT A

## FACILITY DESCRIPTION

**Site Name**: Copperopolis Road Solar Project

**Site includes all or some of the following APNs**: This Agreement is specific to the Site and Seller may change the location of the Site only upon Buyer's prior written consent, which consent is in Buyer's sole discretion. Seller shall maintain Site Control throughout the Contract Term and shall provide Buyer with prompt Notice of any change in the status of Seller's Site Control.

**County**: San Joaquin

**Type of Generating Facility**: solar photovoltaic

**Energy Management Software**: The Facility shall include 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/or the CAISO, including through ADS.

**Guaranteed Capacity**: 2.0 MW (AC)

**Facility Meter Locations**: See Exhibit Q.

**Delivery Point**: Facility PNode on the CAISO-Controlled Grid

**Interconnection Point**: Mormon Bank 1 substation

**P-node:**

**Participating Transmission Owner**: Pacific Gas and Electric Company (PG&E)

## EXHIBIT B

## FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

    a. "**Construction Start**" will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Facility, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract and issued thereunder a full notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility (such authorization to include, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "**Construction Start Date**." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

    b. If Seller does not expect to achieve Construction Start by the Guaranteed Construction Start Date, Seller may elect, in its sole discretion, to extend the Guaranteed Construction Start Date by paying Construction Delay Damages to Buyer. Seller may extend the Guaranteed Construction Start Date for up to one hundred eighty (180) days in the aggregate. To exercise such extension right, Seller shall provide Buyer with written notice and payment of the applicable Construction Delay Damages no later than ten (10) days prior to the then-current Guaranteed Construction Start Date. Upon receipt of such notice and payment, the Guaranteed Construction Start Date shall be extended by the number of days for which Construction Delay Damages have been paid. If Seller achieves Construction Start prior to the extended Guaranteed Construction Start Date, Buyer shall refund the portion of the Construction Delay Damages attributable to the unused extension period. Failure to achieve Construction Start by the Guaranteed Construction Start Date, as extended pursuant to this Section, shall constitute an Event of Default. 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 (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment, upon exercise of Buyer's default right pursuant to Section 11.2.

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 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the "**COD Certificate**") (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and

(iii) Buyer has confirmed or deemed to have confirmed to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The "**Commercial Operation Date**" shall be the date on which Commercial Operation is achieved.

a. Seller shall use commercially reasonable efforts to cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

b. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date (excluding any paid extensions of such date), Buyer shall refund all Construction Delay Damages previously paid by Seller. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.

c. If Seller does not expect to achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller may elect, in its sole discretion, to extend the Guaranteed Commercial Operation Date by paying COD Delay Damages to Buyer. Seller may extend the Guaranteed Commercial Operation Date for up to ninety (90) days in the aggregate. To exercise such extension right, Seller shall provide Buyer with written notice and payment of the applicable COD Delay Damages no later than ten (10) days prior to the then-current Guaranteed Commercial Operation Date. Upon receipt of such notice and payment, the Guaranteed Commercial Operation Date shall be extended by the number of days for which COD Delay Damages have been paid. If Seller achieves Commercial Operation prior to the extended Guaranteed Commercial Operation Date, Buyer shall refund the portion of the COD Delay Damages attributable to the unused extension period. Failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date, as extended pursuant to this Section, shall constitute an Event of Default. The Parties agree that Buyer's receipt of COD Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation on or before Guaranteed Commercial Operation Date, as it may be extended as provided herein, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances:

a. a Force Majeure Event occurs; or

b. delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&E) that are outside of the reasonable control of Seller; or

c. delays caused by a Governmental Authority with jurisdiction over the Facility in issuing required permits or approvals, despite Seller's timely and diligent efforts to obtain such permits or approvals, and which are outside the reasonable control of Seller.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period above shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event. Notwithstanding anything to the contrary, no extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required in the next sentence. Seller shall provide prompt written notice to Buyer of each delay for which Seller seeks an extension promptly after Seller becomes aware of such delay, but in no case more than thirty (30) days thereafter, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity**. If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal [redacted] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement including Expected Energy, shall be adjusted accordingly.

## EXHIBIT C

## COMPENSATION

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

(a) Facility Energy. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds [redacted] of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be equal to the lesser of (a) [redacted] or (b) [redacted] of the Contract Price, but not less than $0.00/MWh.

(b) Annual Excess Energy. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds [redacted] of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be equal to $0.00/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh ("**Negative LMP Costs**").

(d) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(e) Tax Credits. The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Except as otherwise provided herein, 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 except as otherwise expressly provided herein in the definition of "Losses", and "Settlement Amount" and in Sections 11.3 and Article 12. Seller shall have exclusive rights to all Tax Credits and Renewable Energy Incentives. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term. Seller does not intend as of the Effective Date of this Agreement intend to utilize the Production Tax Credit and no payment will be owed to Seller for PTC amounts associated with curtailments in the event Seller later elects to utilize the PTC.

## EXHIBIT D

## SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Facility Energy, and if applicable, the Test Energy, at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all 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 prior to the Commercial Operation Date. Buyer (or its SC) shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as applicable to Buyer as the Scheduling Coordinator for the Facility.

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

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be financially responsible for such services and shall pay for CAISO costs (including for penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall assume all liability and reimburse Buyer for any and all CAISO costs, penalties, Imbalance Energy costs, and other charges and sanctions (i) incurred by Buyer because of Seller's failure to perform its obligations under this Agreement, or (ii) incurred by Buyer because of any Facility outages for which notice has not been provided as required hereunder. Any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account, and any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account (except to the extent such Non-Availability Charges arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility unless such failure is caused by Seller's failure to perform its obligations under this Agreement). In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, or outage reporting, and any such sanctions or penalties are imposed upon the Facility or upon Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, including Curtailment Orders that complies with the requirements of this Agreement, or to otherwise 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 (in each case, except to the extent such sanctions or penalties arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility unless such failure is caused by Seller's failure to perform its obligations under this Agreement).

(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 any undisputed 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 third party 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) CAISO Master File and Resource Data Template; CPUC Master Resource Database. The Parties will cooperate to comply with the applicable deadlines for filing and updating the information for the Facility in the Master Resource Database and Master File. Seller shall provide the data to Buyer that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement at least ten (10) Business Days before the deadline for submission to CAISO and Buyer (as the Facility's SC) shall promptly provide such data to CAISO. Seller shall provide the data that is required for the CPUC's Master Resource Database for the Facility consistent with this Agreement to Buyer for review and approval at least ten (10) Business Days before the deadline for submission of such to the CPUC. Neither Party shall change such CAISO or CPUC data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master File and Resource Data Template (or successor data systems) and CPUC's Master Resource Database for this Facility remains consistent with the actual operating characteristics of the Facility and promptly notify Buyer of any changes.

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

**EXHIBIT E**

**PROGRESS REPORTING FORM**

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including a narrative describing Seller's progress towards meeting the "Local Hire Requirement" including a report that shows the percentage of labor hours to date that qualify as "local" and any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months
11. Prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, 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. Supplier Diversity Reporting. Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

## EXHIBIT F-1

## FORM OF AVERAGE EXPECTED ENERGY REPORT

Average Expected Energy (in MWh)

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **JAN** | | | | | | | | | | | | | | | | | | | | | | | | |
| **FEB** | | | | | | | | | | | | | | | | | | | | | | | | |
| **MAR** | | | | | | | | | | | | | | | | | | | | | | | | |
| **APR** | | | | | | | | | | | | | | | | | | | | | | | | |
| **MAY** | | | | | | | | | | | | | | | | | | | | | | | | |
| **JUN** | | | | | | | | | | | | | | | | | | | | | | | | |
| **JUL** | | | | | | | | | | | | | | | | | | | | | | | | |
| **AUG** | | | | | | | | | | | | | | | | | | | | | | | | |
| **SEP** | | | | | | | | | | | | | | | | | | | | | | | | |
| **OCT** | | | | | | | | | | | | | | | | | | | | | | | | |
| **NOV** | | | | | | | | | | | | | | | | | | | | | | | | |
| **DEC** | | | | | | | | | | | | | | | | | | | | | | | | |

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

**EXHIBIT F-2**

**FORM OF MONTHLY AVAILABLE CAPACITY REPORT**

[Available Capacity, MW per hour] – [*Insert Month*]

| | **1:00** | **2:00** | **3:00** | **4:00** | **5:00** | **6:00** | **7:00** | **8:00** | **9:00** | **10:00** | **11:00** | **12:00** | **13:00** | **14:00** | **15:00** | **16:00** | **17:00** | **18:00** | **19:00** | **20:00** | **21:00** | **22:00** | **23:00** | **24:00** |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Day 1** | | | | | | | | | | | | | | | | | | | | | | | | |
| **Day 2** | | | | | | | | | | | | | | | | | | | | | | | | |
| **Day 3** | | | | | | | | | | | | | | | | | | | | | | | | |
| **Day 4** | | | | | | | | | | | | | | | | | | | | | | | | |
| **Day 5** | | | | | | | | | | | | | | | | | | | | | | | | |
| **[insert additional rows for each day in the month]** | | | | | | | | | | | | | | | | | | | | | | | | |
| **Day 29** | | | | | | | | | | | | | | | | | | | | | | | | |
| **Day 30** | | | | | | | | | | | | | | | | | | | | | | | | |
| **Day 31** | | | | | | | | | | | | | | | | | | | | | | | | |

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

## EXHIBIT G

## GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.8, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

[(A – B) * (C – D)]

where:

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

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

C = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for NP-15, calculated based on a weighted generation profile for the Facility, plus (b) the market value of Green Attributes generated by the Facility during the Performance Measurement Period, as determined by Buyer in a commercially reasonable manner.

D = the Contract Price

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

"**Lost Output**" means the amount of Facility Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Buyer Default, and Curtailment Periods.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number. Buyer will send Seller Notice of the amount of damages owing, if any, which amount shall be payable to Buyer within thirty (30) days from the date of such Notice.

## 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 Renewable Power Purchase Agreement dated ___________ by and between RPCA Solar 19, LLC, a California limited liability company ("**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:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Participating Transmission Owner and CAISO.

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

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

4. 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/or the CAISO, including through ADS.

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

6. The Installed Capacity is not less than ninety-five (95%) of the Guaranteed Capacity.

7. Authorization to parallel the Facility was obtained by the Participating Transmission Owner on [Date].

8. The Participating Transmission Owner has provided documentation supporting full unrestricted release for Commercial Operation by the Participating Transmission Owner on [Date].

9. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [Date].

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this ________ day of _____________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: ______________________________

Printed Name: ______________________

Title: _____________________________

## EXHIBIT I

## FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated ___________ ("**Agreement**") by and between RPCA Solar 19, LLC, a California limited liability company and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the performance test for the Facility demonstrated peak electrical output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Generating Facility 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 RPCA Solar 19, LLC, a California limited liability company ("**Seller**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ 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: __________________________________________.

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

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

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

Beneficiary:

Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901

Ladies and Gentlemen:

By the order of __________ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Marin Clean Energy, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of [*insert date*] and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [*insert date*] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

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

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an email to [*bank email address*] or (c) facsimile to [*bank fax number*]. 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 Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer before the Expiration Date.

All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date (or such later date, if applicable) will be honored.

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

This Letter of Credit is issued subject to the rules of the 'International Standby Practices 1998', International Chamber of Commerce Publication No. 590 ("ISP98") and, as to matters not addressed by ISP98, shall be governed and construed in accordance with the laws of state of California.

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

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

[Bank Name]

___________________________

[Insert officer name]
[Insert officer title]

Exhibit A

Drawing Certificate

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Marin Clean Energy, a California joint powers authority, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of __________ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of ___________, 20__ (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the Expiration Date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such Expiration Date.

3. The undersigned is a duly authorized representative of Marin Clean Energy, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Marin Clean Energy by wire transfer in immediately available funds to the following account: [Specify account information]

Marin Clean Energy

_________________________________
Name and Title of Authorized Representative

Date___________________________

# EXHIBIT L

# FORM OF GUARANTY

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

## Recitals

A. Buyer and RPCA Solar 19, LLC, a California limited liability company ("Seller"), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "PPA") dated as of [____], 20___.

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

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

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

## Agreement

1. **Guaranty**. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the "Guaranteed Amount"), provided, that Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed ________ Dollars ($___________). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. **Demand Notice**. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "Demand Notice"), then Buyer may elect to exercise its rights under this Guaranty and

may make a demand upon Guarantor (a "Payment Demand") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty**. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earliest of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

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

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or

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

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

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including statute of frauds and accord and satisfaction;

provided that, subject to Guarantor's payment of a Guaranteed Amount in accordance with Paragraph 2, Guarantor reserves the right to assert for itself in a subsequent proceeding any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

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

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

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

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

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

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

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

execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices**. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address 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 | [____]<br>Attn: [____]<br>Fax: [____] |
| If delivered to Guarantor, to it at | [____]<br>Attn: [____]<br>Fax: [____] |

8. **Governing Law and Forum Selection**. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Francisco, California.

9. **Miscellaneous**. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination

shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[*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: ____________________________

# EXHIBIT M

## WORKFORCE REQUIREMENTS

(a) Local Hire: Seller shall use commercially reasonable efforts to ensure that fifty percent (50%) of the construction work hours from its workforce (including contractors and subcontractors) providing construction-related work and services at the Site are obtained from permanent residents who live within the same county in which the Facility will be located (preferred) or within eighty (80) miles of the Facility, as measured during the period beginning on the Construction Start Date ending on the Commercial Operation Date (the "**Local Hire Requirement**"). Seller's construction of the Facility shall also be subject to any local hire requirements specific to the city or town where the Facility is located. As a condition precedent to commencement of the Delivery Term, Seller must certify to Buyer in writing that Seller met the Local Hire Requirement and, if requested by Buyer, demonstrating compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit.

(b) Prevailing Wage: To the extent not inconsistent with the requirements of subsection (c) below, Seller will ensure that all employees hired by Seller, and its contractors and subcontractors, that are performing work or providing services at the project site during the Construction Phase are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by Division 2, Part 7, Chapter 1 of the California Labor Code ("**Prevailing Wage Requirement**"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the California Labor Code. As a condition precedent to commencement of the Delivery Term, Seller must certify that it met the Prevailing Wage Requirement, and be able to demonstrate, upon request, compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit.

(c) Union Labor: If Seller's Facility is located in Contra Costa County Seller must agree to comply with the terms of that certain Letter Agreement between MCE and IBEW Local 302, dated June 20, 2017, and attached project labor agreement (collectively, the "PLA"). The PLA applies to "Covered Work" (as defined therein) for solar photovoltaic and associated energy storage projects for which MCE is the power supply off-taker. If Seller's Facility is located outside Contra Costa County, Seller shall, or shall cause its contractors, to enter into project labor agreements of similar scope and requirements as the PLA with participating unions for workforce hired for construction of the Facility. As a condition precedent to commencement of the Delivery Term, Seller must certify that it complied with the foregoing union labor requirements, and be able to demonstrate, upon request, compliance with this requirement via copies of executed PLAs or similar agreements, a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit. A fully executed copy of the PLA, or similar agreement if applicable, shall be delivered to Buyer prior to the Construction Start Date.

In addition to Seller's obligations under this Exhibit M, Seller must provide Notice to Buyer within seven (7) Business Days of Seller becoming aware of any potential delays, impediments, or inability to satisfy the Local Hire Requirement or Prevailing Wage Requirement, or to enter into a PLA as required under this Agreement. For avoidance of doubt, the failure to provide such Notice constitutes an Event of Default if not cured under Section 11.1(b)(iii).

**EXHIBIT N**

**NOTICES**

| **RPCA SOLAR 19, LLC** | **MARIN CLEAN ENERGY** |
|---|---|
| **All Notices:**<br><br>Street: 44 Montgomery Street, Suite 3150<br>City: San Francisco, CA, 94104<br>Attn: Aaron Halimi, President<br>Phone: [redacted]<br>Email: [redacted] | **All Notices:**<br>Marin Clean Energy<br>1125 Tamalpais Avenue<br>San Rafael, CA 94901<br>Attn: Contract Administration<br>Phone: (415) 464-6010<br>Email: contractadmin@mcecleanenergy.org |
| **Reference Numbers:**<br>Duns:<br>Federal Tax ID Number: | **Reference Numbers:**<br>Duns: 829602338<br>Federal Tax ID Number: 26-4300997 |
| **Invoices:**<br>Attn: Jenea Smith, Controller<br>Phone: [redacted]<br>E-mail: [redacted] | **Invoices:**<br>Attn: Power Settlements and Analytics<br>Phone: (415) 464-6684<br>Email: settlements@mcecleanenergy.org |
| **Scheduling:**<br>Attn: Matthew Gasparovich, Dir. Of Asset<br>Phone: [redacted]<br>Email: [redacted] | **Scheduling:**<br>Attn: Customized Energy Solutions (CES)<br>Phone: (267) 238-1882<br>Email: MOC@ces-ltd.com and CAISOOps@ces-ltd.com |
| **Confirmations:**<br>Attn:<br>Phone:<br>Email: | **Confirmations:**<br>Attn: Power Resources<br>Phone: (415) 464-6010<br>Email: procurement@mcecleanenergy.org |
| **Payments:**<br>Attn: Matthew Gasparovich, Dir. Of Asset<br>Phone: [redacted]<br>Email: [redacted] | **Payments:**<br>Attn: Power Settlements and Analytics<br>Phone: (415) 464-6010<br>Email: settlements@mcecleanenergy.org |
| **Wire Transfer:**<br>BNK:<br>ABA:<br>ACCT: | **Wire Transfer:**<br>[redacted] |

| **RPCA SOLAR 19, LLC** | **MARIN CLEAN ENERGY** |
| --- | --- |
| **With additional Notices of an Event of Default to:**<br>Attn: Robert Sander<br>Phone: [redacted]<br>Email: [redacted] | **With additional Notices of an Event of Default to:**<br>Attn: Legal<br>Phone: (415) 464-6010<br>Email: contracts@mcecleanenergy.org<br><br>**With a copy to:**<br>Hall Energy Law PC<br>Attn: Stephen Hall<br>Phone: (503) 313-0755<br>Email: steve@hallenergylaw.com |
| **Emergency Contact:**<br>Attn:<br>Phone:<br>Email: | **Emergency Contact:**<br>Attn: Vidhi Chawla, VP of Power Resources<br>Phone: (925) 378-6731<br>Email: vchawla@mcecleanenergy.org |

# EXHIBIT O

# 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.

Business Name*

Enter your name

Email address*

Enter your email address

In which State is your business located?*

Enter your answer

In which City/Town is your business located?*

Enter your answer

Please provide the total number of employees across all locations for your organization.*

Enter a number

Please provide the specific number of employees who reside in the state of California.*

Enter a number

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

Choose one...

Did your business use subcontractors for your MCE contract?*

Choose one...

If applicable, please describe any hiring targets your business has for minority-owned, women-owned, LGBTQ-owned, disabled-owned, or disabled veteran-owned subcontractors.

Enter 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

If you answered yes to the previous question, 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.

Enter 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

Choose one...

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.

Enter your answer

Submit

# EXHIBIT P

# POLLINATOR SCORECARD

## Northern California / Oregon

## SOLAR SITE POLLINATOR HABITAT PLANNING SCORECARD

*The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility.*

**1. Planned percent ratio of pollinator-friendly flowers to other vegetation within arrays.** *Select one.*

- ☐ 31-45% flowering species + 5 points
- ☐ 46-60% flowering species + 10 points
- ☐ 61+% or more flowering species + 15 points

**Total Points** ☐

**2. Planned species diversity within arrays (total # of species in re-vegetation, including native grasses).** *Select one.*

- ☐ 9-11 species + 5 points
- ☐ 12-15 species + 10 points
- ☐ 16 or more species + 15 points

**Total Points** ☐

**3. Pollinator friendly vegetative buffer/hedgerow/perimeter plantings adjacent to solar site (can include flowering trees, shrubs, forbs, succulents, and native grasses).** *Select only two.*

- ☐ Vegetation in buffer contains 50%-75% pollinator friendly species[1] + 5 points
- ☐ Vegetation in buffer contains 75%-100% pollinator friendly species[1] + 10 points
- ☐ Vegetative buffer zone is equal to 5%-15% of the array zone[2] + 10 points
- ☐ Vegetative buffer zone is equal to 15% or more of the array zone[3] + 15 points

**Total Points** ☐

**4. Planned species diversity in vegetative buffer/hedgerow/perimeter planting (total # of species in re-vegetation including native grasses).** *Select one.*

- ☐ 9-11 species + 5 points
- ☐ 12-15 species + 10 points
- ☐ 16 or more species + 15 points

**Total Points** ☐

**5. Planned percent of native species used in revegetation across the entire site (arrays, parameters, buffers).** *Select one.*

- ☐ 26-50% + 5 points
- ☐ 51-99% + 10 points
- ☐ 100% + 15 points

**Total Points** ☐

**6. Planned seasons with at least three blooming species present across the entire site.** *Check all that apply.*

- ☐ Spring (March-May) + 5 points
- ☐ Summer (June-August) + 5 points
- ☐ Fall (September-November) + 5 points
- ☐ Winter (December-February) + 5 points

**Total Points** ☐

**7. Additional added habitat components within .25 miles.** *Check all that apply.*

- ☐ Native bunch grasses, leaf litter, woody debris, bare ground + 2 points
- ☐ Native trees/shrubs + 2 points
- ☐ Clean, perennial water sources + 2 points
- ☐ Created wildlife nesting feature(s) (e.g., native bee house) + 2 points

**Total Points** ☐

**8. Site planning and management.**

- ☐ Detailed establishment and long-term management plan developed with funding/contract to implement. + 15 points

**Total Points** ☐

**9. Re-vegetation.** *Check all that apply.*

- ☐ Seed is applied at 50 PLS (Pure Live Seed) or more per square foot + 5 points
- ☐ 20% or more of the native species' seed or plants have a local genetic origin within 200 miles of the site + 5 points
- ☐ For sites located 5 miles or further from the coastline, re-vegetation includes 1% native milkweed or more + 10 points

**Total Points** ☐

**10. Pesticide risk.** *Check all that apply.*

- ☐ Planned on-site insecticide use or use of plant material pre-treated with insecticides (excluding buildings/electrical boxes, etc.) - 40 points
- ☐ Communication/registration with local chemical applicators about need to prevent drift from adjacent areas. + 10 points

**Total Points** ☐

**11. Research and Outreach.** *Check all that apply.*

- ☐ Site is part of a study with a university, research lab, or conservation organization. + 5 points
- ☐ Signage legible from a distance of 40 feet or more stating "pollinator friendly solar habitat" (at least 1 placed every 20 ac.). + 5 points

**Total Points** ☐

[1] Pollinator friendly vegetation includes shrubs, trees, and herbaceous forbs that produce flowering resources for pollinators within any season in combination with native grass species that provide nesting habitat.
[2] A hedgerow buffer that is 5.5 ft. wide surrounding a 1-acre square plot (835 ft.) is equal to 10.5%
[3] A hedgerow buffer that is 8 ft. wide surrounding a 1-acre square plot (835 ft.) is equal to 15.3%

**SCORING**

Total Possible Points: 168
Meets Pollinator Standards: 80-104
Provides Exceptional Habitat: 105 and higher

**TOTAL SCORE** ☐

**Project Name:**
**Vegetation Consultant:**
**Project Location:**
**Total acres (array and open area):**
**Projected Seeding Date:**

WildENERGY UCDAVIS · Fresh Energy · POLLINATOR PARTNERSHIP

**EXHIBIT Q**

**METERING DIAGRAM**

# EXHIBIT R

# FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this "**Assignment Agreement**" or "**Agreement**") is entered into as of [______________] by and among [PPA Seller] ("**PPA Seller**"), Marin Clean Energy, a California joint powers authority ("**PPA Buyer**"), and [Limited Assignee], a [______________] ("**Limited Assignee**"), and relates to that certain Renewable Power Purchase Agreement (the "**PPA**") between PPA Buyer and PPA Seller as described on Appendix 1. Unless the context otherwise specifies or requires, capitalized terms but not define din this Agreement have the meaning set forth in the PPA.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Limited Assignee (the "**Parties**" hereto; each is a "**Party**") agree as follows:

**1. Limited Assignment and Delegation.**

(a) PPA Buyer hereby assigns, transfers and conveys to Limited Assignee all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the "**Assigned Products**") during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the "Further Information" section on Appendix 1 (the "**Assigned Product Rights**"). All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.

(b) PPA Buyer hereby delegates to Limited Assignee the obligation to pay for all Assigned Products that are actually delivered to Limited Assignee pursuant to the Assigned Product Rights during the Assignment Period (the "**Delivered Product Payment Obligation**" and together with the Assigned Product Rights, collectively the "**Assigned Rights and Obligations**"); provided that (i) all other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer and PPA Buyer shall be solely responsible for any amounts due to PPA Seller that are not directly related to Assigned Products; and (ii) the Parties acknowledge and agree that (A) PPA Seller will only be obligated to deliver a single consolidated invoice during the Assignment Period (with a copy to Limited Assignee consistent with Section 1(d) hereof), and (B) Limited Assignee and PPA Buyer's respective payments during the Assignment Period shall be administered by a custodian who will transfer to PPA Seller on each payment due date the amounts paid by Limited Assignee and PPA Buyer with respect to each invoice (and it is anticipated that the custodian will consolidate the amounts received from Limited Assignee and PPA Buyer and make a single wire transfer to PPA Seller with respect to each invoice). To the extent Limited Assignee fails to pay the Delivered Product Payment Obligation by the due date for payment set forth in the PPA (without regard to any additional cure period provided in Section 11.1(a)(i) of the PPA), notwithstanding anything in this Agreement to the contrary, PPA Buyer agrees that it remains responsible for such payment and that it will be an Event of Default pursuant to Section 11.1(a)(i) if PPA Buyer does not make such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller. Notwithstanding the administration of payment obligations by a custodian, PPA Buyer and Limited Assignee shall be liable for their respective payment obligations in accordance with the terms and conditions of the PPA and this Agreement, including for any failure of PPA Seller to receive payment from such custodian by the applicable payment due date.

(c) Limited Assignee hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.

(d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass to Limited Assignee upon delivery by PPA Seller in accordance with the PPA; (ii) PPA Buyer is hereby authorized by Limited Assignee to and shall act as Limited Assignee's agent with regard to scheduling Assigned Product; (iii) PPA Buyer will provide copies to Limited Assignee of any Notice (as defined in the PPA) of a Force Majeure Event or Event of Default or default, breach or other occurrence that, if not cured within the applicable grace period, could result in an Event of Default, contemporaneously upon delivery thereof to PPA Seller and promptly after receipt thereof from PPA Seller; (iv) at Limited Assignee's request, PPA Seller will provide copies to Limited Assignee of annual forecasts and monthly forecasts of Facility Energy provided pursuant to Sections 4.3(a) and (b) of the PPA; (v) at Limited Assignee's request, PPA Seller will provide copies to Limited Assignee of all invoices and supporting data provided to PPA Buyer pursuant to Section 8.1 of the PPA, provided that any payment adjustments or subsequent reconciliations occurring after the date that is 10 days prior to the payment due date for a monthly invoice, including pursuant to Section 8.4 of the PPA, will be resolved solely between PPA Buyer and PPA Seller and therefore PPA Seller will not be obligated to deliver copies of any communications relating thereto to Limited Assignee; and (vi) PPA Buyer and PPA Seller, as applicable, will provide copies to Limited Assignee of any other information reasonably requested by Limited Assignee relating to Assigned Products.

(e) PPA Seller acknowledges that (i) Limited Assignee intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Limited Assignee has the right to purchase from such intermediaries' receivables due from PPA Buyer for any such Assigned Products. To the extent Limited Assignee purchases from such intermediaries any such receivables due from PPA Buyer, Limited Assignee may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

(f) On or before the commencement of the Assignment Period, [________] ("**Guarantor**"), Inc. will issue, in favor of PPA Seller, a guaranty of Limited Assignee's payment obligations under this Assignment Agreement substantially in a form mutually agreed by PPA Seller and the Limited Assignee ("**Guaranty**"). PPA Seller may draw upon, apply, or make demand under the Guaranty to recover any unpaid amounts not timely paid as set forth herein.

(g) Notwithstanding any other provision of this Agreement, PPA Buyer shall be entitled to retain for its own account all CAISO revenues associated with delivery of the Assigned Product to CAISO, including where PPA Buyer is acting as Scheduling Coordinator for the Facility (as defined in the PPA) and through scheduling of ISTs. Nothing in this Agreement modifies or amends any rights or obligations of PPA Buyer and PPA Seller under the PPA with respect to CAISO revenues and costs. As used in this clause (f), the following terms have the meanings specified below.

"**CAISO**" means California Independent System Operator or its successor.

"**CAISO Tariff**" means CAISO's Federal Energy Regulatory Commission approved tariff, as modified, amended or supplemented from time to time.

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

"**Scheduling Coordinator**" 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.

(h) The Assigned Prepay Quantity set forth in Appendix 2 relates to obligations by and between Limited Assignee and PPA Buyer and has no impact on PPA Seller's rights and obligations under the PPA.

(i) Limited Assignee may not assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of PPA Seller; provided that, notwithstanding the foregoing, Limited Assignee may, without the consent of PPA Seller or PPA Buyer, assign this Agreement if either (i) the Guaranty continues to apply to the obligations of the assignee hereunder or (ii) the assignee (a) is an entity with a Credit Rating equal to or better than Limited Assignee's Credit Rating at the time of the Effective Date, and (b) such assignee provides to PPA Seller a replacement guaranty, on terms that are acceptable to PPA Seller acting commercially reasonably, of its obligations issued by the Guarantor ("**Replacement Guaranty**"); provided further that Limited Assignee shall (1) no fewer than fifteen (15) Business Days before any such assignment, give Notice to PPA Seller and PPA Buyer of the particulars of such assignment and the proposed assignment agreement, and, if clause (ii) above in this paragraph applies, supporting documentation as to the assignee's Credit Rating together with the proposed Replacement Guaranty, and (2) upon such assignment provide Notice to PPA Seller and PPA Buyer with a copy of the fully executed assignment agreement and, if applicable, such Replacement Guaranty executed and issued by Guarantor.

**2. Assignment Early Termination.**

(a) The Assignment Period may be terminated early upon the occurrence of any of the following:

(1) delivery of a written notice of termination by either Limited Assignee or PPA Buyer to each of the other Parties hereto;

(2) delivery of a written notice of termination by PPA Seller to each of Limited Assignee and PPA Buyer following Limited Assignee's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day (as defined in the PPA) following receipt by Limited Assignee of written notice thereof;

(3) delivery of a written notice by PPA Seller if any of the events described in Section 11.1(a)(iv) of the PPA occurs with respect to Limited Assignee (or any entity providing a parent guaranty on behalf of Limited Assignee); or

(4) delivery of a written notice by Limited Assignee if any of the events described in Section 11.1(a)(iv) of the PPA occurs with respect to PPA Seller.

(b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clause (a)(1) above.

(c) The Assignment Period will automatically terminate upon the expiration or early termination of the PPA.

(d) The Assignment Period will automatically terminate upon delivery by Guarantor of a notice of termination of the Guaranty, unless a Replacement Guaranty will take effect no later than the termination date of the Guaranty.

(e) All Assigned Rights and Obligations shall revert from Limited Assignee to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) Limited Assignee shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Limited Assignee prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

**3. Representations and Warranties.** The PPA Seller and the PPA Buyer represent and warrant to Limited Assignee that (a) the PPA is in full force and effect; (b) no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder; and (c) all of its obligations under the PPA required to be performed on or before the Assignment Period start date have been fulfilled.

**4. Notices.** Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Article 9 of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Buyers agree to notify Limited Assignee of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. Notices to Limited Assignee shall be provided to the following address, as such address may be updated by Limited Assignee from time to time by notice to the other Parties:

[Limited Assignee]

**5. Miscellaneous.** Article 12 (Limitation of Liability and Exclusion of Warranties), Sections 13.2(e) and (f) (Buyer's Representations and Warranties), Article 18 (Confidential Information), Sections 19.2 (Amendments), 19.4 (No Agency, Partnership, Joint Venture or Lease), 19.5 (Severability), 19.6 (Mobile-Sierra), 19.7 (Counterparts), 19.8 (Electronic Delivery), 19.9 (Binding Effect) and 19.10 (No Recourse to Members of Buyer) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

**6. U.S. Resolution Stay Provisions.** The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol ("ISDA U.S. Stay Protocol"), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and for the purposes of such incorporation, (i) Limited Assignee shall be deemed to be a Regulated Entity, (ii) each of PPA Buyer and PPA Seller shall be deemed to be an Adhering Party, and (iii) this Agreement shall be deemed a Protocol Covered Agreement. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

**7. Governing Law, Jurisdiction, Waiver of Jury Trial.**

(a) Governing Law. This Assignment Agreement and the rights and duties of the Parties under this Assignment Agreement will be governed by and construed, enforced and performed in accordance with the laws of the State of California, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws.

(b) Jurisdiction. Each Party submits to the exclusive jurisdiction of the federal courts of the United States of America for the Northern District of California sitting in the city and county of San Francisco.

(c) Waiver of Right to Trial by Jury. Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Assignment Agreement.

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

| | |
|---|---|
| [PPA SELLER] | MARIN CLEAN ENERGY |
| By: …………………………………….. | By: …………………………………. |
| Name: | Name: |
| Title: | Title: |

[LIMITED ASSIGNEE]

By: ………………………………………
Name:
Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By: …………………………………….
Name:
Title:

## Appendix 1

## Assigned Rights and Obligations

**PPA**: Renewable Power Purchase Agreement, dated [___________], by and between Marin Clean Energy, a California joint powers authority and [PPA Seller].

"**Assignment Period**" means the period beginning on [___________] and extending until [___________], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 2 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA. [*The Assignment Period must end no less than 18 months following the Assignment Period Start Date and no later than the end of the Delivery Term under the PPA.*]

**Assigned Product**: [Describe and define]

**Further Information**: [Include, if any] [*To include transfer and settlement mechanics for RECs, as applicable.*]

## 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 80-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.) in the form of [*describe community benefits*].

☐ If Seller unable to provide the pollinator-friendly habitat, make donation to habitat improvement elsewhere in the form of [*describe habitat improvement*].

# MCE Technical Committee

## Power Purchase Agreement with Copperopolis (RPCA Solar 19, LLC)

October 2, 2026

# DAC-GT Program Overview

- **Customer benefits:** Qualified customers in DACs receive a 20% monthly bill discount.
- **Solar procurement in Disadvantaged Communities:** As a Program Administrator, MCE is required to procure new solar generation capacity in a DAC.
- **State funding:** MCE's program costs, including customer discounts, above-market generation costs, and staff time are recovered from Public Purpose Program funds.

**MCE's DAC-GT Snapshot (July 2026)**

- ✓ **5,611** participating customers of **5,805** capacity (97% enrollment)
- ✓ **8.25 MW** allocated generation capacity

**To qualify, customers must:**

- ✓ Live in a CalEnviroScreen-designated **Disadvantaged Community (DAC)** census tract
- ✓ Participate in **CARE, FERA**, or another qualifying state or federal low-income assistance program.

# New Program Developments

1

**MCE's capacity obligation was expanded in 2024**

A 2024 CPUC decision allocated an additional 3.6 MW of DAC-GT capacity to MCE, raising its total capacity from 4.64 MW to 8.25 MW.

2

**MCE's existing resources aren't enough to fill the new capacity**

**Permanent:** Conflitti Solar (4.64 MW) was approved by CPUC in 2024 and came online in Jan 2026.

**Interim:** To serve its additional capacity allocation, MCE utilizes previously signed PPAs in eligible DACs (Corcoran and Goose Lake)

3

**MCE must adhere to new procurement requirements**

CPUC established a new procurement framework for CCAs to expand DAC-GT capacity, including a PPA cost cap.

MCE received its confidential cost cap in Dec 2025.

4

**Next step: Sign PPA(s) for new projects**

To serve the additional 3.6 MW, MCE launched a competitive solicitation in February 2026 to secure a permanent solar resource.

*The PPA discussed today is the result of that solicitation.*


**2 MW**
**solar in San Joaquin County, CA**

# Copperopolis Solar

- Project Size: 2 MW, 5.2 GWh/year
- Location: Stockton, CA
- Owner/Operator: Renewable Properties
- Commercial Operations Date: 6/30/28
- Term: 20 years

# Notable Terms and Conditions

- Energy-only PPA, no Resource Adequacy
- Facility is in an eligible disadvantaged community census tract and within PG&E's distribution service territory
- Renewable rate is flat over the 20-year term with no escalation
- Contractors are required to enter into union project labor agreements (PLA) for all on-site construction
- At least 50% of labor will be sourced within an 80-mile radius
- Pollinator friendly habitat requirement
- No credit/collateral obligations for MCE

# Recommendation

**Approve:**

Power Purchase Agreement between MCE and RPCA SOLAR 19, LLC (Copperopolis)

**Rationale:**

- Fills portion of MCE's recent allocation of additional capacity in the DAC-GT program
- Creates community benefits by operating in and employing people in a disadvantaged community and offering 20% discount on qualified households' bills
- MCE receives cost recovery for program costs, including customer discounts, above-market generation costs, and staff time

Empowering Our Clean Energy Future
CONTRA COSTA | MARIN | NAPA | SOLANO

October 2, 2026

| | |
|---|---|
| TO: | MCE Technical Committee |
| FROM: | Bill Pascoe, Senior Power Procurement Manager |
| RE: | WAPA Contract for Displacement of Base Resource - Amendment 2 (Agenda Item #07) |
| ATTACHMENTS: | A. Amendment 2 (Extension) to the Contract for Displacement of Base Resource with Central Valley Project Customers (Contract 09-SNR-01256)<br>B. Contract for Displacement of Base Resource with Central Valley Project Customers (Contract 09-SNR-01256)<br>C. Presentation – WAPA Contract for Displacement of Base Resource - Amendment 2 |

Dear Technical Committee Members:

**Summary:**
MCE receives a portion of its electricity supply from the Western Area Power Administration (WAPA) through a Base Resource allocation from the federal Central Valley Project (CVP). WAPA has over 10,000 megawatts of installed capacity that it sells to ~700 preference customers including Federal and state agencies, cities and towns, rural electric cooperatives, public utility districts, irrigation districts, and Native American tribes. MCE's share of the base resource allocation is 0.60852% and consists primarily of low-cost large hydroelectric power generated by federally owned facilities operated by the U.S. Bureau of Reclamation. MCE has received allocations from the CVP since January 1, 2015, pursuant to a Base Resource Agreement with WAPA.[1] The most recent Base Resource Agreement (Contract 20-SNR-02358) between MCE and WAPA was approved by the Board in March 2021 and is effective from 2025 through 2054. MCE's WAPA allocations help diversify its power portfolio and provide a stable source of carbon-free energy for MCE customers.

In 2009, changes in California's electricity market increased the cost of delivering WAPA power to certain customers. To preserve the value of these federal hydroelectric power allocations, WAPA and participating utilities established the Displacement Program. The Displacement Program supplements the Base Resource allocation program and allows

[1] MCE entered into its first Base Resource Agreement with WAPA in 2011 pursuant to Board Resolution 2011-17.

participating utilities to exchange and coordinate energy deliveries so that customers continue to receive the benefit of their WAPA allocations while avoiding certain costs associated with physically moving power across different parts of the electric grid. By reducing transmission, scheduling, and market-related costs, the Displacement Program helps maximize the value of federal hydroelectric power resources and provide savings to participating customers.

MCE joined the Displacement Program in 2014 for a term of ten years and has participated continuously since that time.[2] In 2023, MCE entered into Amendment 1 to the Displacement Program contract, which extended the agreement term by two years through December 31, 2026, while leaving all other program provisions unchanged. Amendment 2 would extend the agreement through December 31, 2028, and update federal compliance language. No changes are proposed to the Displacement Program's operations, settlement methodologies, scheduling procedures, or participant obligations.

Staff recommends the Technical Committee approve Amendment 2 to the Contract for Displacement of Base Resource, thereby allowing MCE to continue to participate in the Displacement Program. Continued participation is expected to produce measurable savings for MCE and support the cost-effective delivery of federal hydroelectric power resources to MCE customers.

**Fiscal Impacts:**
The WAPA Displacement Program has provided measurable economic benefits to MCE through reduced delivery costs associated with its WAPA allocation. Net program savings were approximately $43,476 in 2023, $51,224 in 2024, and $46,543 in 2025, representing more than $140,000 in cumulative benefits over the last three years.

While future savings will vary based on market conditions, continued participation preserves MCE's ability to avoid costs that would otherwise be incurred when scheduling and delivering WAPA energy into CAISO. If Amendment 2 is not approved, MCE could lose access to these cost-saving opportunities and bear additional delivery costs associated with its WAPA allocation.

**Recommendation:**
Approve Amendment 2 to the Contract for Displacement of Base Resource to continue MCE's participation in the Displacement Program through December 2028; and authorize the Interim Chief Executive Officer and the Technical Committee Chair, to execute and deliver the Amendment 2.

[2] MCE entered into the Displacement Program in 2014 pursuant to authority granted by Resolution 2011-17 (approving MCE's participation in the Base Resource allocation program administered by WAPA) and Resolution 2013-04 (granting the MCE CEO annual signing authority for up to $25,000).

UNITED STATES

DEPARTMENT OF ENERGY

WESTERN AREA POWER ADMINISTRATION

SIERRA NEVADA REGION

# AMENDMENT 2
(Extension)

TO THE

CONTRACT FOR DISPLACEMENT OF BASE RESOURCE

WITH

CENTRAL VALLEY PROJECT CUSTOMERS

Amendment 2 to
Contract 09-SNR-01256

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SIERRA NEVADA REGION

# AMENDMENT 2
(Extension)

TO THE
CONTRACT FOR DISPLACEMENT OF BASE RESOURCE

WITH

CENTRAL VALLEY PROJECT CUSTOMERS

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UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SIERRA NEVADA REGION

AMENDMENT 2
(Extension)

TO THE
CONTRACT FOR DISPLACEMENT OF BASE RESOURCE

WITH

CENTRAL VALLEY PROJECT CUSTOMERS

## 1. PREAMBLE:

This Amendment 2 to Contract 09-SNR-01256 (Displacement Contract) is made this ______________, between the United States of America, Department of Energy, Western Area Power Administration (WAPA) and the Central Valley Project (CVP) preference power customers signing this Contract and set forth in Exhibit A, all collectively called Parties.

## 2. EXPLANATORY RECITALS:

2.1 The Parties entered into the Displacement Contract on June 1, 2009. The Displacement Contract sets forth the terms and conditions of the Displacement Program.

2.2 Under the Displacement Contract, the Non-Direct Connect Customers (NDCC) First Preference Power or Base Resource is scheduled to the Direct Connect Customers (DCC) in the BANC/WAPA and TID balancing authority areas, and the DCCs provide an equal amount of energy in quality, quantity, and timing to the NDCCs from resources scheduled from or through the CAISO BA.

2.3 The purpose of the Displacement Program is to preserve the benefit of First Preference Power and Base Resource, create efficiencies, and minimize delivery costs among the NDCCs and the DCCs.

2.4 Amendment 1 to the Displacement Contract extended the term through December 31, 2026.

2.5 The Parties desire to further extend the term of the Displacement Contract and update the General Provisions as described in this Amendment 2.

**3. <u>AGREEMENT</u>:**

The Parties agree to the terms and conditions set forth herein.

**4. <u>TERM OF AMENDMENT</u>:**

This Amendment 2 shall become effective upon execution and shall remain in effect concurrently with the Displacement Contract.

**5. <u>MODIFICATION OF SECTION 4 (EFFECTIVE DATE AND TERM OF CONTRACT) OF THE DISPLACEMENT CONTRACT</u>:**

The following subsection of Section 4 of the Displacement Contract is hereby modified as shown below:

> "4.1 This Contract shall become effective on the first day WAPA designates, and shall remain in effect until midnight of December 31, 2028, subject to prior Termination, as otherwise provided for herein. All requirements set forth in Sections 4.1.1 and 4.1.4 herein must be met prior to this Contract becoming effective."

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**6. <u>MODIFICATION OF SECTION 10 (GENERAL PROVISIONS) OF THE DISPLACEMENT CONTRACT</u>:**

Section 10.10 of the Displacement Contract is hereby deleted and replaced as follows:

"10.10 <u>Compliance with Federal Anti-Discrimination Laws</u>:

10.10.1 The NDCCs and DCCs shall comply with all applicable Federal anti-discrimination laws. Compliance with applicable Federal anti-discrimination laws is material to eligibility for and payment under this contract for purposes of 31 U.S.C. 3729(b)(4).

10.10.2 By executing this agreement, the NDCCs and DCCs certifies that, to the best of its knowledge and belief, it does not operate programs promoting diversity, equity, and inclusion that violate any applicable Federal anti-discrimination laws. "Program promoting diversity, equity, and inclusion" means a program whose purpose is to promote preferences based on race, color, religion, sex, or national origins, such as in training or hiring.

10.10.3 Indian Tribes and tribal organizations may apply Indian preference to the extent permitted by Federal law.

**7. <u>DISPLACEMENT CONTRACT TO REMAIN IN EFFECT</u>:**

Except as expressly modified by this Amendment 2, said Displacement Contract shall remain in full force and effect, and this Amendment 2 shall be subject to all provisions of the Displacement Contract, except as herein amended.

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**8. AUTHORITY TO EXECUTE:**

Each individual signing this Amendment 2 certifies that the Party represented has duly authorized such individual to execute this Amendment 2 that binds and obligates the Party.

**9. EXECUTION BY COUNTERPARTS:**

This Amendment 2 may be executed in any number of counterparts and, upon execution and delivery by each Party, the executed and delivered counterparts together shall have the same force and effect as an original instrument as if all Parties had signed the same instrument. Any signature page of this Amendment 2 may be detached by any counterpart of this Amendment 2 without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Amendment 2 identical in form hereto, by having attached to it one or more signature pages.

**10. ELECTRONIC SIGNATURES:**

The Parties agree that this Amendment 2 may be executed by handwritten signature or digitally signed using DocuSign or Adobe E-Signature. An electronic or digital signature is the same as a handwritten signature and shall be considered valid and acceptable.

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**IN WITNESS WHEREOF**, the Parties have caused this Amendment 2 to be executed the day and year first above written.

EASTSIDE POWER AUTHORITY

(Attest) By:_______________________

Name:

Title:_______________________

By:_______________ Address:_______________________

Title:_______________ _______________________

MARIN CLEAN ENERGY

By:_______________ By:_______________________

Name: Name:

Title:_______________ Title:_______________________

Address:_______________ Address:_______________________

_______________ _______________________

MODESTO IRRIGATION DISTRICT

(Attest) By:_______________________

Name:

Title:_______________________

By:_______________ Address:_______________________

Title:_______________ _______________________

NORTHERN CALIFORNIA POWER AGENCY

(Attest) By:______________________

Name:

Title:______________________

By:______________ Address:______________________

Title:______________ ______________________

POWER AND WATER RESOURCES
POOLING AUTHORITY

(Attest) By:______________________

Name:

Title:______________________

By:______________ Address:______________________

Title:______________ ______________________

CITY OF REDDING

(Attest) By:______________________

Name:

Title:______________________

By:______________ Address:______________________

Title:______________ ______________________

CITY OF ROSEVILLE

(Attest)

By:________________________________________

Name:

Title:______________________________________

By:____________________

Title:__________________

Address:____________________________________

____________________________________________

SACRAMENTO MUNICIPAL UTILITY DISTRICT

(Attest)

By:________________________________________

Name:

Title:______________________________________

By:____________________

Title:__________________

Address:____________________________________

____________________________________________

CITY OF SANTA CLARA
dba SILICON VALLEY POWER

(Attest)

By:________________________________________

Name:

Title:______________________________________

By:____________________

Title:__________________

Address:____________________________________

____________________________________________

TURLOCK IRRIGATION DISTRICT

(Attest)

By:________________________________________

Name:

Title:________________________________________

Address:________________________________________

____________________________________________

By:____________________

Title:____________________

WESTERN AREA POWER ADMINISTRATION

By:________________________________________

Name: Sandee L. Peebles

Title: Vice President of Power Marketing for Sierra Nevada Region

Address: 114 Parkshore Drive
Folsom, California 95630

Contract 09-SNR-01256

UNITED STATES

DEPARTMENT OF ENERGY

WESTERN AREA POWER ADMINISTRATION

SIERRA NEVADA CUSTOMER SERVICE REGION

CENTRAL VALLEY PROJECT, CALIFORNIA

AND

CENTRAL VALLEY PROJECT CUSTOMERS

# CONTRACT FOR DISPLACEMENT OF BASE RESOURCE

Contract 09-SNR-01256

UNITED STATES

DEPARTMENT OF ENERGY

WESTERN AREA POWER ADMINISTRATION

SIERRA NEVADA CUSTOMER SERVICE REGION

CENTRAL VALLEY PROJECT, CALIFORNIA

AND

CENTRAL VALLEY PROJECT CUSTOMERS

# CONTRACT FOR DISPLACEMENT OF BASE RESOURCE

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Contract 09-SNR-01256

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SIERRA NEVADA CUSTOMER SERVICE REGION
CENTRAL VALLEY PROJECT, CALIFORNIA
AND
CENTRAL VALLEY PROJECT CUSTOMERS

CONTRACT FOR DISPLACEMENT OF BASE RESOURCE

1. **PREAMBLE**: This Contract is made this 1st day of June, 2009, pursuant to the Acts of Congress approved June 17, 1902, (32 Stat. 388); August 26, 1937, (50 Stat. 844); August 4, 1939, (53 Stat. 1187); and August 4, 1977, (91 Stat. 565); and Acts amendatory or supplementary to the foregoing Acts; between the UNITED STATES OF AMERICA (United States), acting by and through the Administrator, Western Area Power Administration, Department of Energy, (hereinafter called Western) represented by the officer executing this Contract, or a duly appointed successor, hereinafter called the Contracting Officer, and the Central Valley Project (CVP) preference power customers signing this Contract and set forth in Exhibit A, all collectively called Parties.

2. **EXPLANATORY RECITALS**:

2.1 Consistent with Western's final 2004 Power Marketing Plan (Marketing Plan), Western provides First Preference Power (FPP) to First Preference Customers under a full requirements contract and a percentage of the Base

Resource and Hourly Exchange power (BR) to Central Valley Project (CVP) customers under a base resource contract. First Preference Customers and CVP customers that are not directly connected to Western's transmission system shall be referred to as Non-Direct Connect Customers (NDCC) and they are identified in Exhibit A to this Contract. First Preference Customers and CVP customers that are directly connected to Western's transmission system shall be referred to as Direct Connect Customers (DCC) and they also are identified in Exhibit A to this Contract.

2.2 Western provides power for project purposes (Project Use) prior to marketing power to preference entities. The loads served by Project Use, reside both in and out of the California Independent System Operator Corporation (CAISO) Balancing Authority (BA), and are both non-directly and directly connected to Western's transmission system.

2.3 The Federal Energy Regulatory Commission (FERC) accepted the CAISO's proposed Integrated Balancing Authority Area (IBAA) proposal on September 19, 2008. The CAISO implemented the IBAA proposal simultaneously with the start-up of its Market Redesign and Technology Upgrade (MRTU).

2.4 Under IBAA, imports from the Sacramento Municipal Utility District (SMUD)/Western and Turlock Irrigation District (TID) BAs into the CAISO BA are priced differently than exports from the CAISO BA into the SMUD/Western and TID BAs and therefore could result in adverse financial impacts to both the NDCCs and the DCCs. The Parties believe that the CAISO's discriminatory and arbitrary pricing proposal may expose both the NDCCs and the DCCs to increased financial exposure, unreasonable congestion and loss charges, and unpredictable pricing outcomes. The Parties further believe that the IBAA pricing proposal may have the effect of rendering sales to the CAISO from the SMUD/Western and TID BAs uneconomic in certain circumstances to the ultimate detriment of the Parties' ratepayers.

2.5 The loads that the NDCCs are serving with power received under their full requirements contracts, or base resource contracts are located in the CAISO BA, resulting in the NDCCs incurring charges from the CAISO for imports of FPP and BR into the CAISO BA from the SMUD/Western and TID BAs.

2.6 At times the DCCs export resources out of the CAISO BA into the SMUD/Western and TID BAs, resulting in DCCs incurring charges from the CAISO.

2.7 The NDCCs and the DCCs would like to create a Displacement Program under which the NDCC's FPP or BR would be scheduled to the DCCs in the SMUD/Western and TID BAs, and the DCCs would in turn schedule an equal amount of energy in quality, quantity, and timing to the NDCCs from resources scheduled from or through the CAISO BA.

2.8 Pursuant to the Marketing Plan, Western provides the BR, Optional Purchase, and Custom Products. In light of the CAISO's IBAA program, Western is offering the Displacement Program as a means to continue to fully effectuate its Marketing Plan.

2.9 Western's customers cannot resell federal power provided under Western's contracts without Western's consent. Western supports protecting the value of the FPP and BR and consents to the transactions envisioned by this

Displacement Program and is willing to facilitate a Displacement Program of FPP and BR with the NDCCs and the DCCs, subject to the terms and conditions set forth in this Contract.

2.10 The purpose of the Displacement Program is to preserve the benefit of the FPP and BR, create efficiencies, and minimize delivery costs among the NDCCs and the DCCs.

2.11 Although this Contract documents the terms and conditions for a Displacement Program for FPP and BR, it does not preclude the future inclusion of Project Use under the Displacement Program at such time as Western has coordinated with the Bureau of Reclamation and they both have deemed it appropriate for Project Use to be included. The terms and conditions for the inclusion of Project Use would be determined at that time. The objective will be to include Project Use under the existing terms and conditions of this Contract, however there may be a need for modifications to this Contract. In addition, a separate contract may be needed between Western and the Bureau of Reclamation to document the terms and conditions under which Project Use would be included in the Displacement Program.

3. **AGREEMENT**:

The Parties agree to the terms and conditions set forth herein.

4. **EFFECTIVE DATE AND TERM OF CONTRACT**:

4.1 This Contract shall become effective on the first day Western designates, and shall remain in effect until midnight of December 31, 2024, subject to prior

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Termination, as otherwise provided for herein. All requirements set forth in Sections 4.1.1 and 4.1.4 herein must be met prior to this Contract becoming effective.

4.1.1 The Displacement Program Administrator Contract has been executed by the CVP Corporation, Western, and at least one DCC and one NDCC, and if required by the terms of Section 6 of the Displacement Program Administrator Contract such DCC and NDCC have paid their $3,400.00 payment to CVP Corporation.

4.1.2 The Displacement Scheduling Aggregator Contract between the CVP Corporation and the Displacement Scheduling Aggregator has been executed by the CVP Corporation and the Displacement Scheduling Aggregator.

4.1.3 The Displacement Scheduling Coordinator Contract (Exhibit C to Contract 03-SNR-00583) has been executed by the CVP Corporation and Western, and the funds advanced by each DCC and NDCC to the CVP Corporation under Section 4.1.1 above have been sent to Western to establish the trust account required under Exhibit C to Contract 03-SNR-00583.

4.1.4 The Displacement Program Billing Agent Contract has been executed by the CVP Corporation and the Displacement Program billing agent.

4.2 The Parties agree that only with Western's consent any CVP Customer or First Preference Customer, or Project Use customer not currently a party to this Contract may execute this Contract and begin participating in the Displacement

Program. Western may add such additional customers at any time during this Contract. Such participation by such additional customers would begin as soon as: (1) the appropriate system changes are made by Western; (2) Western coordinates with the Displacement Program Aggregator to test for and verify proper data exchange between the Parties; and (3) Western issues a revised Exhibit A to all Parties to this Contract. This process is expected to take up to seven (7) business days after execution of this Contract by any new customer.

4.3 At any time during the term of this Contract, any individual NDCC or DCC, or Western acting on behalf of the DCCs and/or NDCCs it represents under this Contract may terminate its participation under this Contract for any reason upon twenty-eight (28) calendar days advance written notice to all other Parties. Such termination shall be effective no earlier than the first day of the calendar month that falls at least 28 calendar days after such notification is provided. After a NDCC or a DCC has requested termination of its participation, Western will modify Exhibit A as appropriate to remove such NDCC or DCC.

4.4 The Parties agree that Western shall have the right to make unilateral changes to Exhibit A to reflect the current Parties to the Contract.

4.5 Each time a revision is made to Exhibit A, Western will also issue an authenticated copy of Exhibit A to the Displacement Program Administrator and the Displacement Scheduling Aggregator listed in Exhibit C to the Contract.

4.6 This Contract will remain in effect as long as there is at least one NDCC and one DCC listed in Exhibit A, unless terminated earlier by Western in accordance with Section 4.7.

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AUTHENTICATED COPY

4.7 Western, on behalf of itself, may terminate the Displacement Program for any reason by providing thirty (30) calendar days advance written notice to the other Parties to this Contract. Such termination shall be effective no earlier than the first day of the calendar month that falls at least 30 calendar days after such notification is provided. Termination by Western of this Contract terminates Western's consent for displacement and no further displacements under this Contract may take place after the date of termination.

4.8 All obligations incurred hereunder by any individual DCC, NDCC, or Western acting on behalf of the NDCCs and/or DCCs it represents under this Contract shall be preserved until satisfied.

5. **DEFINITION OF TERMS**:

Unless defined in Section 5 of this Contract or defined elsewhere in this Contract, all terms used in this Contract with initial capitalization shall have the same meaning as those contained in the Master Definitions Supplement of the CAISO Tariff. In addition, as used herein, the following terms whether singular or plural, or used with or without initial capitalization, shall have the following meanings:

5.1 "Base Resource" means CVP and Washoe Project power output, as determined by Western to be available for marketing, after (1) meeting the requirements of Project Use and First Preference Customers, and (2) any other adjustments required for maintenance, regulation, reserves, transformation losses, and ancillary services. For the purpose of this Contract BR shall also include energy from the Hourly Exchange Program.

5.2 "CAISO" means the California Independent System Operator Corporation or its successor.

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5.3 "Displacement Program" means the program developed by Western, the NDCCs and DCCs and documented in this Contract to provide for the displacement of BR, FPP and Project Use.

5.4 "Displacement Program Administrator" means the entity responsible for administering the Displacement Program.

5.5 "Displacement Program Administrator Contract" means the contract which outlines the responsibilities of the Displacement Program Administrator and also defines the cost responsibilities of the NDCCs and the DCCs related to the costs associated with the Displacement Program. All Parties to this Contract as well as the Displacement Program Administrator will execute the Displacement Program Administrator Contract.

5.6 "Displacement Scheduling Aggregator" means the entity that has contracted with the Displacement Program Administrator to perform the duties related to determining allocation of costs and benefits among the Parties to this Contract related to the Displacement Program.

5.7 "First Preference Customer" means a customer or preference-qualified entity located within Trinity, Calaveras, or Tuolumne Counties, California, as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191-1192).

5.8 "First Preference Power" means capacity and energy available under a First Preference Customer entitlement, which is the sum of 1) CVP generation, including energy exchanges with other entities; and 2) purchases made to meet the combined Project Use and First Preference Customer loads.

5.9 "Hourly Exchange Program" means the program in which all Base Resource energy in excess of a CVP customer's load is retained by Western and offered by Western for sale to other CVP customers.

5.10 "Marketing Plan" means Western's 2004 Power Marketing Plan for the Sierra Nevada Region.

5.11 "Project Use" means the power used to operate CVP and Washoe Project facilities in accordance with authorized purposes and pursuant to Reclamation Law.

6. **DISPLACEMENT PROGRAM PRINCIPLES**:

6.1 In executing transactions related to the Displacement Program, NDCCs and DCCs shall not encourage or engage in any type of market manipulation, collusion, or other unlawful practices associated with the energy market.

6.2 The Displacement Program is non-discriminatory and open to all CVP and Project Use customers.

6.3 The Displacement Program shall be administered in accordance with sound business management practices and in a financially prudent manner.

6.4 The Displacement Program shall be administered so that it is consistent with the terms and conditions of the "Adjustment of Base Resource Percentage" section of the BR contracts which precludes the resale of Federal power.

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6.5 The Displacement Program shall be administered so that it ensures that both NDCCs and DCCs get the physical benefit associated with their FPP or BR allocation or their Project Use.

6.6 The intent of the Parties is to share benefits evenly (50/50) between the NDCCs and the DCCs, recognizing that the sharing methodology may not always result in a perfect 50/50 sharing. If the benefit sharing becomes significantly disproportionate to one Party or one class of Parties, the Parties will revise the settlements and scheduling processes on a prospective basis using the procedure identified in Exhibit D.

6.7 The Displacement Program is not intended to shift or increase any Party's costs.

6.8 Nothing in this Contract alters the rights, obligations or duties of the Parties under their BR or FPP Contracts. All Parties shall continue to pay their BR or FPP percentage share of Western's costs, as set forth in each of their respective BR or FPP contracts regardless of BR and FPP quantities participating in the Displacement Program.

6.9 The administration and sharing of benefits arising from the implementation of the Displacement Program shall treat all Parties fairly.

6.10 DCCs shall not take more FPP, BR, or Project Use under the Displacement Program than their available loads consistent with the terms and conditions of the "Electric Service Furnished by Western" section of the BR contracts.

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6.11 The environmental attributes (which can include but is not necessarily limited to: carbon dioxide emissions and renewable power attributes) of all resources used for the Displacement Program by the Parties shall remain with the Parties originally contracting for said resources.

6.12 The Displacement Program is intended to be structured like an energy exchange. The Parties recognize, however, that the CAISO's MRTU does not have mechanisms allowing for classic energy exchanges because of the Day-Ahead and Real-Time energy market structures developed by the CAISO whereby the CAISO becomes the *de facto* purchaser of energy injections into and within the CAISO BA, and the *de facto* seller of energy to all loads within and exports from the CAISO BA. However, the Parties also recognize that market mechanisms, such as the Inter-SC Trade, have been developed within the MRTU Tariff to allow parties to transact at specific points of exchange within the CAISO BA (i.e. Generator PNode, Existing Zone Trading Hub and Load Aggregation Point).

6.13 Costs and benefits of Congestion Revenue Right (CRR) positions taken by the Parties are excluded from the Displacement Program.

7. **SCHEDULING AND SETTLEMENTS**:

7.1 Exhibit B to this Contract documents the settlements process identified and agreed to by the Parties, and includes the shared savings methodology for allocating Displacement Program benefits and/or costs associated with exercising displacement. Exhibit B includes the agreed-upon CAISO charges which are incorporated within the shared savings calculations.

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7.2 Exhibit C documents the scheduling process as identified and agreed to by the Parties for implementing the Displacement Program.

7.3 Displacement of an NDCC's BR, FPP and Project Use will occur with DCC resource positions within or through the CAISO BA.

7.4 BR, FPP, and Project Use used by DCCs under the Displacement Program must be implemented within the same time/scheduling period as BR, FPP, and Project Use offered by the NDCCs.

7.5 The scheduling process for the Displacement Program will function within existing scheduling timeframes, as may be modified from time-to-time, including the Western timeframe for scheduling of BR, FPP and Project Use.

7.6 The Parties will use established market mechanisms to model an energy exchange as closely as possible (i.e. CAISO Inter-SC Trades, Western schedules).

7.7 NDCCs may elect, but are not required, to offer all or a portion of their respective BR or FPP allocations, or their Project Use on an hourly basis on any day for participation in the Displacement Program ("Offered Displacement Energy").

7.8 DCCs may elect, but are not required, to use all or a portion of their Displacement Program allocation on an hourly basis on any day ("Elected Displacement Energy").

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7.9 The allocation methodology for sharing of the Offered Displacement Energy by the DCCs is set forth in Exhibit C.

7.10 The Displacement Program Administrator is identified in Exhibit C to this Contract. The duties of the Displacement Program Administrator are identified in Exhibit C to this Contract.

7.11 The Displacement Scheduling Aggregator is identified in Exhibit C to this Contract. The duties of the Displacement Scheduling Aggregator are identified in Exhibit C to this Contract.

7.12 Upon execution of this Contract, each Party shall designate a representative to participate in the Displacement Program Scheduling and Settlements Working Group ("Working Group"). Exhibit D will contain the representative for each Party and the duties of the Working Group. A Party may at any time, change its representative to the Working Group by providing written notice to Western. When Western is notified of a change to a Party's representative, Western will update Exhibit D.

8. **PAYMENT OBLIGATIONS:**

8.1 The Parties shall settle and be invoiced for Displacement Program transactions using the time frames determined by the Parties that best fit with CAISO settlements and billing time frames. Settlement and billing time frames are documented in Exhibit B, and shall be modified from time-to-time by the Working Group under the terms and conditions of Exhibit D as necessary.

8.2 The Displacement Program Administrator will be responsible for settling the collection and payment of Displacement Program benefits between the

Parties. These benefits are set forth in the Settlements and Shared Savings Methodology procedures which are documented in Exhibit B, and shall be modified from time-to-time by the Working Group under the terms and conditions of Exhibit D as necessary.

9. **ENFORCEABILITY:**

It is not the intent of the Parties that this Contract confer any rights on third parties to enforce the provisions of this Contract except as required by law or express provision in this Contract. Except as provided in this Section 9, this Contract may be enforced, or caused to be enforced, only by Western, the NDCCs, and the DCCs, or their successors or assigns.

10. **GENERAL PROVISIONS:**

10.1 Integration: This Contract constitutes the entire agreement among the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, among the Parties with respect to the subject matter of this Contract. There are no other agreements, representations, warranties, or covenants, which constitute any part of the consideration for or any condition to, any Party's compliance with its obligations under this Contract.

10.2 Waiver of Consequential Damages: No Party hereunder shall be liable for special, incidental, exemplary, indirect or consequential damages, whether based on contract or tort (including such Party's own negligence) and including, but not limited to, loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of purchased power, cost of substitute equipment, facilities or services, downtime costs, or claims of customers of either Party for such damages. (including intentional action, willful action, gross or ordinary negligence, or force majeure); provided, however, that a Party may seek equitable or other non-monetary relief as may be necessary to enforce this Contract and that damages for which a Party may be liable to another Party under another agreement will not be considered damages under this Contract.

10.3 Notices: Any notice, demand, or request in accordance with this Contract, unless otherwise provided in this Contract, shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by first class United States mail, postage prepaid, by confirmed electronic facsimile or by prepaid commercial courier service to a Party via its signatory to the Contract, or a Party's successor in that position, at the addresses used in this Contract. Any Party may at any time change the designation or address of a person specified for purposes of written notice. Such a change shall not constitute an amendment to this Contract.

10.4 Uncontrollable Forces: No Party shall be considered to be in default in respect to any obligation hereunder if prevented from fulfilling such obligation by reason of Uncontrollable Force. The term "Uncontrollable Force" for the purpose of this Contract shall mean any cause beyond the control of the Party affected, including but not limited to flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which Uncontrollable Forces, by exercise of due diligence and foresight, such Party could not reasonably have been expected to avoid. The Party rendered unable to fulfill any obligation by reason of Uncontrollable Force shall exercise commercially reasonable efforts to remove such inability with all reasonable dispatch.

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10.5 Waiver: The failure of a Party to this Contract to insist, on any occasion, upon strict performance of any provision of this Contract will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by a Party of its rights with respect to this Contract shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Contract. Any waivers at any time by any Party of its rights with respect to any default under this Contract, or with respect to any other matter arising in connection with this Contract, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Contract. Any delay, short of the statutory period of limitations, in asserting or enforcing any right under this Contract shall not constitute or be deemed a waiver of such right.

10.6 Legal Representation and Fees: Western may be required to provide legal representation and/or pay for any costs (including judgments) related to legal or regulatory proceedings related to the Displacement Program. The customers participating in the Displacement Program during the time frame associated with any legal or regulatory proceeding, agree to pay Western its legal fees and costs (including any judgment against Western) on a pro rata share based on each party's respective liability or responsibility calculated as that party's megawatthours of participation during the time frame associated with the legal or regulatory proceeding.

10.7 Contingent Upon Appropriations and Authorization: Where activities provided for in the Contract extend beyond the current fiscal year, continued expenditures by the Western are contingent upon Congress making the necessary appropriations required for the continued performance of Western's obligations under the Contract. In case such appropriation is not made, the

NDCCs and DCCs hereby release Western from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

10.8 Covenant Against Contingent Fees: The NDCCs and DCCs warrant that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the NDCCs and DCCs for the purpose of securing business. For breach or violation of this warranty, Western shall have the right to annul the Contract without liability or in its discretion to deduct from the Contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

10.9 Contract Work Hours and Safety Standards: The Contract, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. § 3701, as amended or supplemented, is subject to the provisions of the Act, 40 U.S.C. §§ 3701-3708, as amended or supplemented, and to regulations promulgated by the Secretary of Labor pursuant to the Act.

10.10 Equal Opportunity Employment Practices: Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by Executive Order No. 12086, 43 Fed. Reg. 46501 (1978), as amended or supplemented, which provides, among other things, that the NDCCs and DCCs will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated herein by reference the same as if the specific language had been written into the Contract, except that Indian

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Tribes and tribal organizations may apply Indian preference to the extent permitted by Federal law.

10.11 Use of Convict Labor: The NDCCs and DCCs agree not to employ any person undergoing sentence of imprisonment in performing the Contract except as provided by 18 U.S.C. § 3622(c), as amended or supplemented, and Executive Order No. 11755, 39 Fed. Reg. 779 (1973), as amended or supplemented.

10.12 Authority: The undersigned hereby represents that he or she has the requisite power and authority to bind the applicable Party to the terms and obligations of this Contract.

10.13 Choice of Law and Forum: This Contract is made and entered into in the State of California. Interpretation of this Contract, and performance and enforcement thereof, shall be determined in accordance with California law or Federal law as applicable.

## 11. **EXHIBITS MADE PART OF CONTRACT:**

Exhibit A (List of Customers Participating in Displacement Program), Exhibit B (Settlements and Shared Savings Methodology), Exhibit C (Displacement Program Scheduling Procedures), and Exhibit D (Displacement Program Working Group Representatives) existing under this Contract may vary during the term hereof. Each of said exhibits shall become a part of this Contract during the term fixed by its provisions. Exhibits A, B, C, and D are attached hereto, and each shall be in force and effect in accordance with its terms until respectively superseded by a subsequent exhibit, as allowed by the terms of each exhibit. The Parties agree that Western shall have the right to make unilateral changes to Exhibits A through D to this Contract, as described herein. Each time a revision is made to any one of the exhibits, Western will issue an authenticated copy of such exhibit to all Parties to this Contract. Any time that a Party receives an authenticated copy of an exhibit, that Party shall have thirty (30) days to provide written notification to Western of its intent to terminate its participation under this Contract. The effective termination date shall be in accordance with the termination time frame set forth in Section 4.3 herein. If a Party does not provide notice within the thirty (30) day time period allowed for termination, then the Party is deemed to have accepted the revised exhibit.

12. **EXECUTION IN COUNTERPART**:

This Contract may be executed in a number of counterparts and shall constitute a single document with the same force and effect as if each Party had signed all other counterparts.

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AUTHENTICATED COPY

NDCC

Resolution/Certificate No.

AUTHENTICATED COPY

DCC

Resolution/Certificate No.



AUTHENTICATED COPY

**IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: Sonja A Anderson

Sonja A. Anderson

Title: Power Marketing Manager

Address: 114 Parkshore Drive

Folsom, CA 95630-4710

Date: MAY 2 8 2009

EASTSIDE POWER AUTHORITY

By: [illegible]

Title: PRESIDENT

Address: 14181 AVENUE 24

DELANO, CA 93215

Date: 5/14/09

(Attest)

By: [illegible]

Title: MGR, ESPA

Date: 5/14/09

**IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: Sonja A Anderson

Sonja A. Anderson

Title: Vice President of Power Marketing for Sierra Nevada Region

Address: 114 Parkshore Drive

Folsom, CA 95630-4710

Date: 1/5/15

MARIN CLEAN ENERGY

By: Dawn Weisz

Dawn Weisz

Title: Executive Officer

Address:

Date: 12-18-14

(Attest)

By: BLK

Title: ELIZABETH KELLY, LEGAL DIR.

Date: 12-18-14

**RESOLUTION NO. 2013- 04**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MARIN ENERGY AUTHORITY AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO AND EXECUTE CONTRACTS**

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

**WHEREAS**, MEA members include the following Marin communities: the City of San Rafael, the County of Marin, the City of Larkspur, the City of Belvedere, the Town of Fairfax, the City of Mill Valley, the City of Novato, the Town of Ross, the Town of San Anselmo, the City of Sausalito, the Town of Tiburon, the Town of Corte Madera, the City of Richmond; and

**WHEREAS**, Section 2.5 of the Marin Energy Authority Joint Powers Agreement authorizes the Authority to make and enter into contracts, and to employ staff to administer the Authority; and

**WHEREAS**, on April 10, 2010 the Board issued Resolution No. 2010-05A authorizing the Interim Director to enter into and execute contracts for an amount not to exceed $20,000, consistent with the Board approved budget, the Joint Powers Agreement, and the Operating Rules and Regulations; and

**WHEREAS,** the Board desires to authorize the Executive Officer to enter into and execute contracts for an amount not to exceed $25,000, consistent with the Authority's budget, Joint Powers Agreement, and Operating Rules and Regulations; and

**WHEREAS,** the Board desires to concurrently rescind Resolution No. 2010-05A.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Directors of the Marin Energy Authority:

The Executive Officer is hereby authorized to enter into and execute contracts for an amount not to exceed $25,000 per contractor per fiscal year, consistent with the Board approved budget, the Joint Powers Agreement, and the Operating Rules and Regulations. The Executive Officer shall report all contracts executed by the Executive Officer pursuant to the authority granted by this resolution to the Board of Directors at their next regular meeting.

Resolution No. 2010-05A, A Resolution of the Board of Directors of the Marin Energy Authority Authorizing the Interim Director to Enter Into and Execute Contracts, is hereby rescinded.

**PASSED AND ADOPTED** at a regular meeting of the Marin Energy Authority Board of Directors on this 7th day of March, 2013, by the following vote:

| | AYES | NOES | ABSTAIN | ABSENT |
|---|---|---|---|---|
| City of San Rafael | ✓ | | | |
| County of Marin | ✓ | | | |
| City of Larkspur | ✓ | | | |
| City of Mill Valley | | | | ✓ |
| Town of San Anselmo | | | | ✓ |
| Town of Ross | ✓ | | | |
| City of Richmond | ✓ | | | |
| City of Novato | ✓ | | | |
| Town of Corte Madera | ✓ | | | |
| Town of Fairfax | ✓ | | | |
| City of Belvedere | ✓ | | | |
| City of Sausalito | | | | ✓ |
| Town of Tiburon | ✓ | | | |

CHAIR, MARIN ENERGY AUTHORITY BOARD

APPROVED
MAR 07 2013
MARIN
ENERGY AUTHORITY

**RESOLUTION NO. 2011-17**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MARIN ENERGY AUTHORITY APPROVING THE ELECTRIC SERVICE BASELOAD CONTRACT WITH THE WESTERN AREA POWER ADMINISTRATION**

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

**WHEREAS**, MEA members include the following Marin communities: the County of Marin, the City of Belvedere, the Town of Fairfax, the City of Mill Valley, the Town of San Anselmo, the City of San Rafael, the City of Sausalito and the Town of Tiburon; and

**WHEREAS**, the Western Area Power Administration (WAPA) is one of four power marketing administrations within the U.S. Department of Energy whose role is to market and transmit electricity from multi-use water projects; and

**WHEREAS**, WAPA markets and delivers cost-based hydroelectric power and related services within a 15-state region of the central and western United States; and

**WHEREAS**, Western's transmission system carries electricity from 57 power plants operated by the Bureau of Reclamation, U.S. Army Corps of Engineers and the International Boundary and Water Commission with a combined installed capacity of 10,479 megawatts; and

**WHEREAS**, The Western Sierra Nevada Region (SNR), headquartered in Folsom, CA, markets power in northern and central California, and portions of Nevada, to wholesale customers and Federal end-use customers such as towns, rural electric cooperatives, public utilities and irrigation districts, Federal, state, and military agencies, Native American tribes, and U.S. Bureau of Reclamation customers; and

**WHEREAS**, Western SNR markets surplus power from the California Central Valley Project (CVP), which includes 11 hydro-electric power plants with 2,055 MW of production capacity; and

**WHEREAS**, Most power that SNR sells is generated by power plants owned and operated by the Bureau of Reclamation, including those at Shasta, Folsom, Trinity and New Melones dams; and

**WHEREAS**, On December 10th, 2010, Western published the final 2015 Resource Pool Allocations, granting MEA a 0.62094% share of the CVP Base

Resource; and

**WHEREAS**, the MEA Board of Directors approved the Electric Base Resource Contract with the Western Area Power Administration on November 3, 2011.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Directors of the Marin Energy Authority that the Board of Directors of the Marin Energy Authority approves the Electric Service Base Resource Contract with the Western Area Power Administration.

**PASSED AND ADOPTED** at a regular meeting of the Marin Energy Authority Board of Directors on this 1st day of December 2011 by the following vote:

| | AYES | NOES | ABSTAIN | ABSENT |
|---|---|---|---|---|
| City of Belvedere | | | | ✓ |
| Town of Fairfax | ✓ | | | |
| County of Marin | ✓ | | | |
| City of Mill Valley | ✓ | | | |
| Town of San Anselmo | ✓ | | | |
| City of San Rafael | ✓ | | | |
| City of Sausalito | ✓ | | | |
| Town of Tiburon | | | | ✓ |

CHAIR, MARIN ENERGY AUTHORITY BOARD

ATTEST:

SECRETARY, MARIN ENERGY AUTHORITY BOARD

**IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: Sonja A. Anderson

Sonja A. Anderson

Title: Power Marketing Manager

Address: 114 Parkshore Drive

Folsom, CA 95630-4710

Date: JUL 28 2009

MODESTO IRRIGATION DISTRICT

By: Allen Short

Allen Short

Title: General Manager

Address: 1231 11th Street

Modesto, CA 95352

Date: July 23, 2009

(Attest)

By: Pat Mille

Title: Secretary to the Board

Date: July 23, 2009

**RESOLUTION NO. 2009-57**
**APPROVING EXECUTION OF TWO CONTRACTS; THE CONTRACT FOR DISPLACEMENT OF BASE RESOURCE BETWEEN THE WESTERN AREA POWER ADMINISTRATION AND CENTRAL VALLEY PROJECT CUSTOMERS AND EXHIBIT C TO THE CENTRAL VALLEY PROJECT CORPORATION MEMBERSHIP AGREEMENT AUTHORIZING CVP CORP TO ACT AS DISPLACEMENT PROGRAM ADMINISTRATOR**

WHEREAS, MID receives an allocation of power from the Western Area Power Administration (WAPA) and is directly connected to WAPA; and

WHEREAS, on April 1, 2009, the California Independent System Operator Corporation (ISO) implemented its proposed Integrated Balancing Authority Area (IBAA) proposal as part of its Market Redesign and Technology Upgrade (MRTU); and

WHEREAS, under the IBAA proposal, MID imports from the CAISO into the SMUD/WAPA Balancing Authority Area are priced differently than exports out of the SMUD/WAPA Balancing Authority Area into the CAISO Balancing Authority Area; and

WHEREAS, the IBAA pricing may expose MID to increased financial exposure, unreasonable congestion and loss charges, and unpredictable pricing outcomes; and

WHEREAS, WAPA customers within the CAISO Balancing Authority Area that are not directly connected to WAPA (NDCCs) may find it uneconomic to inject power into the CAISO Balancing Authority Area under the CAISO's IBAA proposal; and

WHEREAS, in order to preserve the benefits of WAPA power for customers directly connected to WAPA (DCCs) and NDCCs, WAPA has agreed to offer a displacement program under which the NDCCs' power would be scheduled to the DCCs in the SMUD Balancing Authority Area, and the DCCs would, in turn, schedule an equal amount of energy to the NDCCs from resources scheduled from or through the CAISO Balancing Authority Area; and

WHEREAS, the DCCs and the NDCCs have agreed to split equally the benefits derived from the displacement program.

BE IT RESOLVED, That the Board of Directors of the Modesto Irrigation District does hereby authorize and direct the General Manager to execute two contracts; the Contract for Displacement of Base Resource between the Western Area Power Administration and Central Valley Project Customers and Exhibit C to the Central Valley Project Corporation Membership Agreement authorizing CVP Corp to act as Displacement Program Adminstrator.

Moved by Director Hensley, seconded by Director Kidd, that the foregoing resolution be adopted.

The following vote was had:
Ayes: Directors Hensley, Kidd, Serpa, Van Groningen and Warda
Noes: Directors None
Absent: Directors None
The President declared the resolution adopted.

oOo

I, Angela Cartisano, Assistant Secretary of the Board of Directors of the MODESTO IRRIGATION DISTRICT, do hereby CERTIFY that the foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of said Board of Directors held the 14th day of July 2009.

Assistant Secretary of the Board of Directors
of the Modesto Irrigation District

**IN WITNESS WHEREOF,** the Parties have caused this Contract to be executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: Sonja A Anderson

Sonja A. Anderson

Title: Power Marketing Manager

Address: 114 Parkshore Drive

Folsom, CA 95630-4710

Date: MAY 28 2009

NORTHERN CALIFORNIA POWER AGENCY

By: [signature]

Title: GM

Address: 651 Commerce

Roseville, CA 95678

Date: 5/28/09

(Attest)

By: Denise Dow

Title: Executive Assistant

Date: 5/28/09

**IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: Sonja A Anderson

Sonja A. Anderson

Title: Power Marketing Manager

Address: 114 Parkshore Drive

Folsom, CA 95630-4710

Date: JAN 27 2010

POWER AND WATER RECOURCES POOLING AUTHORITY

By: William Paulson

Title: General Manager

Address: 2106 Homewood Way Ste 100

Carmichael CA

Date: 1/21/10

(Attest)

By:

Title: SECRETARY, PWRPA

Date: JAN 21, 2010

# Power & Water Resources Pooling Authority
## Resolution 09-05-05

## RESOLUTION AUTHORIZING AND DIRECTING THE GENERAL MANAGER TO ENTER INTO CONTRACTS ENABLING THE DISPLACEMENT OF CENTRAL VALLEY PROJECT BASE RESOURCE ALLOCATIONS FOR THE PURPOSE OF ACHIEVING EFFICIENCIES AND MINIMIZING DELIVERY COSTS

WHEREAS, the Power and Water Resources Pooling Authority (Pooling Authority) was created by a Joint Powers Agreement to, among other things, study, promote, develop, conduct, finance, acquire, construct, and/or operate water and energy-related projects and programs; and

WHEREAS, the Pooling Authority Parties and Stakeholders, as defined in the Joint Powers Agreement, have signed an Aggregation Services Agreement ("ASA") under which the Authority provides aggregated electric services to electric accounts designated by Parties and Stakeholders that are signatories to the ASA ("Project Participants"), and

WHEREAS, the Western Area Power Administration ("Western") markets the surplus generation from the Central Valley Project pursuant to its 2004 Power Marketing Plan ("Marketing Plan"); and

WHEREAS, pursuant to the Marketing Plan, Western executed Base Resource Contract 04-SNR-00722 ("Base Resource Contract") with the Pooling Authority on August 12, 2004; and

WHEREAS, the Pooling Authority executed a Membership Agreement with the Central Valley Project Corporation ("CVP Corp") in August 2008; and

WHEREAS, certain Base Resource customers are not directly connected to Western's transmission system ("NDCCs") and other Base Resource customers are directly connected to Western's transmission system ("DCCs"); and

WHEREAS, all Pooling Authority Project Participants are NDCCs except Byron-Bethany Irrigation District which is a DCC; and

WHEREAS, the Federal Energy Regulatory Commission conditionally approved the Integrated Balancing Authority Area ("IBAA") proposal of the California Independent System operator ("CAISO") on September 19, 2008 such that the CAISO implemented the IBAA proposal simultaneously with the start-up of its Market Redesign and Technology Upgrade ("MRTU"); and

WHEREAS, implementation of IBAA could result in adverse financial impacts to both the NDCCs and the DCCs because imports from the Sacramento Municipal Utility District ("SMUD")/Western and Turlock Irrigation District ("TID") Balancing Authorities ("BAs") to the CAISO BA are priced differently than exports from the CAISO BA into the SMUD/Western and TID BAs; and

WHEREAS, the NDCCs and DCCs believe that the CAISO's MRTU pricing proposal may expose them to increased financial exposure, unreasonable congestion and loss charges, and unpredictable pricing outcomes as well as have the effect of causing sales to the CAISO



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from the SMUD/Western and TID BAs to be uneconomic in certain circumstances to the ultimate detriment of the NDCC and DCC ratepayers; and

WHEREAS, the loads that the NDCCs are serving with power received under their Base Resource Contracts incur charges from the CAISO for imports from the SMUD/Western and TID Bas and at times the DCCs export resources out of the CAISO BA into the SMUD/Western and TID BAs, resulting in DCCs incurring charges from the CAISO; and

WHEREAS, the NDCCs and the DCCs seek to create a Displacement Program under which the NDCCs Base Resource can be scheduled to the DCCs in the SMUD/Western and TID BAs, and the DCCs in turn can schedule an equal amount of energy in quality, quantity, and timing to the NDCCs from resources scheduled from or through the CAISO BA; and

WHEREAS, in consideration of the CAISO's IBAA program, Western is offering the Displacement Program through Contract 09-SNR-01256 ("Displacement Contract") as a means to continue to fulfill the intent of the 2004 Power Marketing Plan; and

WHEREAS, the CVP Corp has agreed to be the Displacement Program Administrator as described in the Displacement Contract; and

WHEREAS, the CVP Corp will contract with a Displacement Scheduling Aggregator who will be responsible for scheduling the displaced Base Resource energy between DCCs and NDCCs on an hourly basis, calculating the savings statements, and preparing corresponding financial reports which will be used as input for invoicing; and

WHEREAS, the CVP Corp will contract with a Scheduling Coordinator which will schedule the trades between the DCCs and NDCCs to the CAISO; and

WHEREAS, the CVP Corp will contract with a Billing Agent to collect and make payments to and from the participants as calculated by the Displacement Scheduling Aggregator and collect fees from the participants to make payments for the service contracts required to enable the displacement transactions; and

WHEREAS, the CVP Corp Participant Exhibit C establishes the repayment mechanisms necessary to pay for the program costs incurred by CVP Corp in performing its administrative responsibilities.

NOW, THEREFORE, BE IT RESOLVED that the Pooling Authority Board of Directors hereby:

1. Finds that it is reasonable and consistent with the purpose and objective of the ASA for the Pooling Authority to participate in the Displacement Program which is being established to preserve the value and benefit of the Pooling Authority's Base Resource allocations, create efficiencies amongst Central Valley Project customers, and minimize delivery costs among the Non-Direct Connect Customers and the Direct Connect Customers.

2. Authorizes the General Manager to execute and implement the Displacement Contract, attached as Exhibit A to this Resolution, and the Participant Exhibit C Agreement, attached as Exhibit B to this Resolution, with the prior approval of General Counsel as to the form of the final, executable versions.

3. Authorizes this Resolution to take effect immediately upon its adoption.

PASSED AND ADOPTED by the Pooling Authority Board of Directors this 4th day of November 2009, by the following vote on roll call:

| | |
|---|---|
| AYES | Arvin-Edison WSD, Banta Carbona ID, Byron-Bethany ID, Glenn-Colusa ID, James ID, Lower Tule River ID, Santa Clara Valley WD, Sonoma County Water Agency, West Stanislaus ID, Westlands Water District (80.6% voting shares) |
| NOES | None |
| ABSENT | Cawelo Water District, Princeton/Provident ID, RD 108, The West Side ID (19.4% voting shares) |

David Weisenberger
Chairman

Attest by: Bruce McLaughlin
Secretary

**IN WITNESS WHEREOF,** the Parties have caused this Contract to be executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: Sonja A Anderson

Sonja A. Anderson

Title: Power Marketing Manager

Address: 114 Parkshore Drive

Folsom, CA 95630-4710

Date: MAY 28 2009

CITY OF REDDING

ELECTRIC DEPARTMENT

By: Paul Hauser

Paul Hauser

Title: Electric Utility Director

Address: 777 Cypress Avenue

Redding CA 96001

Date: 5/12/09

C-5140

(Attest)

By: Pamela Mize, Asst City Clerk

for Title: CONNIE STROHMAYER, CITY CLERK

Date: 5/22/09

Form Approved

B E DeWalt

Barry E. DeWalt

Assistant City Attorney

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DCC

Resolution/Certificate No. 2009-53

Contract 09-SNR-01256

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# RESOLUTION NO. 2009 - 53

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REDDING AUTHORIZING THE REDDING ELECTRIC UTILITY DIRECTOR TO SIGN BOTH THE CONTRACT FOR THE DISPLACEMENT OF BASE RESOURCE ENERGY (CONTRACT NUMBER 09-SNR-01256) AND THE CONFIRMATION LETTER FOR ADVANCE FUNDING WITH THE WESTERN AREA POWER ADMINISTRATION**

**WHEREAS,** on April 1, 2009, the California Independent System Operator (CAISO) implemented the Market Redesign and Technology Upgrade; and

**WHEREAS,** Market Redesign and Technology Upgrade charges significant fees to import and export power between the CAISO Balancing Authority and the Sacramento Municipal Utility District Balancing Authority; and

**WHEREAS,** the Redding Electric Utility and the Western Area Power Administration reside within the Sacramento Municipal Utility District Balancing Authority; and

**WHEREAS,** the Western Area Power Administration has implemented the Base Resource Displacement Program to mitigate the additional expenses related to Market Redesign and Technology Upgrade; and

**WHEREAS,** Redding Electric Utility will benefit through the reduction of CAISO expenses through utilizing the Base Resource Displacement Program when participating in the CAISO energy market;

**WHEREAS,** Western is requiring all base resource displacement customers to establish a trust account for displacement services performed by Western;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Redding that the Redding Electric Utility Director will be authorized to sign both the Contract for the Displacement of Base Resource Energy (contract number 09-SNR-01256) and the Confirmation Letter for Advance Funding with the Western Area Power Administration.

**I HEREBY CERTIFY** that the foregoing Resolution was introduced, read, and adopted at a regular meeting of the City Council on the 19th day of May, 2009, by the following vote:

| | | |
|---|---|---|
| **AYES:** | **COUNCIL MEMBERS:** | **Dickerson, Jones, McArthur, Stegall, and Bosetti** |
| **NOES:** | **COUNCIL MEMBERS:** | **None** |
| **ABSENT:** | **COUNCIL MEMBERS:** | **None** |
| **ABSTAIN:** | **COUNCIL MEMBERS:** | **None** |

THIS INSTRUMENT IS A CORRECT COPY
OF THE ORIGINAL ON FILE IN THIS OFFICE
ATTEST
MAY 22 2009
By Pamela M...
CONNIE STROHMAYER
CITY CLERK AND CLERK OF THE CITY COUNCIL
OF THE CITY OF REDDING, COUNTY OF SHASTA,
STATE OF CALIFORNIA
DEPUTY

*/s/ Rick Bosetti*
**RICK BOSETTI, Mayor**

**Attest:**

*/s/ Connie Strohmayer*
**CONNIE STROHMAYER, City Clerk**

**Form Approved:**

*/s/ Richard A. Duvernay*
**RICHARD A. DUVERNAY, City Attorney**

**IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: Sonja A Anderson

Sonja A. Anderson

Title: Power Marketing Manager

Address: 114 Parkshore Drive

Folsom, CA 95630-4710

Date: JUNE 25, 2009

CITY OF ROSEVILLE

By: W. Craig Robinson

W. Craig Robinson

Title: City Manager

Address: 311 Vernon Street

Roseville, CA 95678

Date: June 18, 2009

(Attest)

By: Sonia Orozco

Title: City Clerk

Date: June 23, 2009

RESOLUTION NO. 09-243

APPROVING A CONTRACT BETWEEN THE CITY OF ROSEVILLE AND UNITED STATES OF AMERICA, DEPARTMENT OF ENERGY, WESTERN AREA POWER ADMINISTRATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE IT ON BEHALF OF THE CITY OF ROSEVILLE

WHEREAS, a Contract for Displacement of Base Resource (09-SNR-01256), between the City of Roseville and the United States of America, Department of Energy, Western Area Power Administration – Sierra Nevada Region, has been reviewed by the City Council; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Roseville that said contract is hereby approved and that the City Manager is authorized to execute it on behalf of the City of Roseville.

PASSED AND ADOPTED by the Council of the City of Roseville this 17th day of June, 2009, by the following vote on roll call:

AYES COUNCILMEMBERS: Allard, Gray, Garcia, Roccucci, Garbolino

NOES COUNCILMEMBERS: None

ABSENT COUNCILMEMBERS: None

MAYOR

ATTEST:

City Clerk



AUTHENTICATED COPY

**IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: Sonja A Anderson

Sonja A. Anderson

Title: Power Marketing Manager

Address: 114 Parkshore Drive

Folsom, CA 95630-4710

Date: MAY 2 8 2009

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By:

John DiStasio

Title: General Manager and CEO

Address: 6201 S Street

Sacramento, CA 95817

Date: 5/21/09

(Attest)

By:

Title: Senior Attorney

Date: 5/21/09

## SECRETARY'S CERTIFICATE

I, Arlen Orchard, Secretary of Sacramento Municipal Utility District (SMUD), hereby certify that the foregoing is a full, true and correct copy of Resolution No. 09-04-11 duly adopted at a regular session of the Board of Directors of SMUD on the 16th day of April 2009, at which meeting all of the members of said Board of Directors had due notice and at which a majority thereof were present; and that at said meeting said resolution was adopted by the following vote:

| INTRODUCED BY DIRECTOR CARR | | | | |
|---|---|---|---|---|
| SECONDED BY DIRECTOR TAYLOR | | | | |
| DIRECTOR | AYE | NO | ABSTAIN | ABSENT |
| POSNER | X | | | |
| SLATON | X | | | |
| TAYLOR | X | | | |
| BUI | X | | | |
| SHIROMA | X | | | |
| KERTH | X | | | |
| CARR | X | | | |

I further certify that I have carefully compared the same with the original minutes of said meeting on file and of record in my office; that said resolution is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes; and that said resolution has not been amended, modified, or rescinded since the date of its adoption, and is now in full force and effect.

WITNESS my hand and the seal of Sacramento Municipal Utility District this 21st day of May 2009.

Arlen Orchard
General Counsel and Secretary of the
Sacramento Municipal Utility District

# RESOLUTION NO. 09-04-11

**WHEREAS,** SMUD receives an allocation of power from the Western Area Power Administration (Western) and is directly connected to Western; and

**WHEREAS**, on April 1, 2009, the California Independent System Operator Corporation (ISO) implemented its proposed Integrated Balancing Authority Area (IBAA) proposal as part of its Market Redesign and Technology Upgrade (MRTU);

**WHEREAS**, under the IBAA proposal, SMUD imports from the CAISO into the SMUD Balancing Authority Area are priced differently than exports out of the SMUD Balancing Authority Area into the CAISO Balancing Authority Area;

**WHEREAS**, the IBAA pricing may expose SMUD to increased financial exposure, unreasonable congestion and loss charges, and unpredictable pricing outcomes,

**WHEREAS**, Western customers within the CAISO Balancing Authority Area that are not directly connected to Western (NDCCs) may find it uneconomic to inject power into the CAISO Balancing Authority Area under the CAISO's IBAA proposal;

**WHEREAS**, in order to preserve the benefits of Western power for customers directly connected to Western (DCCs) and NDCCs, Western has agreed to offer a displacement program under which the NDCCs' power would be scheduled to the DCCs in the SMUD Balancing Authority Area, and the DCCs would, in turn, schedule an equal amount of energy to the NDCCs from resources scheduled from or through the CAISO Balancing Authority Area;

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**WHEREAS**, the DCCs and the NDCCs have agreed to split equally the benefits derived from the displacement program;

**WHEREAS**, the Central Valley Project Corporation (CVP Corp.) will administer the Western displacement program as part of its duties under the CVP Corp. Membership Agreement; **NOW, THEREFORE,**

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT:**

**Section 1.** That this Board hereby authorizes the General Manager and CEO, or his designee, to negotiate and execute the specific terms and conditions of a Contract for Displacement of Base Resource with the Western Area Power Administration, in substantial conformance with **Attachment B.**

**Section 2.** That this Board hereby authorizes the General Manager and CEO, or his designee, to negotiate and execute the specific terms and conditions of Exhibit C to the Central Valley Project Corporation Membership Agreement, in substantial conformance with **Attachment C.**

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**Section 3.** That the General Manager is authorized to make future changes to the terms and conditions of the contracts that, in his prudent judgment: (a) further the primary purpose of the contracts; and (b) are intended to provide a net benefit to SMUD.

Adopted: April 16, 2009

| INTRODUCED: DIRECTOR CARR | | | | |
|---|---|---|---|---|
| SECONDED: DIRECTOR TAYLOR | | | | |
| DIRECTOR | AYE | NO | ABSTAIN | ABSENT |
| POSNER | X | | | |
| SLATON | X | | | |
| TAYLOR | X | | | |
| BUI | X | | | |
| SHIROMA | X | | | |
| KERTH | X | | | |
| CARR | X | | | |

**IN WITNESS WHEREOF,** the Parties have caused this Contract to be executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: Sonja A Anderson

Sonja A. Anderson

Title: Power Marketing Manager

Address: 114 Parkshore Drive

Folsom, CA 95630-4710

Date: JUL 21 2009

CITY OF SANTA CLARA

DBA SILICON VALLEY POWER

By: Jennifer Sparacino

(Attest)

Title: City Manager

By: [signature]

Address: 1500 Warburton Avenue

Title: City Clerk

Santa Clara, CA 95050

Date: 7/13/09

Date: 07/13/09

Approved by Council on: 07/07/09

**APPROVED AS TO FORM:**

***SANTA CLARA CITY ATTORNEY'S OFFICE***
***HELENE LEICHTER, CITY ATTORNEY***

**By:** Lindsay Speck
**LINDSAY SPECK**
**DEPUTY CITY ATTORNEY**

**IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: Arun K. Sethi

Arun K. Sethi

Title: Vice President of Power Marketing for Sierra Nevada Region

Address: 114 Parkshore Drive
Folsom, CA 95630-4710

Date: JUN 3 2019

TURLOCK IRRIGATION DISTRICT

By:

BRAD KOEHN

Title: AGM OF POWER SUPPLY

Address: 333 East Canal Drive
Turlock, CA 95380

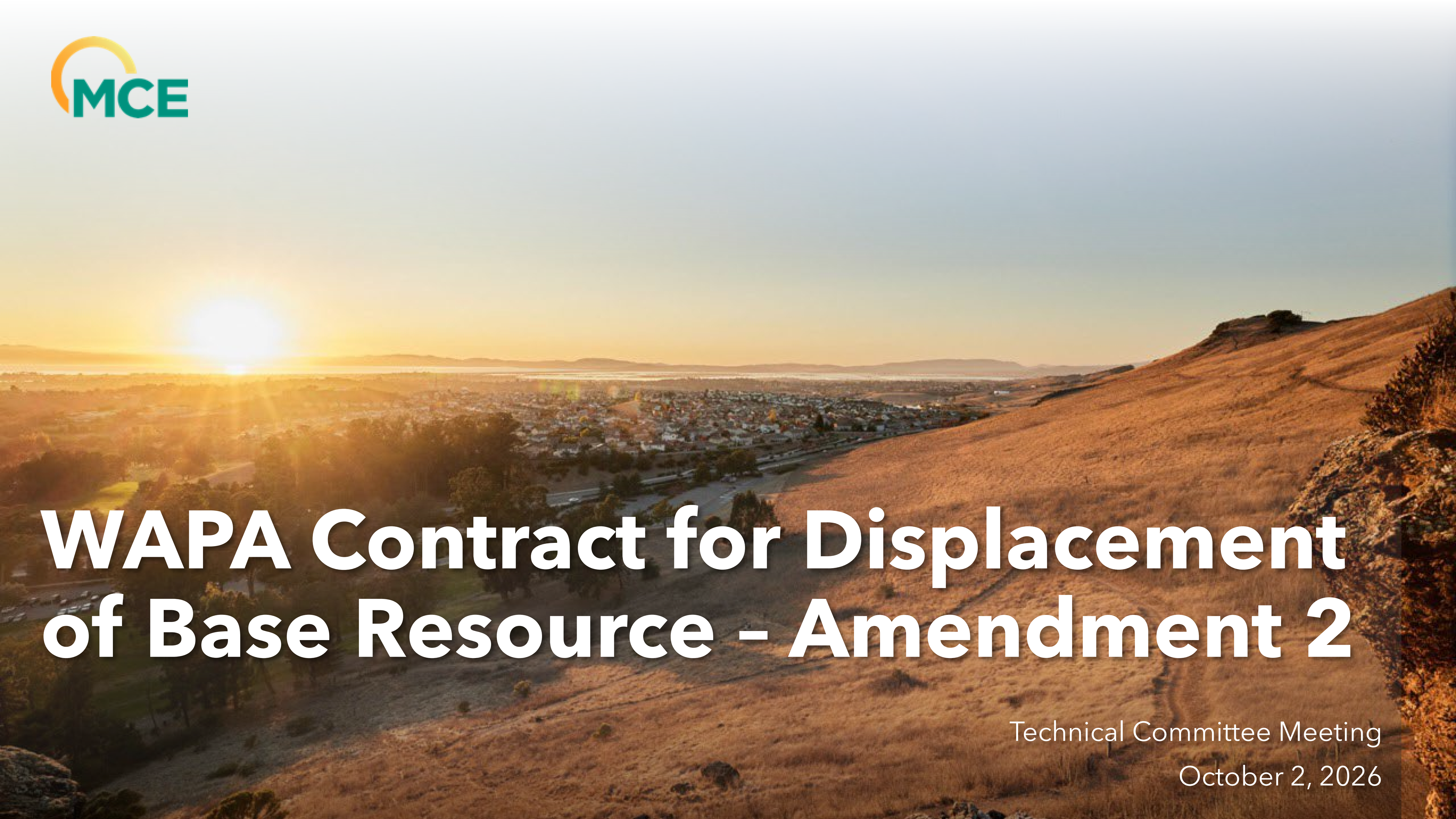
Date: 06/03/19

(Attest)

By Carrie Ann Kostecky

Title: CIVIL ENG TECH.

Date: 6/3/19



MCE

# WAPA Contract for Displacement of Base Resource – Amendment 2

Technical Committee Meeting

October 2, 2026

# WAPA Agreement Overview

MCE receives low-cost, carbon-free hydroelectric power through its WAPA Central Valley Project (CVP) Base Resource allocation.

- CVP allocation has served MCE since January 1, 2015 and is effective through 2054
- Displacement Program established to reduce delivery costs
- MCE joined the Displacement Program and has participated continuously since start of energy deliveries
- Program reduces transmission, scheduling and market-related costs while preserving value of federal hydropower allocations
- Amendment 1 to the Displacement program extended the agreement term from December 31, 2024 through December 31, 2026

# Displacement Program Financial Benefits

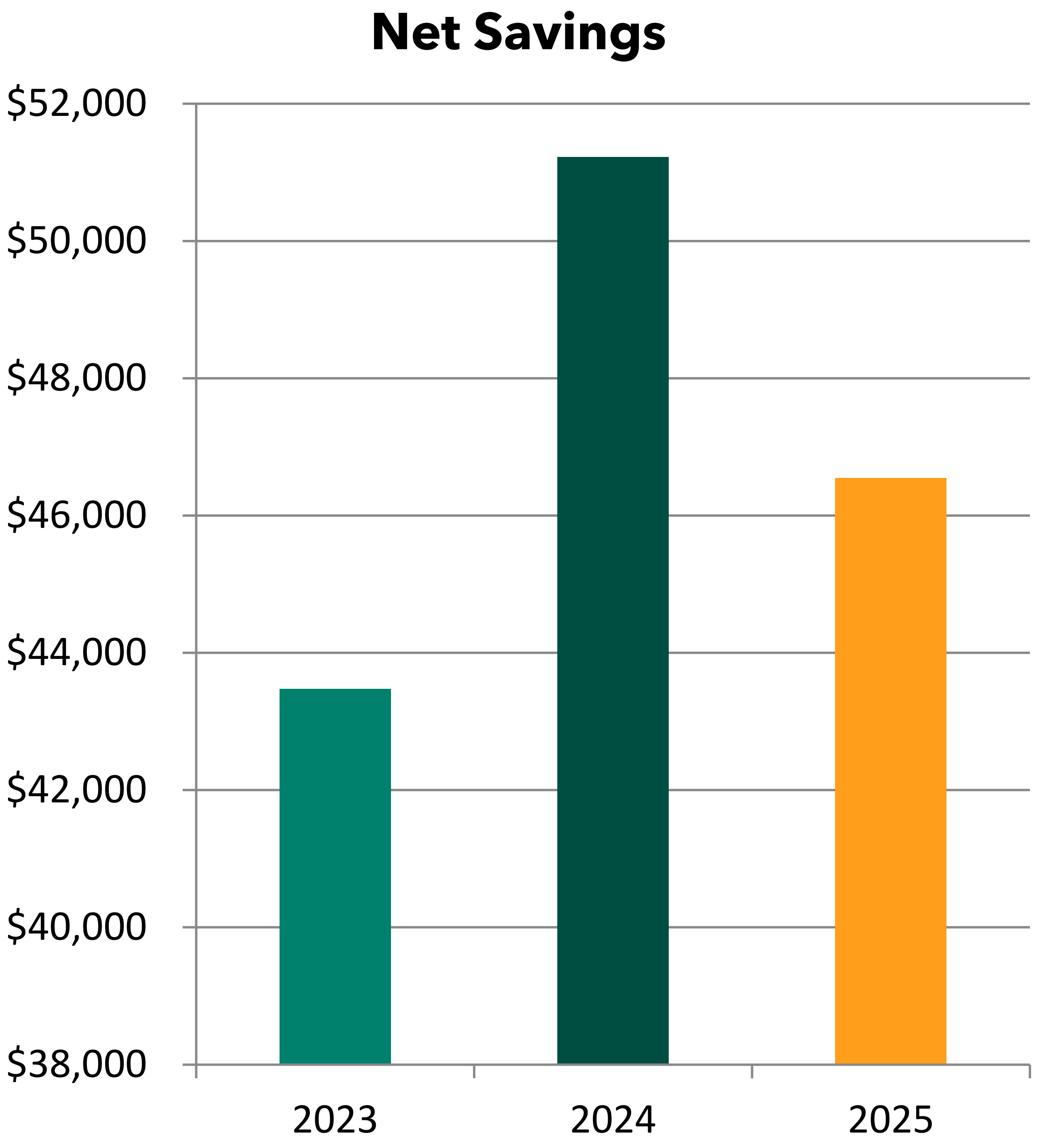
**Snapshot of Historic Benefits:**

- $43,476 savings in 2023
- $51,224 savings in 2024
- $46,543 savings in 2025
- More than $140,000 cumulative three-year benefit

    *Future Savings will vary based on market conditions

**Amendment 2:**

- Extends program term from Dec. 31, 2026 to Dec. 31, 2028
- No changes to operations, settlements, scheduling, or obligations



# Recommendation and Board Action

Why Continue Participation?

- Preserves access to proven cost-saving opportunities when delivering WAPA energy into CAISO
- Supports cost-effective delivery of federal hydropower resources

Requested Action:

1. Approve Amendment 2 through December 2028
2. Ratify existing Amendment 1 expiring December 31, 2026
3. Authorize the Acting CEO (or designee) and Technical Committee Chair to execute Amendment 2

# Thank you!

mceCleanEnergy.org

October 2, 2026

TO: MCE Technical Committee

FROM: Jesica Brooks, Lead Board Clerk and Executive Assistant

RE: Member Requests for Future Agenda Items (Agenda Item #08)

Dear Technical Committee Members:

**Summary:**
Committee members are invited to submit topics they would like to discuss at upcoming Technical Committee meetings. Staff has compiled the requests received to date.

| **Topic** | **Expected Timing for the Committee** |
|---|---|
| Renewable Energy Targets for Light Green | January 2027 |

The listed topics have been provided for the Committee's review. The Committee may discuss, prioritize, and provide direction regarding the scheduling of these items on future meeting agendas.

**Fiscal Impacts:**
None.

**Recommendation:**
No action needed. This report serves to provide the Committee with a continuing list of topics for future meetings presented by Committee Members in meetings.